

1985
PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (STAND-BY DUTY) BILL 1985
EXPLANATORY MEMORANDUM

(Circulated by the Authority of the
Minister for Industry, Technology & Commerce,
Senator the Honourable John N. Button)

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OUTLINE

This Bill forms part of the Government's policy on domestic crude oil marketing arrangements. This policy was announced by the former Minister for Resources and Energy, Senator Walsh, on 9 October 1984. The purpose of the Bill is to enable the imposition of a special Customs duty of 3 cents per litre on the importation of certain petroleum oils, should that prove to be necessary in the event of a shortfall or underlifting of indigenous crude oils by local refiners.

The commencement date of the Bill will be the day on which it receives the Royal Assent. The Bill enables refiners' performance prior to the commencement date of the Bill but after June 1985 in respect to Bass Strait oil, and after March 1985 in respect to minor oil, to be taken into account in determining whether the provisions for the imposition of the special duty need to be invoked. The provisions of the Bill however do not enable the imposition of any duty in less than 2 months after the date of Royal Assent.

For the imposition of any duty under the legislation a series of steps have to be followed:

- . a refiner has to have had, during each of 3 consecutive annual months that occurred after June 1985 a shortfall of Bass Strait oil, or an underlift of minor oil from a particular oil source during a period of 6 consecutive annual months that occurred after March 1985. The significance of the dates of June and March 1985 is that the ends of these months are approximately three and six months before the prospective date of the Bill receiving the Royal Assent.
- . the Minister for Resources and Energy has to be satisfied that the shortfall of Bass Strait oil or the underlift of minor oil from a particular oil source was principally within the control of the refiner
 - in order to be satisfied the Minister for Resources and Energy has to notify the refiner of the shortfall or underlift and state that a stand-by certificate might be issued unless, within a calendar month, the refiner supplies information that will satisfy the Minister that the shortfall or underlift was not within the control of the refiner
- . if the refiner either does not respond within the calendar month or the information supplied does not satisfy the Minister then the Minister is required to
 - notify the refiner that he or she is satisfied that the shortfall or underlift was within the control of the refiner; and

- unless precluded by a further provision of the legislation (see below) he or she proposes to issue a certificate to the Minister for Industry, Technology and Commerce stating that it is appropriate that duty be payable
- . before the certificate can be issued the refiner is given the opportunity to move out of shortfall or underlift. For Bass Strait oil the period in which the shortfall can be made up commences at the beginning of the earliest of the 3 annual months and concludes at the end of the calendar month that began on the day on which the refiner was notified that the Minister for Resources and Energy was satisfied that the shortfall was within the control of the refiner. For minor oil the procedure is similar except that the period commences at the beginning of the earliest of the 6 annual months
- . in addition, before the Minister for Resources and Energy can issue a stand-by certificate he or she is required to publish a notice in the Gazette setting out particulars of the decision that he or she is satisfied a shortfall or underlift was within the control of a refiner. That Minister must also invite refiners to apply to have their names placed on a list of eligible importers. Inclusion on this list exempts those persons from the payment of any stand-by duty
- . it is only when all these provisions of the Bill are satisfied that the Minister for Resources and Energy can give the Minister for Industry, Technology and Commerce a stand-by certificate. The Minister for Industry, Technology and Commerce shall thereafter publish a Gazette notice which declares that duty is payable under the Act. Duty cannot be imposed from a day earlier than the day of publication of the Gazette.

The Bill also contains provisions for the revocation of stand-by certificates and declarations when refiners are considered to be no longer in shortfall or underlift. Arrangements for transfers of oil between refiners and subsequent adjustment of allocation notices are also provided for in the Bill.

Several provisions of the legislation have been made subject to appeals to the Administrative Appeals Tribunal by the Customs and Excise Legislation Amendment Act 1985. Appeals can be made against the following:

- . a decision of the Minister for Resources and Energy that he or she is, or is not, satisfied in a matter for the purposes of the definition of "list of eligible importers" in sub-clause 4(1)

- . a decision of that Minister under paragraph 10(1)(b) or 11(1)(b) that he or she is, or is not, satisfied as to whether a shortfall of Bass Strait oil or an underlifting of minor oil was within the control of the refiner.

FINANCIAL IMPACT

Refiners who purchase the quantities or percentages allocated to them will not be required to pay any additional penalty customs duty. If a refiner does not purchase the amounts allocated, then the penalty duty may be imposed. In the event that a medium sized refiner is required to pay the duty it is expected that approximately \$4 million would be paid to the Government each month.

