

[AS REPORTED FROM THE COMMERCE COMMITTEE]

*House of Representatives, 24 September 1971.*

Words struck out by the Committee are shown in italics within bold round brackets; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

*Hon. Mr Adams-Schneider*

## CUSTOMS AMENDMENT

### ANALYSIS

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### A BILL INTITULED

#### An Act to amend the Customs Act 1966

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,  
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Customs Amendment Act 1971, and shall be read together with and deemed part of the Customs Act 1966\* (hereinafter referred to as the principal Act).
- 10 (2) Sections 2 to 4 of this Act and the First, Second, and Third Schedules thereto shall come into force on the 1st day of January 1972.
- (3) Except as provided in subsection (2) of this section, this Act shall come into force on its passing.

\*1966, No. 19

Amendments: 1967, No. 2, Part I; 1967, No. 137; 1968, No. 31; 1968, No. 142, Part I; 1970, No. 28, Part I; 1970, No. 44

No. 77—2

Price 10c

*The Customs Tariff*

**2. Interpretation**—(1) Section 2 of the principal Act is hereby amended by inserting in subsection (1), after the definition of the term “declaration”, the following definition:

“‘Developing country’ means any country for the time being declared by Order in Council, under section 120 of this Act, to be a developing country for the purposes of this Act:”.

(2) The said section 2 is hereby further amended by inserting in the definition of the term “Most Favoured Nation Tariff” in subsection (1), after the words “preceded by”, the words “the abbreviation ‘DC’ or”.

(3) The said section 2 is hereby further amended by omitting from the definition of the term “Tariff items”, in subsection (1), the words “six digits”, and substituting the words “7 digits”.

**3. New Customs Tariff**—(1) The Second Schedule to the principal Act is hereby amended by repealing the Customs Tariff (as heretofore modified), and substituting the new Customs Tariff set out in the First Schedule to this Act.

(2) The enactments specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule.

(3) Every reference in any other enactment (including any Order in Council) in force at the commencement of this section to any Tariff item shall thereafter, unless the context otherwise requires, be read as a reference to the corresponding item of the Tariff as substituted by subsection (1) of this section.

(4) The following enactments are hereby repealed:

(a) The Sixth Schedule to the principal Act:

(b) Sections 3 and 4 of the Customs Acts Amendment Act 1967, and the First and Second Schedules to that Act:

(c) Part I of the Customs Acts Amendment Act 1968, and the First and Second Schedules to that Act:

(d) Section 2 of the Customs Amendment Act 1970, and the Schedule to that Act.

(5) The Orders in Council specified in the Third Schedule to this Act are hereby revoked.

**4. Application of Tariff to developing countries—**

(1) Section 120 of the principal Act is hereby amended by inserting, after subsection (1), the following *(subsection)* subsections:

5 “(1A) The Governor-General may from time to time, by Order in Council—

    “(a) Declare any country to be a developing country for the purposes of this Act:

10      “(b) Declare that any country shall cease to be a developing country for the purposes of this Act.

*New*

15 “(1B) Where by any Order in Council made under subsection (1A) of this section any country is declared to be a developing country for the purposes of this Act, the Governor-General may by the same or any subsequent Order in Council declare that in relation to any specified Tariff items any rates of duty or exemptions from duty otherwise applicable to developing countries shall not apply to that country.”

20 (2) The said section 120 is hereby further amended by repealing paragraph (f) of subsection (1), and substituting the following paragraphs:

25      “(f) In the case of goods being the produce or manufacture of a developing country that is not part of the Commonwealth, and being goods included in a Tariff item in respect of which any rate of duty or exemption from duty is specified after the abbreviation ‘DC’ in the column headed ‘Most Favoured Nation’ in the Tariff, at the rates (if any) so specified, unless by virtue of any Order in Council under this section the said rate of duty or exemption from duty does not apply to that country:

35      “(g) In the case of goods being the produce or manufacture of a developing country that is part of the Commonwealth, and being goods included in a Tariff item in respect of which any rate of duty or exemption from duty is specified after the abbreviation ‘DC’ in the column headed ‘Most Favoured Nation’ in the Tariff, at the rates (if

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any) so specified, or at the rates (if any) specified in the British Preferential Tariff, whichever is more favourable to the importer, unless by virtue of any Order in Council under this section the said rate of duty or exemption from duty does not apply to that country: 5

“(h) In the case of goods being the produce or manufacture of any country that is not part of the Commonwealth, except goods to which paragraph (d) or paragraph (e) or paragraph (f) of this subsection applies, at the rates (if any) specified in the General Tariff.” 10

(3) Subsection (1) of the said section 120 is hereby further amended—

(a) By inserting in paragraph (a), after the words “paragraph (c)”, the words “or paragraph (g)”: 15

