

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 118.

Customs Tariff (Dumping and Subsidies).

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was, by virtue of the incorporation of the Act with the *Customs Act*, vested in the Minister for Foreign Affairs and Trade

Accordingly, as at that date, unless some other intention is clearly indicated, by note or in the text, references in or in relation to this Chapter to—

“the Minister”—should be read as references to the Minister for Foreign Affairs and Trade;

“the Departmental Head”—should be read as references to the Secretary for Foreign Affairs and Trade¹;

“the Department”—should be read as references to the Department of Foreign Affairs and Trade².

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¹ Previously the Secretary, Department of Foreign Relations and Trade.

² Previously the Department of Foreign Relations and Trade.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 118.

Customs Tariff (Dumping and Subsidies) Act.

ARRANGEMENT OF SECTIONS.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 118.

Customs Tariff (Dumping and Subsidies) Act.

Being an Act relating to certain special duties of Customs, to be incorporated and read as one with the *Customs Act*.

1. Interpretation.

In this Act, unless the contrary intention appears—

“countervailing duty” means a special duty payable on goods under Section 5(2);

“dumping duty” means a special duty payable on goods under Section 3(2);

“the export price”, in relation to goods that have been or are being exported to the country, means—

(a) an amount in Papua New Guinea currency that is equal to the price paid or payable to the exporter, or an agent of the exporter, for the goods (including free on board charges in the country of export); or

(b) if the Head of State, acting on advice, is of the opinion that adequate information as to the price so paid or payable cannot be obtained—an amount in Papua New Guinea currency that is equal to the price estimated by the Head of State, acting on advice, to be the price so paid or payable;

“financial assistance” includes the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales;

“industry” means an industry established or proposed to be established in the country;

“the normal value”, in relation to goods that have been or are being exported to the country, means whichever of the following amounts in Papua New Guinea currency, as ascertained by the Head of State, acting on advice, is determined by the Head of State, acting on advice, to be the normal value of those goods :—

(a) an amount equal to the sum of—

(i) the fair market value of similar goods sold in the country of export for home consumption in the ordinary course of trade; and

(ii) free on board charges paid or payable in that country in respect of the goods,

but not including any duties or other taxes paid or payable in that country, in respect of the goods, that are remitted or refunded on export; or

(b) an amount equal to the sum of—

(i) the highest comparable price paid for similar goods sold in the country of export for export to a third country in the ordinary course of trade; and

(ii) free on board charges paid or payable in the country of export in respect of the goods,

but not including any duties or other taxes paid or payable in the country of export, in respect of the goods, that are remitted or refunded on export; or

(c) an amount equal to the sum of—

(i) the fair market value of similar goods produced or manufactured, and sold, in the ordinary course of trade, in a third country selected by the Head of State, acting on advice, for home consumption in that country, it being a country in which, in the opinion of the Head of State, acting on advice, the costs of production or manufacture are similar to those in the country of export; and

(ii) such amount as is estimated by the Head of State, acting on advice, to be the cost of placing the goods free on board in the country of export,

but not including any duties or other taxes paid or payable in the third country, in respect of the goods, that are remitted or refunded on export; or

(d) an amount equal to the sum of—

(i) the cost of production or manufacture of the goods or, if the Head of State, acting on advice, is of the opinion that adequate information as to the cost of production or manufacture of the goods cannot be obtained, such amount as is estimated by the Head of State, acting on advice, to be the cost of production or manufacture of the goods; and

(ii) free on board charges paid or payable in the country of export in respect of the goods; and

(iii) such additional amount in respect of selling costs and profit as is determined by the Head of State, acting on advice;

“third country countervailing duty” means a special duty payable under Section 6(2);

“third country dumping duty” means a special duty payable under Section 4(2).

2. Imposition of duties of Customs.

Duties of Customs are imposed in accordance with this Act.

3. Dumping duty.

(1) Where the Head of State, acting on advice, is satisfied that—

(a) goods that are produced or manufactured outside the country and have been or are being exported to the country have been, are being or may be sold to a person in the country at an export price that is less than the normal value of the goods at the date of exportation; and

(b) the importation of the goods—

(i) is causing or threatening injury to industry producing or manufacturing similar or directly competitive goods; or

- (ii) may hinder the establishment of an industry in connexion with the production or manufacture of similar or directly competitive goods,

the Head of State, acting on advice, may cause a notice to be published in the National Gazette specifying the goods for the purposes of this section.