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DETAILED DESCRIPTION OF THE BILL

A Bill for an Act relating to the provision of a special duty of Customs in respect of certain petroleum oils in certain circumstances.

Clause 1 - Citation - Customs Tariff (Stand-by Duty) Act 1985

Clause 2 - Date of Commencement - Date of Royal Assent

Clause 3 - Provides that the Customs Act 1901 is incorporated and shall be read as one with this Act

Clause 4 - Interpretation

Provides interpretations of the following terms which are used in the Bill

- . annual month
- . Australian installation
- . Bass Strait allocation notice
- . Bass Strait oil
- . Customs Minister
- . exempt oils
- . ineligible person
- . initial prices notice
- . list of eligible importers
- . minor oil
- . minor oil allocation notice
- . oil source
- . periodic prices notice
- . prescribed oils
- . prices notice

- . quantity
- . refiner
- . relevant heading
- . relevant oils
- . relevant tariff classification
- . Resources Minister
- . stabilised crude petroleum oil
- . stand-by certificate
- . stand-by declaration
- . Tariff Act
- stabilised crude petroleum oil
- minor oil from a particular oil source
- application of an item in a prices notice
- application of an item in a periodic prices notice
- notices may be telexed
- associates

Clause 5 - Shortfall

Sub-clause (1) - provides that a refiner who in an annual month had purchased less Bass Strait oil than was specified in the Bass Strait allocation notice which relates to that month shall be taken to have had a shortfall.

Sub-clause (2) - sets out the circumstances in which a shortfall of Bass Strait oil shall be taken to have been principally within the control of the refiner.

Clause 6 - Underlifting

Sub-clause (1) - provides that a refiner who in a period had purchased less than the percentage of the quantity of minor oil from a particular oil source specified in the minor allocation notice shall be taken to have underlifted such minor oil. Provision is made for calculating whether a refiner had underlifted where different allocation percentages are specified during the period.

Sub-clause (2) - sets out the circumstances in which an underlift of minor oil from a particular oil source shall be taken as being principally within the control of the refiner.

Clause 7 - Imposition of special duty

Provides, subject to certain exemptions specified in Clause 9, for the imposition of a special duty on imported relevant oils while a stand-by declaration is in force.

Clause 8 - Rate of duty

The special rate of Customs duty shall be \$0.03 per litre.

Clause 9 - Exemption

Sub-clause 9(1) - provides that relevant oils of New Zealand or Papua New Guinea origin are exempt from the special duty.

Sub-clause 9(2) - provides that relevant oils imported by or on behalf of a person who is on a list of eligible importers are exempt from the special duty.

Clause 10 - Certificate that imposition of duty is appropriate because of shortfall.

This clause sets out the steps that have to be followed before a stand-by certificate can be issued in relation to Bass Strait oil.

Sub-clause 10(1) - provides, subject to limitations imposed by subsequent sub-clauses, that where a refiner had a shortfall of Bass Strait oil during each of 3 consecutive annual months that occurred after June 1985 and the Resources Minister is satisfied that the shortfall was within that refiner's control, that Minister may give a certificate to the Customs Minister stating that imposition of the special duty is appropriate.

Sub-clause 10(2) - provides that the Resources Minister is not entitled to be satisfied that a shortfall was within a refiner's control unless, at the end of the relevant 3 months but not before the commencement date, that Minister gave the refiner a written notice setting out particulars of the shortfall. This notice shall also state that a certificate might be issued unless, within one calendar month of the notice being given, information is provided by the refiner that will satisfy the Resources Minister that the shortfall was not within the refiner's control. That Minister is entitled to be satisfied that the shortfall was within a refiner's control if information

- . is not provided by the refiner within one calendar month, or
- . does not satisfy that Minister that the shortfall was beyond the refiner's control.

Sub-clause 10(3) - provides that the Resources Minister is not entitled to give a stand-by certificate unless, after deciding that a shortfall was within a refiner's control, that Minister gives a written notice to that effect to the refiner. This notice is required to set out particulars of the decision and state that the Minister's intention, unless precluded by sub-clause 10(4), is to give a certificate. Before giving the certificate, the Resources Minister shall publish a Gazette Notice inviting persons to apply for inclusion on a list of eligible importers. Inclusion on this list will prevent any requirement for payment of the penalty Customs duty.

