Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION
OF THE AGREEMENT

Supplement

In accordance with its obligations under Article 16:6(b) of the Anti-Dumping Code and Article 19:5(b) of the Code on Subsidies and Countervailing Measures, the delegation of Australia has forwarded a copy of the most recent reprint of the Customs Tariff (Anti-Dumping) Act 1975. This reprint incorporates Amendment No. 20 of 1983 which has not previously been passed to the GATT. Amendment No. 20 of 1983 relates to the insertion of paragraphs 8(7)(b) and 10(8)(aa).
AN ACT

Relating to certain Special Duties of Customs

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:-

1. This Act may be cited as the Customs Tariff (Anti-Dumping) Act 1973.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

3. (1) The following Acts are repealed:-

       Customs Tariff (Dumping and Subsidies) Act 1961
       Customs Tariff (Dumping and Subsidies) Act 1969.

       (2) Subject to sub-section (3), where, immediately before the date of commencement of this Act, a special duty was payable on any goods under the Customs Tariff (Dumping and Subsidies) Act 1961 in consequence of the publication by the Minister of a notice in the Gazette specifying those goods, the special duty continues to be payable on those goods, and may be charged and collected, in accordance with that Act on and after that date notwithstanding the repeal of the Acts specified in sub-section (1).

       (3) The Minister may, by notice published in the Gazette, revoke a notice referred to in sub-section (2), and, upon the revocation of the notice, the special duty on goods specified in the notice ceases to be payable, and shall not be charged or collected, on goods entered for home consumption on or after the date of revocation.

       (4) The reference in sub-section (2) to the Customs Tariff (Dumping and Subsidies) Act 1961 shall be read as including a reference to that Act as amended and in force from time to time.

4. (1) In this Act, unless the contrary intention appears-

       "determination" means a determination in writing;

       "direction" means a direction in writing;

       "importer", in relation to goods exported to Australia, means-

       (a) in a case to which paragraph (b) does not apply - the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they are landed;

       (b) in the case of goods taken from parts beyond the seas to an Australian installation or goods on board an overseas installation at the time when it is attached to the Australian seabed - the beneficial owner of the goods at the time when they are imported into Australia; or

       (c) in the case of goods being an overseas installation that becomes attached to the Australian seabed - the beneficial owner of the installation at the time when it is imported into Australia.

       (2) For the purposes of this Act, a purchase or sale of goods shall not be treated as an arms length transaction if-

       (a) there is any consideration payable for or in respect of the goods other than their price;

       (b) the price is influenced by a commercial or other relationship between the buyer, or a business associate of the buyer, and the seller, or a business associate of the seller; or

       (c) the buyer, or a business associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

       (3) For the purposes of this Act, 2 persons who are not business associates within the ordinary meaning of that term shall, nevertheless, be deemed to be business associates if, directly or indirectly-

       (a) one has an interest in the business or property of the other;

       (b) both have an interest in the same business or property; or
(c) another person has an interest in the business or property of each of them.

(4) A reference in this Act to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.

(5) For the purposes of this Act, where, during the exportation of goods to Australia, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

4AA. (1) For the purposes of this Act, where an overseas installation becomes attached to the Australian seabed, the installation shall, subject to sub-section (4), be deemed to be part of Australia.

(2) For the purposes of this Act, an installation that, at the commencement of this sub-section, is attached to the Australian seabed shall, subject to sub-section (4), be deemed to be part of Australia.

(3) For the purposes of this Act, an installation (other than an installation that is deemed by sub-section (1) to be part of Australia) that becomes attached to the Australian seabed shall, subject to sub-section (4), be deemed to be part of Australia.

(4) An installation that is deemed to be part of Australia by virtue of the operation of this section shall, for the purposes of this Act, cease to be part of Australia if-

(a) the installation is detached from the Australian seabed, or from another installation that is attached to the Australian seabed, for the purpose of being taken outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits); or

(b) after having been detached from the Australian seabed otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits).

4AB. (1) Where an overseas installation (not being an installation referred to in sub-section (2)) becomes attached to the Australian seabed, the installation and any other goods on the installation at the time when it becomes so attached shall, for the purposes of this Act, be deemed to have been exported to Australia and to have been imported into Australia at the time when the installation becomes so attached.