(2) On the publication of a notice under Subsection (1), a special duty shall be charged, collected and paid to the State on goods specified in the notice that are imported into the country.

(3) The amount of the duty in respect of any goods is a sum equal to the amount by which the export price of the goods is less than the normal value of the goods at the date of exportation.

(4) The Head of State, acting on advice, may, by instrument, exempt goods from the dumping duty if he is satisfied that—

- (a) similar or directly competitive goods are not offered for sale in the country to all purchasers on equal terms under similar conditions having regard to the custom and usage of trade; or
- (b) the difference between the export price of the goods and the normal value of the goods at the date of exportation does not exceed 10% of the normal value and the exemption would not cause injury to an industry producing or manufacturing similar or directly competitive goods; or
- (c) the goods are articles of merchandise and are for use as samples for the sale of similar goods.

(5) Where, under Subsection (4), the Head of State, acting on advice, exempts goods from dumping duty by reason of his being satisfied as to a matter specified in Subsection (4)(a) or (b), the instrument of exemption shall be published in the National Gazette.

4. Dumping duty—third country.

(1) Where the Head of State, acting on advice, is satisfied that—

- (a) goods that are produced or manufactured in a particular country and have been or are being exported to the country have been, are being or may be sold to a person in the country at an export price that is less than the normal value of the goods at the date of exportation; and
- (b) the importation of the goods is causing or threatening injury to the trade, in the market in the country, of producers or manufacturers in a third country of similar or directly competitive goods,

the Head of State, acting on advice, may cause a notice to be published in the National Gazette specifying the goods for the purposes of this section.

(2) On the publication of a notice under Subsection (1), a special duty shall be charged, collected and paid to the State, on goods specified in the notice imported into the country.

(3) The amount of the duty in respect of any goods is a sum equal to the amount by which the export price of the goods is less than the normal value of the goods at the date of exportation.

(4) The Head of State, acting on advice, may by instrument, exempt goods from the third country dumping duty if he is satisfied that—

- (a) similar or directly competitive goods are not offered for sale in the country to all purchasers on equal terms under similar conditions having regard to the custom and usage of trade; or
- (b) the difference between the export price of the goods and the normal value of the goods at the date of exportation does not exceed 10% of the normal value and the exemption would not cause injury to the trade, in the market in the country, of producers or manufacturers in the third country of similar or directly competitive goods; or
- (c) the goods are articles of merchandise and are for use as samples for the sale of similar goods.

(5) Where, under Subsection (4), the Head of State, acting on advice, exempts goods from the third country dumping duty by reason of his being satisfied as to a matter specified in Subsection (4)(a) or (b), the instrument of exemption shall be published in the National Gazette.

5. Countervailing duty.

(1) Where, in respect of goods that are produced or manufactured in a particular country and have been or are being exported to Papua New Guinea, the Head of State, acting on advice, is satisfied that—

- (a) a subsidy, bounty, reduction or remission of freight or other financial assistance has been or is being paid or granted directly or indirectly on the production, manufacture, carriage, export, distribution or sale of the goods; and
- (b) the importation of the goods—
 - (i) is causing or threatening injury to an industry producing or manufacturing similar or directly competitive goods; or
 - (ii) may hinder the establishment of an industry in connexion with the production or manufacture of similar or directly competitive goods,

the Head of State, acting on advice, may cause a notice to be published in the National Gazette specifying the goods for the purposes of this section.

(2) On the publication of a notice under Subsection (1), a special duty shall be charged, collected and paid to the State, on goods specified in the notice imported into the country.

(3) The amount of the duty in respect of any goods is a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance referred to in Subsection (1).

(4) Where the Head of State, acting on advice, is of opinion that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance for the purposes of this section is as determined by the Head of State, acting on advice.