Sub-clause 10(4) - sub-clause 10(3) provides that the Resources Minister is not entitled to issue a stand-by certificate unless the requirements of this sub-clause are satisfied. The purpose of this sub-clause is to prevent the imposition of a duty if a refiner ceases to have a shortfall. It gives the refiner the time from the start of the 3 annual months to the end of the calendar month which began on the day that notice was given under sub-clause 10(3) to purchase sufficient oil to not be in shortfall.

Sub-clause 10(5) - specifies, for the purposes of sub-clause 10(4), the means of determining whether a refiner has had a shortfall in a period that is not an annual month.

Clause 11 - Certificate that imposition of duty is appropriate because of underlifting.

This clause sets out the steps that have to be followed before a stand-by certificate can be issued in relation to minor oil.

Sub-clause 11(1) - provides, subject to limitations imposed by subsequent sub-clauses, that where a refiner underlifted minor oil from a particular oil source during a period of 6 consecutive annual months that occurred after March 1985 and the Resources Minister is satisfied that the underlifting was within a refiner's control, that Minister may give a certificate to the Customs Minister stating that imposition of the special duty is appropriate.

Sub-clause 11(2) - applies parallel provisions to those contained in sub-clause 10(2) but in respect of a refiner underlifting minor oil from a particular oil source during a period of 6 consecutive annual months but not before the commencement of this Act.

Sub-clause 11(3) - applies parallel provisions to those contained in sub-clause 10(3) but in respect of a refiner underlifting minor oil from a particular oil source during a period of 6 consecutive annual months.

Sub-clause 11(4) - provides that the Resources Minister is not entitled to give a stand-by certificate unless the refiner underlifted minor oil from an oil source during the period commencing at the beginning of the 6 annual months and ending one calendar month from the date a notice under sub-clause 11(3) was given to the refiner.

Clause 12 - Declarations that duty is payable

Sub-clause 12(1) - provides that where a declaration is not in force and where the Resources Minister gives the Customs Minister a stand-by certificate, the Customs Minister shall publish in the Gazette a written notice declaring that the special duty is payable.

Sub-clause 12(2) - provides that a declaration made pursuant to sub-clause 12(1) has effect on and from the day specified in the notice, not being a day earlier than the publication date of the Gazette.

Clause 13 - Revocation of Certificates

Sub-clause 13(1) - provides that where a stand-by certificate in respect of a shortfall of Bass Strait oil is in force and the Resources Minister becomes satisfied after an annual month that the specified refiner has purchased sufficient Bass Strait oil in the period

- . that commenced at the beginning of the 3 months specified in the certificate; and
- . ending at the conclusion of the annual month in which the Resources Minister became satisfied

then that refiner shall no longer be regarded as having had a shortfall. The Resources Minister shall then revoke the relevant certificate.

Sub-clause 13(2) - this is a parallel provision to sub-clause 13(1) and provides for the revocation of stand-by certificates in relation to minor oil. A refiner ceases to be in underlift when the Resources Minister becomes satisfied after an annual month that the refiner did not underlift minor oil in the period

- . that commenced at the beginning of the earliest of the 6 annual months specified in the certificate; and
- . ending at the conclusion of the annual month in which the Resources Minister became satisfied.

The Resources Minister shall then revoke the relevant certificate.

Clause 14 - Revocation of declarations.

Sub-clause 14(1) - provides that where a stand-by declaration is in force and the stand-by certificate or all certificates given before or after the making of the declaration are revoked, the Customs Minister shall publish in the Gazette a notice in writing revoking that declaration.

Sub-clause 14(2) - provides that revocation of the declaration has effect from the date specified in the Gazette, that date being the first day of the annual month following the annual month in which the notice is published.

Clause 15 - Transfers of allocations

Sub-clause 15(1) - provides that, where two refiners have agreed to transfer in an annual month occurring after June 1985 Bass Strait oil from one refiner to the other, the quantity of oil specified in the respective Bass Strait allocation notices shall be deemed to be increased or decreased, as the case may be, by the transferred quantity.

Sub-clause 15(2) - provides that, where two refiners have agreed to transfer in an annual month occurring after March 1985 minor oil from a particular oil source from one refiner to the other, the percentage in relation to minor oil from the particular source specified in the minor oil allocation notices given to the transferor and the transferee shall be deemed to be increased or decreased, as the case may be, by the transferred percentage.

Clause 16 - Special duty to be additional to ordinary duty

Provides that the Customs duty payable under this Act is additional to Customs duties payable under any other Act.

