

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DAIRY PRODUCE LEVY (No. 1) AMENDMENT BILL 1995

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and Energy, Senator  
the Hon Bob Collins)



## DAIRY PRODUCE LEVY (No. 1) AMENDMENT BILL 1995

### GENERAL OUTLINE

1. The purpose of this amendment is to give effect to advice received from the Office of General Counsel subsequent to the introduction of the Bill into the House of Representatives that there was a substantial risk that the import offset provisions of the *Dairy Produce Levy (No. 1) Amendment Bill 1995* could be successfully challenged on Constitutional grounds as imposing a duty of customs in a Bill dealing with a duty of excise.
2. Following advice from the Attorney-General's Department, a dual levy mechanism has been adopted. An import offset levy (ie a duty of customs) is proposed to be imposed on imports of dairy products under the *Dairy Produce Levy (No. 2) Amendment Bill 1995* but only up to the level of the levy payer's export credit (if any) ie export rebate or reduction of manufacturing milk levy liability due to exports. An acquisition offset levy (ie a duty of excise) is proposed to be imposed under the *Dairy Produce Levy (No. 1) Amendment Bill 1995* on imported dairy product which is acquired by prescribed exporters (or related companies) after import up to the level of the levy payer's export credit, net of any import offset levy already paid.
3. These levies are designed to prevent exporters manipulating the market support arrangements for financial gain. They are offsets against export credits or export rebates rather than general import duties and will not affect normal import trade.
4. The amendments affect all three related Bills i.e. the *Dairy Produce Amendment Bill 1995*, the *Dairy Produce Levy (No. 1) Amendment Bill 1995* and the *Dairy Produce Levy (No. 2) Amendment Bill 1995*.
5. The amendments provide for the import offset and acquisition offset levies to be imposed, on a financial year basis, on the milk fat and protein content of imported dairy produce up to the level of rebate on the milk fat and protein content of exports, whether that rebate was a reduction in the levy liability of a manufacturer of dairy produce or a direct payment to a downstream manufacturer of dairy produce.

### FINANCIAL IMPACT STATEMENT

6. There are no financial implications of this Bill for the Commonwealth. All levies received into the Consolidated Revenue Fund will be fully appropriated to the Dairy Market Support Fund administered by the Australian Dairy Corporation.
7. The amounts raised by the levies will not increase the level of support to the industry. As the import offset and acquisition offset levies will offset rebates of manufacturing milk levy (which generates the consumer transfer from domestic consumers to manufacturing milk producers) due to exports generated directly or indirectly by imports of dairy products, they will act to preserve that support.

## NOTES ON INDIVIDUAL CLAUSES

### SCHEDULE

#### 3. Subsections 4(2) to (7):

8. Subsection 4(2) is deleted and replaced with a new subsection 4(2) which defines the use of relevant dairy produce in the manufacture of dairy produce.
9. Subsection 4(3) is inserted, defining a prescribed exporter for the purpose of imposition of acquisition offset levy in relation to a particular financial year as a company which has benefited from a reduction of manufacturing milk levy liability or a rebate of manufacturing milk levy as a result of the export of dairy produce during that financial year.
10. Subsection 4(4) is inserted, defining relevant exports to be any exports of dairy produce for which a reduction could be made in a manufacturing levy liability imposed by the *Dairy Produce Levy (No. 1) Act 1986*, or for which a person could claim a rebate of manufacturing milk levy under section 108C of the *Dairy Produce Act 1986*.
11. Subsection 4(5) defines related companies for the purposes of the *Dairy Produce Levy (No. 1) Act 1986*.

#### 4. Part II: Repeal the Part, substitute:

#### PART II - LEVIES ON RELEVANT DAIRY PRODUCE

12. The word relevant is removed from the heading because the acquisition offset levy imposed (on certain imported dairy produce) in the proposed Part II is not imposed on relevant dairy produce (which, by definition, is wholemilk or wholemilk products produced in Australia).

#### Imposition of levies

13. Paragraph 5(1)(ba) provides for an acquisition offset levy to be imposed on the total quantity of imported dairy produce acquired by a prescribed exporter or a related company (which is not a prescribed exporter) during a particular financial year, providing levy has not been imposed by section 8 or section 8A of the *Dairy Produce Levy (No. 2) Act 1986* on that dairy produce.

#### Amount of manufacturing milk levy

14. Subsection 7(5) is amended, and subsections 7(6) to (8) deleted, having effect to remove imported dairy produce from the monthly calculation of manufacturing levy liability. Imported dairy produce is levied separately on an annual basis, by the proposed paragraph 5(1)(ba) of the *Dairy Produce Levy (No. 1) Act 1986* or one of the proposed sections 8 and 8A of the *Dairy Produce Levy (No. 2) Act 1986*.

Amount of acquisition offset levy

15. Subsection 7A(1) provides for the acquisition offset levy to be levied, at the rates prescribed for manufacturing milk levy applying at the time of acquisition, on the milk fat and protein content of the imported dairy produce.
16. Subsections 7A(2), (3) and (4) provide that the maximum amount of acquisition offset levy which a prescribed exporter is required to pay (in relation to a particular financial year) is that amount which does not exceed the total amount of benefit (reduction of manufacturing milk levy liability, or rebate of manufacturing milk levy) to which that prescribed exporter is entitled (in relation to the same financial year), net of any amount of levy imposed (in relation to the same financial year) on that prescribed exporter by section 8 of the *Dairy Produce Levy (No. 2) Act 1986*.

By whom levies payable

17. Subsection 11(2A) provides that the acquisition offset levy is payable by the prescribed exporter who has benefited from a reduction of manufacturing milk levy liability or a rebate of manufacturing milk levy as a result of the export of dairy produce.