6. Countervailing duty—third country.

(1) Where, in respect of goods that are produced or manufactured in a particular country and have been or are being exported to Papua New Guinea, the Head of State, acting on advice, is satisfied that—

- (a) a subsidy, bounty, reduction or remission of freight or other financial assistance has been or is being paid or granted directly or indirectly on the production, manufacture, carriage, export, distribution or sale of the goods; and
- (b) the importation of the goods is causing or threatening injury to the trade, in the market in the country, of producers or manufacturers, in a third country, of similar or directly competitive goods,

the Head of State, acting on advice, may cause a notice to be published in the National Gazette specifying the goods for the purposes of this section.

(2) On the publication of a notice under Subsection (1), a special duty shall be charged, collected and paid to the State on goods specified in the notice that are imported into the country.

(3) The amount of the duty in respect of any goods is a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance referred to in Subsection (1).

(4) Where the Head of State, acting on advice, is of opinion that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance for the purposes of this section is as determined by the Head of State, acting on advice.

7. Injury does not include an insubstantial injury.

A reference—

- (a) in Sections 3, 4, 5 or 6 to an injury—does not include a reference to an insubstantial injury; and
- (b) in Section 3 or 5 to the hindering of the establishment of an industry—does not include a reference to an insubstantial hindrance to the establishment of an industry.

8. Notices inconsistent with international obligations.

The Head of State, acting on advice, shall not cause a notice to be published under Section 4(1) or 6(1) unless he is satisfied that the publication of the notice is not inconsistent with the obligations of Papua New Guinea under any international agreement relating to tariffs or trade.

9. Investigations.

(1) The Head of State, acting on advice, may at any time direct a special advisory examiner appointed under the *Tariff Advisory Committee Act* to undertake an inquiry into any matter specified in Section 3, 4, 5 or 6 and to report to the Head of State.

(2) On receipt of a direction under Subsection (1) the special advisory examiner shall—

- (a) immediately undertake the inquiry in such manner as he thinks proper; and
- (b) make his report to the Head of State as soon as practicable.

(3) Sections 12, 17, 18, 19, 20, 21 and 22 of the *Tariff Advisory Committee Act* apply to and in relation to an inquiry by a special advisory examiner under this section in the same way as they apply to and in relation to an inquiry by a special advisory examiner under that Act.

10. Charging of duties.

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

11. Equivalents in Papua New Guinea currency.

(1) For the purposes of calculating the amount of a duty payable under this Act in respect of any goods, the amount in Papua New Guinea currency that is the equivalent of an amount calculated in another currency shall be ascertained in accordance with a fair rate of exchange at the date of exportation of the goods.

(2) For the purpose of this section, the Head of State, acting on advice, where he considers it desirable to do so for the avoidance of doubt, may specify, by notice in the *National Gazette*, a rate that shall 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) For the purpose of calculating the amount of duty payable on any goods exported on the date or during the period to which a rate specified under Subsection (2) applies, the rate of exchange specified, in relation to a currency under Subsection (2), is the rate of exchange that is to be applied for the purposes of Subsection (1).

12. Power to specify goods.

The powers given to the Head of State by this Act to cause notices to be published specifying goods extend to the publication of notices specifying—

- (a) goods of a particular class or kind; and
- (b) goods exported from a particular country; and
- (c) goods contained in a particular shipment; and
- (d) goods exported by a particular exporter; and
- (e) goods specified in such other manner as the Head of State, acting on advice, thinks fit; and
- (f) goods entered for home consumption before the date of publication of the notice as well as goods entered for home consumption on or after that date.

13. Revocation of notices.

On the revocation of a notice specifying any goods for the purposes of a provision of this Act, the special duty on the goods—

- (a) ceases to be payable; and
- (b) shall not be charged or collected,

on goods entered for home consumption on or after the date of revocation.

14. Special duties additional to ordinary duties.

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

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 118.

Customs Tariff (Dumping and Subsidies).

APPENDIX.

SOURCE OF THE CUSTOMS TARIFF (DUMPING AND SUBSIDIES) ACT.

Part A.—Previous Legislation

Customs Tariff (Dumping and Subsidies) Act 1965 (No. 79 of 1965)

as amended by—

Customs Tariff (Dumping and Subsidies) (Investigations) Act 1971 (No. 72 of 1971).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ¹ .
1	4
2	5
3	6
4	7
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6	9
7	10
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9	11A
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¹ Unless otherwise indicated, references are to the Act set out in Part A.

