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Customs and Excise Legislation Amendment Bill (No. 4) 1989

Date Introduced: 25 October 1989

House: House of Representatives

Portfolio: Industry, Technology and Commerce

Digest of Bill

Purpose

This is an omnibus Bill that will make a number of amendments to legislation administered by the Industry, Technology and Commerce portfolio. The major changes relate to the operation of the Commercial Tariff Concession System; terminate most of the existing manufacture in bond arrangements; require that potable spirits imported in bulk containers be repackaged in bond and locally produced spirits be repackaged in non-bulk containers prior to local sale; and allow a prescribed fee for the processing of certain entries.

Background

Manufacture in bond arrangements allow the production of goods in a manufacturing warehouse licensed by Customs for domestic consumption and export. The objective of the scheme is to promote local manufacture of goods. Manufacturers using the scheme gain certain benefits, including where goods are produced for export, duties are not paid on imported inputs; imported materials and components wasted in the production process are not dutiable under prescribed conditions; and the duty payable on entry for home consumption is the lesser of the amount of duty payable on the inputs to production or on the finished article. The regulations of the *Customs Act 1901* provide for the manufacture of approximately 42 items for domestic consumption and 49 items for export. Items which can be manufactured in bond are diverse and include cocktails and grease. In January 1987, the Industries Assistance Commission (IAC) reported on export concessions and recommended that the manufacture in bond scheme be abolished. The IAC found that the overall effects of the manufacture in bond scheme on industry are minor; that it is mainly confined to parts of the telecommunications equipment industry; is highly selective; is granted through the exercise of administrative discretion; and is not subject to public scrutiny.¹

Excise and import duty on potable spirits (alcoholic spirit beverages and spirit used for fortifying Australian wine) are levied on the basis of alcoholic content. Most bottling of Australian produced spirits is done under bond in a factory or a licensed customs warehouse. When spirits are bottled in bond, excise duty is assessed at the point of bottling. Spirits may also be bottled, free of Customs Service control, using duty paid spirits. Where this occurs, excise duty is assessed when the bulk spirit is entered for local sale. The bulk

spirits to be reduced and bottled in Australia are entered into warehouses which are licensed for blending and bottling spirits. For imported spirits bottled in bond, import duty is assessed at the point of bottling and the duty is payable when the goods are entered for local sale. For imported spirits bottled out of bond, import duty becomes payable when the spirit is cleared for local sale. In November 1987, the IAC reported on the customs and excise bond system. The IAC did not make any recommendations in relation to restricting all bottling of potable spirits to bond stores. The IAC found that while confining bottling of potable spirit to bond stores would provide the Customs Service with greater powers to prevent the mixing of duty paid spirit with illicit spirit this would not necessarily prevent continuing illegal distillation and distribution. In addition, any increase in the collection of excise through restricting bottling to bond would be negligible, given that all major importers and manufacturers of potable spirit already bottle under bond. In contrast to the IAC, the Australian Wine and Brandy Producers' Association and the Distilled Spirits Industry Council of Australia supported the Customs Service proposal for all bottling of potable spirits to be under bond.²

The Commercial Tariff Concession (CTC) system provides for a tariff concession to certain imported goods. The CTC system was introduced in 1983 to replace the previous by-law concession system which had been found difficult to administer. Basically, at the moment a Tariff Concession Order may be issued if goods performing a similar function as the particular good the order is sought in respect to, is not produced in Australia, and cannot be produced here in the normal course of business. Under the amendments proposed in the Bill, regard is to be had as to whether there is a good in the same class produced in Australia or capable of being produced in the normal course of business. The Minister will have power to set guidelines that are to be used in determining particular classes of goods.