(2) Where an overseas installation-

(a) is brought to a place in Australia; and

(b) is to be taken from that place into Australian waters for the purpose of becoming attached to the Australian seabed, the installation and any goods on the installation at the time when it is brought to that place shall, for the purposes of this Act, be deemed to have been exported to Australia and to have been imported into Australia at the time when the installation is brought to that place.

4AC. Where goods are taken from parts beyond the seas on to an Australian installation, the goods shall, for the purposes of this Act, be deemed to have been exported to Australia and to have been imported into Australia upon being taken on to the installation.

4A. (1) For the purposes of this Act, the export price of any goods exported to Australia is-

(a) where-

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and

(ii) the importer and the exporter are not business associates,

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation;
(b) where -

(i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation);

(ii) the importer and the exporter are business associates; and

(iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not a business associate of the importer,

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

(c) in any other case - the price that the Minister determines having regard to all the circumstances of the exportation.

(2) A reference in paragraph (1) (b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to -

(a) any duties of Customs or sales tax paid or payable on the goods;

(b) any costs, charges or expenses arising in relation to the goods after exportation; and

(c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the foregoing sub-sections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of sub-section (3), the Minister may disregard any information that he considers to be unreliable.

5. (1) Subject to this section, for the purposes of this Act, the normal value of any goods exported to Australia is the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Subject to this section, where the Minister is satisfied that -

(a) by reason of the absence of sales that would be relevant for the purpose of determining a price under sub-section 

or

(b) by reason that the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under sub-section

are not suitable for use in determining such a price,

the normal value of goods exported to Australia cannot be ascertained under sub-section (1), the normal value of the goods for the purposes of this Act is -

(c) except where paragraph (d) applies, the sum of -

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export -

(A) such amounts as the Minister determines would be the delivery charges and other costs necessarily incurred in that sale; and

(B) an amount calculated in accordance with such rate as the Minister determines would be the rate of profit on that sale; or

(d) where the Minister so directs, the highest price paid for like goods sold in the ordinary course of trade in the country of export for export to a third country.

Normal value of goods
Amended by No. 66, 1981, s.4

Sub-section (2)
substituted by No. 66, 1981, s.4
Sub-section (3) substituted by No. 66, 1981, s.4

Subject to sub-sections (4) and (3), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding sub-sections by reason that the Government of the country of export:

(a) has a monopoly, or substantial monopoly of the trade of the country; or

(b) determines or substantially influences the domestic price of goods in that country,

the normal value of the goods for the purposes of this Act shall be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

(c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;

(d) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for export from that country to another country in the ordinary course of trade, being sales that are arms length transactions;

(e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:

(I) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;

(II) such amounts as the Minister determines are the delivery charges and other costs necessarily incurred in selling the like goods;

(III) an amount calculated in accordance with such rate as the Minister determines is to be regarded as the rate of profit on the sale of the like goods;

(f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.

(4) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of those goods to be ascertained under the preceding sub-sections, the normal value of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4A) For the purposes of sub-section (4), the Minister may disregard any information that he considers to be unreliable.

(5) Where the normal value of goods exported to Australia is the price paid for like goods and that price and the export price of the goods exported:

(a) relate to sales occurring at different times;

(b) are not in respect of identical goods; or

(c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate,

that price paid for like goods is to be taken to be that price paid adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

(7) Where:

(a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
R.I Customs Tariff (Anti-Dumping) Act 1973

(b) the Minister is of the opinion that the normal value of the goods shall be ascertained for the purposes of this Act as if the country of origin were the country of export, he may direct that the normal value of the goods shall be so ascertained.

(8) For the purposes of sub-section (7), the country of origin of goods is -

(a) in the case of unmanufactured raw products - the country of which they are products; or

(b) in any other case - the country in which the last significant process in the manufacture or production of the goods was performed.

6. The Customs Act 1901 (in this Act referred to as the Customs Act) is incorporated and shall be read as one with this Act.

7. Duties of Customs are imposed in accordance with this Act.

8. (1) Subject to section 13, where the Minister is satisfied, as to any goods that have been exported to Australia, that -

(a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and

(b) by reason thereof -

(i) material injury to an Australian industry has been or is being caused or is threatened or the establishment of an Australian industry has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 of the Customs Act in respect of any duty that may become payable on the goods under this section - material injury to an Australian industry would or might have been caused if the security had not been taken.

the Minister may, by notice published in the Gazette, declare that this section applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind, that -

(a) the amount of the export price of goods of that kind that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of goods of that kind that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) by reason thereof, material injury to an Australian Industry has been or is being caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered.

the Minister may, by notice published in the Gazette (whether or not he has made, or proposes to make, a declaration under sub-section (1) in respect of goods of that kind that have been exported to Australia), declare that this section applies to goods of that kind -

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

(2A) Where the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may suspend indefinitely his consideration of the export of that consignment if he is given and accepts an undertaking by the exporter, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to an Australian Industry or hindering the establishment of an Australian Industry.
Third country dumping duties

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as dumping duty.