(b) By inserting in paragraph (d), after the words “of a most favoured nation”, the words “, except goods to which paragraph (e) or paragraph (f) of this subsection applies.”. 20

**5. Transitional provisions—**(1) At any time after the passing of this Act, the Governor-General may, by Order in Council, exercise in respect of the new Customs Tariff substituted by section 3 (1) of this Act, with effect from the commencement of that section, any of the powers to amend or modify the Tariff, or to revoke or suspend it and create exemptions in respect of any goods, conferred on him by any provision of the principal Act or of the New Zealand - Australia Free Trade Agreement Act 1965, for the purpose of giving effect to that provision or to section 10E of the Tariff and Development Board Act 1961, and for the purpose of bringing the said new Tariff into effective operation at the commencement of the said section 3; and the provisions of the principal Act or, as the case may require, of the New Zealand - Australia Free Trade Agreement Act 1965 shall apply to every such Order in Council made for the purposes of this subsection. 25 30 35

(2) Nothing in this Act shall limit or affect the operation of section 10E of the Tariff and Development Board Act 1961 in respect of any temporary Customs duty imposed on any goods for the purposes of that section so far as that duty is in force at the commencement of the said section 3. 40

*Dumping Duty*

6. **Dumping duty**—The principal Act is hereby further amended by repealing section 129, and substituting the following section:

5 “129. (1) Subject to the provisions of this section, in any of the cases specified in subsection (2) of this section the Minister may from time to time by notice in the *Gazette* direct that there shall, in addition to any other duties of Customs, be imposed on goods imported into New Zealand a  
10 special duty of Customs (in this section referred to as a dumping duty), and such duty shall be levied, collected, and paid accordingly.

“ (2) If in the opinion of the Minister the importation into New Zealand from any country (whether or not it is  
15 a contracting party to the General Agreement on Tariffs and Trade referred to in the General Agreement on Tariffs and Trade Act 1948) of any goods of a class or kind produced or manufactured or intended to be produced or manufactured in New Zealand, or in any other country  
20 which is a contracting party to the General Agreement on Tariffs and Trade, has or is likely to have any effect prejudicial to any industry carried on in New Zealand or in such other country as aforesaid, or to the establishment of any industry in New Zealand or in that other country, a  
25 dumping duty may be levied in respect of any such goods imported into New Zealand in any of the following cases, namely:

“ (a) If the actual selling price of the goods to any importer is less than their current domestic value  
30 determined in accordance with the provisions of this Act:

“ (b) If the actual selling price of the goods to any importer is in the opinion of the Minister less than the cost of production, with a reasonable profit added thereto, of similar goods in the country  
35 of origin or the country of exportation to New Zealand at the time of such exportation:

“ (c) If the Minister is satisfied that, in respect of the goods, any special concession (whether by way of  
40 railway or shipping or air freight, subsidy, bounty, rebate, or otherwise) has been or is to be allowed, taken, or granted:

“(d) If the Minister is satisfied that, because of an association in business or a compensatory arrangement between the exporter and the importer or a third party, the goods are being sold on the open market in New Zealand at a loss, or at a profit lower than the profit normally made on sales on the open market of identical or equivalent goods. 5

“(3) For the purposes of this section, the Minister may determine the amount of any concession to which paragraph (c) of subsection (2) of this section relates. 10

“(4) The rate or amount of dumping duty levied under this section shall be determined as follows:

“(a) In the case of goods to which paragraph (a) of subsection (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and their current domestic value: 15

“(b) In the case of goods to which paragraph (b) of subsection (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the actual selling price of the goods and the cost of production, with a reasonable profit added thereto, of similar goods in the country of origin or the country of exportation to New Zealand at the time of such exportation: 20 25

“(c) In the case of goods to which paragraph (c) of subsection (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the amount of the special concession referred to in that paragraph: 30

“(d) In the case of goods to which paragraph (d) of subsection (2) of this section applies, the dumping duty shall be an amount, to be determined by the Minister, not exceeding the difference between the price at which the goods are being sold on the open market in New Zealand and such selling price as the Minister may determine, having regard to the profit margin normally made by an independent seller in New Zealand on sales of identical or equivalent goods to an independent purchaser. 35 40

“(5) For the purposes of paragraphs (a) and (b) of subsection (2) and paragraphs (a) and (b) of subsection (4) of this section, the actual selling price of the goods shall be deemed not to exceed the amount payable in accordance with  
 5 usual commercial practice by the importer or purchaser in respect of those goods, exclusive of any charges that are not taken into account in determining the current domestic value of goods in accordance with this Act. In every such case the amount payable as aforesaid in respect of any goods shall be  
 10 ascertained as if the parties had agreed that payment for those goods should be made in New Zealand. If in relation to this section any question arises as to whether or not any payment is in accordance with usual commercial practice, it shall be determined by the Minister.

