



Bills Digest

No. 121 2000-01

Dried Vine Fruits (Rate of Primary Industry
(Customs) Charge) Validation Bill 2001

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Dried Vine Fruits (Rate of Primary Industry (Customs)
Charge) Validation Bill 2001

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7 May 2001

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Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001

Date Introduced: 29 March 2001

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: Royal Assent

Purpose

To validate the regulations that purported to set the rate of customs charge on dried vine fruit exported from Australia for the period since 1 January 2000.

Background

A primary industry customs charge is imposed on dried vine fruits by Schedule 10 of the *Primary Industries (Customs) Charges Act 1999*.¹ The proceeds of the export charges and excise levy paid by producers of sultanas, currants and raisins in Australia are used to finance the marketing and promotion activities of the Australian Dried Fruits Board (the Board). The Board, as agent, collects the levies and export charges on behalf of the Commonwealth Government.² In 1999-2000 the income of the Board was \$381 807 of which industry levies and export charges made up 57 percent.³

On 29 August 2000 the Governor General made regulations under the *Primary Industries (Customs) Charges Act 1999* and the *Primary Industries (Excise) Levies Act 1999* to reduce the rates of levy and export charge on dried vine fruits from \$10 to \$7 a tonne. The reduction was to have retrospective effect from 1 January 2000.⁴ In his Second Reading Speech on a Bill related to this one,⁵ the Minister, Hon Warren Truss said that:

Contrary to the original advice received from the Attorney-General's Department, the regulations imposing the new levy or charge have been deemed to possibly contravene subsection 48(2) of the *Acts Interpretation Act 1901* which invalidates any regulation that is expressed to take effect at a time before it is gazetted and operates to the disadvantage of any person other than the Commonwealth.⁶

Warning:

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Subsection 48(2) of the *Acts Interpretation Act 1901* provides that regulations have no effect if they take effect before the date of notification and have an adverse effect on a person other than the Commonwealth. It states that:

- (2) A regulation, or a provision of regulations, has no effect if, apart from this subsection, it would take effect before the date of notification and as a result:
 - (a) The rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of notification would be affected so as to disadvantage that person; or
 - (b) Liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification.

According to the Explanatory Memorandum, current advice from the Office of Legislative Drafting raises concerns about the validity of the regulations made on 29 August 2000, that purported to reduce the customs charge on dried vine fruits from \$10 to \$7 a tonne⁷. The purpose of this Bill is to validate the regulations for the period since 1 January 2000.

Since September 2000 producers have been paying the customs charge at the reduced rate of \$7 a tonne.⁸

Separate Acts to comply with section 55 of the Constitution

The imposition of industry levies and customs charges must comply with the requirements of section 55 of the Constitution, which states that:

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

As a result, the excise levy on dried fruit processed for domestic consumption, and the customs charge on dried vine fruit that is exported, are imposed by two Acts, namely:

- *Primary Industries (Excise) Levies Act 1999*, and
- *Primary Industries (Customs) Charges Act 1999*.

The measures for the collection of the export levy and customs charge imposed by the two Acts are contained in the *Primary Industries Levies and Charges Collection Act 1991*.

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Main Provisions

Clause 3 overrides subsection 48(2) of the *Acts Interpretation Act 1901* with respect to Schedule 1 in the Primary Industries (Customs) Charges Amendment Regulations 2000 (No. 1) (being Statutory Rules 2000 No. 236). This has the effect of ensuring that the reduction in the customs charge could be applied before the amendments to the regulations were gazetted on 29 August 2000.

The legislative approach taken by this Bill differs from that of the Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001. This is apparently because of the different timing in the process of amalgamating individual levy regulations into two sets of consolidated regulations covering excise levies (Primary Industries (Excise) Levies Regulations 1999) and customs charges (Primary Industries (Customs) Charges Regulations 2000).

The Primary Industries (Excise) Levies Regulations 1999 took effect on 1 January 2000. However, due to the process of consolidating groups of excise levies, this particular consolidation did not include dried vine fruits at that time. The consolidation that included dried vine fruits did not come into effect until 1 October 2000. Amendments that reduced the rate of levy were approved in September 2000 to come into effect on 2 October 2000. As a result the Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001 seeks to validate the regulations that set the operative rate of excise levy from 1 January 2000 to 1 October 2000 inclusive.

The consolidated Primary Industries (Customs) Charges Regulations 2000 came into effect on 1 July 2000, and again, because of the stages of consolidating groups of charges, they also did not include dried vine fruits at that time. No amendments to reduce the rate of customs charge were sought, and the operative rate of charge has not been reduced as it was intended. Consequently, this Bill seeks to validate the regulations that set the customs charge on dried vine fruits from 1 January 2000.

Concluding Comments

The passing of an Act to validate delegated legislation has been used several times recently. On 25 November 1999 Parliament passed the *National Residue Survey Levies Regulations (Validation and Commencement of Amendments) Act 1999*⁹ in order to confirm that the levy system for sheep and lamb sales, purported to have been introduced by the Primary Industries Levies and Charges (National Residue Survey Levies) Regulations 1998 (Amendment), was valid and effective from 1 August 1998.¹⁰ On 13 March 2000 Parliament also passed five Acts¹¹ to validate determinations made by the Treasurer on 11 August 1998 imposing levies totalling \$40 million on certain industries within the financial sector.¹² These Acts declared that the determinations were valid and effective from 1 July 1998 despite subsection 48(2) of the *Acts Interpretation Act 1901*.

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Endnotes

- 1 By definition in the *Primary Industries (Customs) Charges Act 1999* and Schedule 10 of the *Primary Industries (Customs) Charges Regulations 2000*, dried vine fruits are chargeable horticultural products.
- 2 Australian Dried Fruits Board, *Annual Report 1999-2000*, p. 22.
- 3 *ibid.*, p. 3.
- 4 *Primary Industries (Excise) Levies Amendment Regulations 2000 (No. 3)* (being *Statutory Rules 2000 No. 237*) and *Primary Industries (Customs) Charges Amendment Regulations 2000 (No. 1)* (being *Statutory Rules 2000 No. 236*).
- 5 *Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001*.
- 6 House of Representatives, *Debates*, 29 March 2001, p. 25975.
- 7 *Explanatory Memorandum*, *Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001*, p. [2].
- 8 *ibid.*, p. [3].
- 9 Act 163 of 1999.
- 10 For a discussion of this legislation see [Bills Digest](#) no. 72 (1999-2000), 'National Residue Survey Levies Regulations (Validation and Commencement of Amendments) Bill 2000', by Angus Martyn.
- 11 Acts 14-18 of 2000. The Acts were the *Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Act 2000*, *General Insurance Supervisory Levy Determination Validation Act 2000*, *Life Insurance Supervisory Levy Determination Validation Act 2000*, *Retirement Savings Account Providers Supervisory Levy Determination Validation Act 2000*, and *Superannuation Supervisory Levy Determination Validation Act 2000*.
- 12 For a discussion of the issues involved see [Bills Digest](#) nos. 21, 1999-2000, 'Authorised Non-operating Holding Companies Supervisory Levy Determination Validation Bill 1999', by David Kehl and Bernard Pulle, pp. 28-31.

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