(4) Subject to sub-section (5), the dumping duty in respect of goods is a sum equal to the amount by which the amount of the export price of the goods is less than the amount of the normal value of the goods.

(5) The Minister may, by notice published in the Gazette, direct that the dumping duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the dumping duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(6) A notice under sub-section (5) applies to goods entered for home consumption on or after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.

(7) The Minister may, by notice in writing, exempt goods from dumping duty if he is satisfied -

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

(b) that a Commercial Tariff Concession Order under Part XVA of the Customs Act 1901 in respect of the goods is in force;

(c) that -

(i) the tariff classification in Schedule 3 to the Customs Tariff Act 1962 that applies to the goods, or, where the goods are goods to which section 27 of that Act applies, the item in Part 1 of Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

(d) that -

(i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Part 1 of Schedule 4 on the goods; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or

(e) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(8) Where the Minister exempts goods from the dumping duty under sub-section (7) by reason of his being satisfied as to a matter specified in paragraph (7)(a), (c), or (d) the instrument of exemption shall be published in the Gazette.
Customs Tariff (Anti-Dumping) Act 1975

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that -

(a) the amount of the export price of goods of that kind so produced or manufactured that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of goods of that kind so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) by reason thereof, material injury to a producer or manufacturer in a third country has been or is being caused or is threatened,

the Minister, if requested by the Government of the third country so to do, may, by notice published in the Gazette (whether or not he has made proposals to make, a declaration under sub-section (1) in respect of goods of that kind so manufactured or produced that have been exported to Australia), declare that this section applies to goods of that kind so produced or manufactured -

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as third country dumping duty.

(4) Subject to sub-section (5), the third party dumping duty in respect of goods is a sum equal to the amount by which the amount of the export price of the goods is less than the amount of the normal value of the goods.

(5) The Minister may, by notice published in the Gazette, direct that the third country dumping duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the third country dumping duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(6) A notice under sub-section (5) applies to goods entered for home consumption after a date specified in the notice, which may be a day earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.

(7) The Minister may, by notice in writing, exempt goods, from third country dumping duty if he is satisfied -

(a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or

(c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(8) Where the Minister exempts goods from the third country dumping duty under sub-section (7) by reason of his being satisfied as to a matter specified under paragraph (7)(a), the instrument of exemption shall be published in the Gazette.

10. (1) Subject to section 13, where the Minister is satisfied as to any goods that have been exported to Australia, that -

(a) in the country of origin or the country of export of the goods there has been paid or granted, directly or indirectly, upon production, manufacture, carriage or export of those goods a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) by reason thereof -

(1) material injury to an Australian industry has been or is being caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered; or

(11) in a case where security has been taken under section 42 of the Customs Act in respect of any duty that may become payable on the goods under this section -

material injury to an Australian industry would or might have been caused if the security had not been taken,
Customs Tariff (Anti-Dumping) Act 1975

the Minister may, by notice published in the Gazette, declare that this section applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind that -
(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind that have already been exported to Australia or may be paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and
(b) by reason thereof, material injury to an Australian industry has been or is being threatened, or the establishment of an Australian industry has been or may be materially hindered,

the Minister may, by notice published in the Gazette (whether or not he has made, or proposes to make, a declaration under sub-section (1) in respect of goods of that kind that have been exported to Australia), declare that this section applies to goods of that kind -
(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and
(d) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.

(2A) Where the export of a consignment of goods to Australia has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may suspend indefinitely his consideration of the export of that consignment if he is given and accepts -
(a) an undertaking by the Government of the country of origin, or of the country of export, of the goods in the consignment, in terms that are satisfactory to the Minister, that that Government will, in relation to any future export trade to Australia in goods of the same kind as the goods in the consignment, review any financial assistance by that Government and make any changes that may be found to be necessary to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry; or
(b) an undertaking by the exporter of the goods in the consignment, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry.