15 “(6) If at any time it appears to the Minister that the payment of any dumping duty is being evaded or avoided by the importation of any goods otherwise than on sale or in any other manner, he may determine, for the purposes of this section, the actual selling price of the goods, the cost  
 20 of production, or the current domestic value thereof, and dumping duty may be levied accordingly.

“(7) For the purposes of this section, 2 persons shall be deemed to be associated in business with each other if, whether directly or indirectly, either of them has any interest  
 25 in the business or property of the other, or both have a common interest in any business or property, or some third person has an interest in the business or property of both of them.

“(8) If in the opinion of the Minister there is reasonable  
 30 cause to believe that any goods that have been imported into New Zealand are goods in respect of which he may direct the imposition of a dumping duty, he may give a provisional direction that payment of dumping duty in respect of those goods shall be secured, in accordance with Part IX of this Act, in  
 35 such amount as he may determine.

“(9) A provisional direction given under subsection (8) of this section (unless in the meantime it is replaced by a direction given under subsection (1) of this section) shall cease to have effect at the expiry of the period of 3 months following the  
 40 date on which the provisional direction was given, except so far as it is extended by any further direction given by the Minister within that period; but an extended provisional direction shall in any case cease to have effect at the expiry of the period of 6 months following the date on which the  
 45 provisional direction was first given.

“(10) If any provisional direction given under subsection (8) of this section ceases to have effect, any security given pursuant to the provisional direction shall be released, except to the extent that the duty secured is payable pursuant to a direction given under subsection (1) of this section. 5

“(11) Any direction given under subsection (1) of this section may, in the discretion of the Minister, require the imposition of dumping duty on goods imported into New Zealand before the date on which the direction is given, except goods imported earlier than 4 months immediately 10 preceding—

“(a) The date on which the Collector has received from any person a written complaint that he has been or will be prejudicially affected by the dumping of any of the goods to which the direction relates; or 15

“(b) The date of the giving of a provisional direction in respect of the goods under subsection (8) of this section; or

“(c) The date of the giving of the direction under subsection (1) of this section— 20  
whichever date is the earliest.

“(12) Every determination of the Minister made under the authority of this section shall be final.”

#### *Miscellaneous Provisions*

**7. Duration of warehousing in Crown warehouses—**Section 115 of the principal Act is hereby amended by omitting the word “with”, and substituting the word “within”. 25

**8. Duties on goods produced in manufacturing warehouses—**(1) The principal Act is hereby further amended by repealing section 134, and substituting the following 30 section:

“134. (1) In respect of all goods manufactured in a manufacturing warehouse there shall be levied, collected, and paid—

“(a) In the case of any goods or class of goods specified 35 in the Third Schedule to this Act, duties, if any, at the appropriate rates set out in that Schedule:

“(b) In the case of any goods or class of goods in respect of which a rate of duty is for the time being fixed by the Governor-General in Council pursuant to 40 section 66 of the Distillation Act 1908—

“(i) Duties at the rate so fixed, as if the goods had been made by a process involving distillation in New Zealand; and

5 “(ii) In respect of any imported spirit used in the manufacture of such goods, duty at a rate equal to the difference between the rate of duty under the Tariff in respect of that imported spirit and the rate of duty imposed on the manufactured goods pursuant to subparagraph (i) of this paragraph:

10 “(c) In the case of all other goods so manufactured, duty, if any, at the lowest rate applicable to those goods under the Standard Tariff, as if the goods had been imported into New Zealand.

15 “(2) When the duty applicable to any goods pursuant to paragraph (c) of subsection (1) of this section is an *ad valorem* duty, the value of the goods for the purposes of such duty shall be determined in the prescribed manner.

“(3) This section shall apply to all goods entered for home consumption after the commencement of this section, although manufactured before its commencement.”

20 (2) Section 5 of the Customs Amendment Act 1967 is hereby consequentially amended by repealing subsection (1).

25 **9. Requisition to produce documents**—Section 218 of the principal Act is hereby amended by inserting in subsection (2), after the word “person”, the words “(including any officer employed in or in connection with any Government department)”.

**10. Protection of persons acting under authority of Act**—The principal Act is hereby further amended by inserting in Part VIII, after section 228, the following section:  
 30 “228A. Neither the Crown nor any officer of Customs or member of the Police shall be liable for the loss of or damage to any goods occasioned by anything done or omitted to be done or purporting to have been done by an officer of Customs or member of the Police in the exercise of any power conferred on him by this Act or any regulations made under  
 35 this Act, unless he has not acted in good faith or has acted without reasonable care.”

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NOTE—The Schedules referred to in clauses 1 and 3 have been omitted from this print of the Bill, which is intended to show the amendments made by the Commerce Committee.