The proposed amendments have been criticised by the Customs Agents' Institute of Australia. They maintain that under the proposed legislation the number of concessions granted will fall, as 'classes of goods' will form a larger group than comparison with a particular good. They also object on the ground that the Customs Service will have a discretion to determine how narrowly or broadly the class will be defined.³

Main Provisions

Amendments to the *Customs Act 1901*

Clause 6 provides that the regulations may prescribe that entries be able to be processed by a specified computer system used by the Customs Service. The regulations may also prescribe that a person making an entry pay a fee, where they have access to the system, for access to that system, and where they do not have access to the system, for assistance in preparing an entry for use in, or the supply of computer facilities for access to, the system. The regulations may exempt prescribed persons from having to pay fees. The amendment will have effect from 1 January 1990.

Clauses 7 and 8 will terminate the existing manufacture in bond arrangements, except for blending and packaging which will continue to be allowed in a licenced warehouse. Clauses 7 and 8 will have effect from 1 January 1990.

A new Part VA (proposed sections 103 – 105) will be inserted into the Act by clause 9 and will deal with bulk importation of potable spirit, bond, and repackaging prior to local sale. All potable spirit imported into Australia in bulk containers (i.e. containers holding more than 2 litres of spirit) will have initially to be entered for warehousing (i.e. placed in bond) or transshipment (proposed section 104). Proposed section 105 provides that potable spirit imported in bulk containers and placed in bond is not to be sold locally unless it has either been repackaged into non bulk containers or the Comptroller allows it to be sold in bulk containers. The Comptroller is not to allow the entry of bulk containers for local sale unless the containers have a capacity of 20 litres or less, or a prescribed amount, and the Comptroller is satisfied that the potable spirit will not be repackaged in any other container for retail sale. Clause 9 will have effect from 1 January 1990.

A new section 269BA will be inserted into the Act by clause 19 to allow the Minister to set and give guidelines to the Comptroller as to how the Comptroller is to carry out the functions under Part XVA of the Act (which deals with Concession Orders). The Comptroller is to have regard to the guidelines. The guidelines are to deal with general principles and not in relation to a particular application for a Concession Order. In addition to the above powers given to the Minister, the Minister may set guidelines in relation to deciding whether goods constitute a class of goods; whether goods serve similar functions to other goods; and certain matters relevant to deciding whether a Concession Order may not be in the public interest. Guidelines will have to be *Gazetted* and will be subject to disallowance by Parliament. Clause 19 will have effect from 1 January 1990.

Where a good nominated in an application for a Concession Order is a good which falls into a class of goods, and goods serving a similar function to that class are not produced in Australia, or are not capable of being produced or repaired in the normal course of business in Australia, the Comptroller is to issue a Concession Order (clause 20). Clause 20 will have effect from 1 January 1990.

Clause 22 provides that the Comptroller may refuse to make a Concession Order if the Order would be likely, in the Comptroller's opinion, to have a substantially adverse effect on the market for goods produced, work carried out, or services provided in Australia. Where the Comptroller is of the opinion that an application for a Concession Order may not be in the national interest, the Comptroller is to refer the application to the Minister. Where the Minister decides that the making of a Concession Order would not be in the national

interest, the Minister is to inform the Comptroller of the decision, the reasons for the decision, and after being informed, the Comptroller is to refuse to make the Concession Order. Clause 22 will have effect from 1 January 1990.

Amendments to the *Excise Act 1901*

Excisable potable spirit is not to be entered for local sale unless it has been repackaged in non bulk containers (i.e. containers holding two litres or less); the spirit is entered for local sale for a purpose for which a free rate of duty applies; or the Comptroller allows the entry for local sale in bulk containers. The Comptroller is not to allow the entry for local sale in bulk containers unless the containers have a capacity of less than 20 litres, or a prescribed amount, and the Comptroller is satisfied that the potable spirit will not be repackaged in any other container for retail sale (clause 37). Clause 37 will have effect from 1 January 1990.

References

1. Industries Assistance Commission, *Export Concessions*, 16 January 1987, p. 63.
2. Industries Assistance Commission, *The Customs and Excise Bond Systems*, 19 November 1989, pp. 67 and 68.
3. The Customs Agent's Institute of Australia, *Press Release*, 20 November 1989.

For further information, if required, contact the Economics and Commerce Group.

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This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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