Sub-section (2B)

(2B) Where the Minister is satisfied that -
(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties;
(b) those duties are imposed because it is alleged that there is paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind a subsidy, bounty, reduction or remission of freight or other financial assistance; and
(c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country has been or is being caused or is threatened, or the establishment of an industry in that country has been or may be materially hindered, by reason of the payment or grant of that subsidy, bounty, reduction or remission of freight or other financial assistance,

the Minister may, by notice published in the Gazette, declare that this section applies to goods specified in the notice -
(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and
(2C) Where the Minister is satisfied that -

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties;

(b) those duties are imposed because it is alleged that -

(1) prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and

(2) material injury to an industry in that country has been or is being caused or is threatened, or the establishment of an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance; and

(c) prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed has been paid or granted in relation to goods exported from that country to Australia and material injury to an Australian industry has been or is being caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance,

the Minister may, by notice published in the Gazette, declare that this section applies to goods specified in the notice, being goods of a kind mentioned in paragraph (2) -

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(2D) Where the Minister is satisfied that -

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties;

(b) those duties are imposed because it is alleged that prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country;

(c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country has been or is being caused or is threatened, or the establishment of an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance,

the Minister may, by notice published in the Gazette, declare that this section applies to goods specified in the notice -

(d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and

(e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(2E) A reference in this section to prescribed assistance in relation to goods is a reference to any assistance, incentive, exemption, privilege or benefit (whether financial or otherwise) in relation to goods other than the payment or grant of a subsidy, bounty, reduction or remission of freight or other financial assistance on the production, manufacture, carriage or export of the goods.
Customs Tariff (Anti-Dumping) Act 1975

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as countervailing duty.

(4) Subject to sub-section (5), the countervailing duty in respect of goods is -

(a) in the case of countervailing duty in respect of goods to which this section applies by virtue of sub-section (1), (2) or (2B) - a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance that has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods; or

(b) in the case of countervailing duty in respect of goods to which this section applies by virtue of sub-section (2C) or (2D), a sum equal to -

1. If the prescribed assistance that has been paid or granted, directly or indirectly, in relation to the goods was financial assistance - the amount of that financial assistance; or

2. If the prescribed assistance that has been granted, directly or indirectly, in relation to the goods was not financial assistance, whichever of the following is determined by the Minister to be appropriate:

   (A) the cost of granting that assistance;

   (B) the value of that assistance to the person to whom it was granted.

(5) The Minister may, by notice published in the Gazette, direct that the countervailing duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the countervailing duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(6) A notice under sub-section (5) applies to goods entered for home consumption after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.

Sub-section (7) amended by No. 68, 1982, s.2

(7) If the Minister is satisfied in a case to which paragraph (4)(a) applies that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance shall, for the purpose of this section, be such as is determined, in writing, by the Minister.

Sub-section 7A inserted by No. 69, 1982, s.2

(7A) If the Minister is satisfied in a case to which paragraph (4)(b) applies that adequate information as to the amount, cost or value of the prescribed assistance in relation to goods cannot be obtained, the amount, cost or value of that prescribed assistance shall, for the purpose of this section, be such as is determined, in writing, by the Minister.

(8) The Minister may, by notice in writing, exempt goods from countervailing duty if he is satisfied -

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

(b) that -

1. the tariff classification in Schedule 3 to the Customs Tariff Act 1982 that applies to the goods, or, where the goods are goods to which section 27 of that Act applies, the Item in Part I of Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

2. suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

(c) that -

1. the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Part I of Schedule 4 on the goods; and

2. suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or

(d) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.
R.1  Customs Tariff (Anti-Dumping) Act 1973

(9) Where the Minister exempts goods from countervailing duty under sub-section (8) by reason of his being satisfied as to a matter specified in paragraph (8)(a), (b), and (c), the instrument of exemption shall be published in the Gazette.

(10) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales shall be deemed to be financial assistance paid to him.

11. (1) Subject to section 13, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that -

(a) in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of those goods, a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) by reason thereof -

(1) material injury to a producer or manufacturer in a third country has been or is being caused; or is being threatened; or

(11) in a case where security has been taken under section 42 of the Customs Act in respect of any duty that may become payable on the goods under this section - material injury to a producer or manufacturer in a third country or might have been caused if the security had not been taken,

the Minister if requested by the Government of the third country so to do, by notice published in the Gazette, declare that this section applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that -

(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind that have already been exported to Australia and there may be paid or granted directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) by reason thereof material injury to a producer or manufacturer in a third country has been or is being caused or is being threatened,

the Minister if requested by the Government of the third country so to do may, by notice published in the Gazette (whether or not he has made or makes a declaration under sub-section (1) in respect of goods of that kind that have been exported to Australia), declare that this section applies to goods of that kind -

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as the third country countervailing duty.

(4) Subject to sub-section (5), the third country countervailing duty in respect of goods is a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance that has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods.

(5) The Minister may, by notice published in the Gazette, direct that the third country countervailing duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the third country countervailing duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(6) A notice under sub-section (5) applies to goods entered for home consumption after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.
Customs Tariff (Anti-Dumping) Act 1975

Amended by No. 66, 1981, s.8

(7) If the Minister is satisfied that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance shall, for the purpose of this section, be such as is determined, in writing, by the Minister.

(8) The Minister may, by notice in writing, exempt goods from third country countervailing duty if he is satisfied -

(a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or

(b) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(9) Where the Minister exempts goods from third country countervailing duty under sub-section (8) by reason of his being satisfied as to a matter specified under paragraph (8)(a), the instrument of exemption shall be published in the Gazette.

(10) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales shall be deemed to be financial assistance paid to him.

(11A) Where the Minister is satisfied that it is inappropriate to ascertain the amount of a subsidy, bounty, reduction or remission of freight or other financial assistance referred to in sub-section 10(1) or (2) or 11(1) or (2) except in accordance with this section by reason that the Government of the country of export -

(a) has a monopoly, or substantial monopoly, of the trade of the country; or

(b) determines or substantially influences the domestic price of goods in that country,

the Minister may, for the purposes of section 10 or 11, as the case may be, determine the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance, as the case may be, on the basis that the normal value of the goods is such value as is ascertained in accordance with sub-section 5(3).

(12) (1) Where the Minister is satisfied that, by reason of any circumstances, including the granting of rebates, refunds or other allowances, goods exported to Australia have been carried whether within the country of export for the purpose of exporting the goods to Australia or from the country of export to Australia or both, freight free, or the amount of freight paid or payable in respect of the carriage of the goods is less than the normal freight in relation to the goods -

(a) the Minister shall be deemed, for the purposes of section 10, or section 11, to be satisfied that a reduction of freight has been granted upon the carriage of the goods; and

(b) where a special duty of Customs imposed by section 10 or section 11 is chargeable (whether by virtue of this section or otherwise) on goods as to which the Minister is so satisfied, the Minister shall be deemed, for the purposes of sub-section 10(7), or sub-section 11(7), to be satisfied that the amount of the reduction of freight that has been granted upon the carriage of goods is an amount equal to -

(I) in the case of goods carried freight free - the amount of the normal freight in relation to the goods; and

(II) in the case of other goods - the amount by which the normal freight in relation to the goods exceeds the amount or the net amount of the freight paid or payable in respect of the carriage of the goods.

(2) In this section, "normal freight", in relation to goods exported to Australia, means -

(a) the amount of freight that would have been payable in respect of the carriage of the goods within the country of export for the purpose of exporting the goods from that country to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the time of that carriage, in respect of carriage of like goods, and to any other matter that the Minister considers relevant;
(b) the amount of freight that would have been payable in respect of the carriage of the goods from the country of export to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates (if any), at the date of exportation, of like goods, in respect of the carriage of like goods by sea or, if like goods are regularly carried by aircraft, by aircraft, and to any other matter that the Minister considers relevant; or

(c) the sum of the amount of freight referred to in paragraph (a) and the amount of freight referred to in paragraph (b), as the case may be.

13. (1) Subject to this section, the Minister shall not cause a notice to be published under sub-section 8(1), 9(1), 10(1) or 11(1) in respect of goods that have been entered for home consumption.

(2) Sub-section (1) does not prevent the publication of a notice under sub-section 8(1), 9(1), 10(1) or 11(1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 of the Customs Act in respect of any duty that might become payable under section 8, 9, 10 or 11 of this Act, as the case may be (not being security that has been cancelled by reason of the publication of such a notice or in relation to which the Customs had the right to require and take such security (not being security that would have been cancelled in accordance with the Customs Act if it had been taken).

(3) Sub-section (1) does not prevent the publication of a notice under sub-section 8(1) in respect of goods that have been entered for home consumption to which, by virtue of sub-section (4) of this section, this sub-section applies, if -

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 of the Customs Act in respect of any duty that might be payable on goods of the same kind under section 8 of this Act or, within that period, the Customs had the right to require and take such security; and

(b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason of the amount of the export price of the goods exported being less than the amount of the normal value of the goods exported, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.

(4) Sub-section (3) applies to goods -

(a) that have been imported into Australia by an importer who knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry; or

(b) that are goods of a kind the exportation of which to Australia on a number of occasions has caused, or but for the publication of a notice under section 8 in respect of goods of that kind, would have caused material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.

(5) Sub-section (1) does not prevent the publication of a notice under sub-section 10(1) in respect of goods that have been entered for home consumption if -

(a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 of the Customs Act in respect of any duty that might be payable on goods of the same kind under section 10 of this Act or, within that period, the Customs had the right to require and take such security; and

(b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason that, in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly upon the production, manufacture, carriage or export of the goods a subsidy, bounty, reduction or remission of freight or other financial assistance (including financial assistance of the kind referred to in sub-section 10(10)).

Added by No. 66, 1981, s.11
(6) Where—

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with sub-section 8(2A) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 of the Customs Act in respect of any duty under section 8 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 8(1) in respect of goods that—

(c) have been exported by the exporter;

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that—

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(7) Where—

(a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with sub-section 10 (2A) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission security has been taken under section 42 of the Customs Act in respect of any duty under section 10 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 10(1) in respect of goods that—

(c) are the produce or manufacture of that country or have been exported from that country, as the case may be;

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that—

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(8) Where—

(a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with sub-section 10 (2A) is a violation of that undertaking; and

(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 of the Customs Act in respect of any duty under section 10 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 10(1) in respect of goods that—

(c) have been exported by the exporter;

(d) are of the kind to which the undertaking relates; and

(e) have been entered for home consumption on a day that—

(i) was not earlier than the day on which that act or omission occurred; and

(ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

Section 14 repealed
by No. 136, 1982, s.3
19. (1) The Minister may refer to the Industries Assistance Commission (in this section referred to as "the Commission") for inquiry and report a question as to the existence of any fact, or facts, as to the existence of which he is required to be satisfied before causing a notice to be published under sub-section 8(1), 8(2), 9(1), 9(2), 10(1), 10(2), 11(1), 11(2) or 20(1).

(2) Where -

(a) a person engaged in, or concerned in the establishment of, an Australian industry requests the Minister to cause a notice to be published under sub-section 8(1), 8(2), 10(1) or 10(2) in relation to goods of a kind with which persons engaged in that industry are concerned; and

(b) the Minister informs the person, in writing, that he does not propose to accede to the request,

the person may, not later than 30 days after being so informed, request the Minister, in writing, to refer to the Commission for inquiry and report the question as to the existence of a fact, or facts, specified in the request, being a fact or facts as to the existence of which the Minister is required to be satisfied before causing the notice to be published.

(3) Where -

(a) a person engaged in, or concerned in the establishment of, an Australian industry or engaged, or proposing to engage, in the business of importing into Australia goods of a particular kind requests the Minister to cause a notice to be published under sub-section 8(1), 8(2), 9(1), 9(2), 10(1), 10(2), 11(1) or 11(2), being a notice relating to goods of a kind with which persons engaged in that industry are concerned or relating to goods of the kind imported, or proposed to be imported, by the person, as the case may be; and

(b) the Minister informs the person, in writing, that he does not propose to accede to the request,

the person may, not later than 30 days after being so informed, request the Minister, in writing, to refer to the Commission for inquiry and report the question as to the existence of a fact, or facts, specified in the request, being a fact or facts as to the existence of which the notice would be required to be satisfied before causing the notice to be published.

(4) Where the Minister receives a request under sub-section (2) or (3) to refer a question to the Commission for inquiry and report, he shall, unless that question has been referred to the Commission for inquiry and report within the period of 2 years immediately preceding the request, refer the question to the Commission for inquiry and report.

(5) Where the Minister refers a question to the Commission under this section, that question shall, for the purposes of the Industries Assistance Commission Act 1973, be deemed to have been referred to the Commission in accordance with that Act by the Minister administering that Act.

16. The several duties imposed by this Act shall be separately charged, notwithstanding that more than one duty applies to any particular goods.

17. (1) For the purposes of sections 8, 9, 10, 11 and 12 and any other purpose of this Act, the equivalent amount in Australian currency of an amount in a currency other than Australian currency shall be ascertained in accordance with a fair rate of exchange at the appropriate date.

(2) For the purpose of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the Gazette, a means of ascertaining a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to a currency -

(a) on a date, or during a period, preceding the date of publication of the notice; or

(b) from and including the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3) The rate of exchange ascertained in relation to a currency in pursuance of sub-section (2) shall, for the purpose of calculating the amount of duty payable on any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange that shall be applied for the purpose of sub-section (1) in respect of the currency specified in the notice.

18. A notice under sub-section 8(2), 9(2), 10(2) or 11(2) in respect of a kind of goods, may without limiting the generality of those provisions be expressed to apply to -

(a) goods of that kind exported from a particular country; or

(b) goods of that kind exported by a particular exporter.

19. (1) The Minister may, by writing under his hand, delegate to a person, either generally or otherwise all or any of his powers and functions under sections 11, 12, 13, 14, 15, 16, 17, 18, 20(1), 20(2) and 20(3) and under section 5.
Revocation of notices

(2) A delegate of the Minister is, in the exercise of his powers and the performance of his functions under this Act, other than in his being satisfied, or having an opinion, as to any matter, subject to the directions of the Minister.

20. (1) The Minister may, by notice published in the Gazette, revoke a notice published in pursuance of this Act and shall do so if he is satisfied that, if the notice were not in force, he would not be authorised by this Act to cause the notice to be published.

(2) A notice of revocation under sub-section (1) has effect from a date specified in the notice, which, except in the case of the revocation of a notice that directed the manner of ascertaining the amount of a special duty of Customs imposed by this Act, may be a date earlier than the date of publication of the notice of revocation in the Gazette.

(3) Upon the revocation of notice that declared that a section of this Act applies to goods, the special duty on the goods ceases to be payable, and shall not be charged or collected on goods entered for home consumption on or after the date of effect of the notice of revocation.

21. The special duties of Customs payable under this Act are in addition to such other duties of Customs (if any) as are payable under any other Act.

NOTES

1. The Customs Tariff (Anti-Dumping) Act 1975 as shown in this reprint comprises the Customs Tariff (Anti-Dumping) Act 1975 as amended. Particulars of the Principal Act and the Amending Acts are set out in the following table:

<table>
<thead>
<tr>
<th>Act</th>
<th>Number and Year</th>
<th>Date of Assent</th>
<th>Date of Commencement</th>
<th>Application, saving or transitional provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs Tariff (Anti-Dumping) Amendment (Off-shore Installations) Act 1982</td>
<td>53, 1982</td>
<td>16 June 1982</td>
<td>See Note (1) below</td>
<td></td>
</tr>
<tr>
<td>Customs Tariff (Anti-Dumping) Amendment Act 1982</td>
<td>114, 1982</td>
<td>22 November 1982</td>
<td>See Note (2) below</td>
<td>S.5</td>
</tr>
<tr>
<td>Customs Tariff (Anti-Dumping) Amendment Act 1983</td>
<td>20, 1983</td>
<td>14 June 1983</td>
<td>See Note (3) below</td>
<td></td>
</tr>
</tbody>
</table>

(1) Section 2 of the Customs Tariff (Anti-Dumping) Amendment (Off-shore Installations) Act provides:

"This Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the twenty-eighth day after the day on which the Off-shore Installations (Miscellaneous Amendments) Act 1982 receives the Royal Assent."

The Off-shore Installations (Miscellaneous Amendments) Act 1982 received the Royal Assent on 16 June 1982. The twenty-eighth day after the day on which that received the Royal Assent is 14 July 1982.

(2) Section 2 of the Customs Tariff (Anti-Dumping) Amendment Act 1982 provides that that Act shall come into operation on the day on which the Customs Tariff Act 1982 comes into operation. The Act was proclaimed to come into operation on 1 January 1983.

(3) Section 2 of the Customs Tariff (Anti-Dumping) Amendment Act 1983 provides that that Act shall come into operation on the day on which section 5 of the Customs Amendment Act 1983 comes into operation. Section 5 of that Act was proclaimed to come into operation on 30 June 1983.