



Customs Duties (Dumping and Subsidies) Act 1969

1969 CHAPTER 16

An Act to consolidate the Customs Duties (Dumping and Subsidies) Acts 1957 and 1968 and related enactments [24th April 1969]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Principal provisions as to anti-dumping duties

1 Charge of anti-dumping duties

- (1) Where it appears to the Board of Trade—
 - (a) that goods of any description are being or have been imported into the United Kingdom in circumstances in which they are under the provisions of this Act to be regarded as having been dumped ; and
 - (b) that, having regard to all the circumstances, it would be in the national interest; they may exercise in such manner as they think necessary to meet the dumping the power described in subsection (3) below, subject however to the restriction imposed by subsection (3)(b) on the exercise of the power as regards treaty countries
- (2) For the purposes of this Act imported goods shall be regarded as having been dumped—
 - (a) if the export price from the country of origin is less than the fair market price there (whether the country of exportation is the same or a different country); or
 - (b) if the export price from the country of exportation (if a different country) is less than the fair market price there
- (3) The power which the Board of Trade may exercise where this subsection applies is a power by order to impose on goods of a description specified in the order a duty of

customs chargeable on the importation of the goods into the United Kingdom at a rate specified in the order; but an order made in the exercise of the power—

- (a) shall include in the matters by reference to which the description of goods is framed either the country of origin or the country of exportation ; and
 - (b) shall not impose a duty on any goods as goods of which the country of origin, or country of exportation, is a treaty country (that is to say, a country in relation to which Her Majesty's Government in the United Kingdom is for the time being bound under the provisions of the General Agreement on Tariffs and Trade concluded at Geneva in the year 1947), unless the Board of Trade are satisfied that the case is within subsection (4) below.
- (4) For a case to be within this subsection the effect of the dumping must be such as either—
- (a) to cause or threaten material injury to an established industry in the United Kingdom, or materially retard the establishment of an industry in the United Kingdom ; or
 - (b) to cause or threaten material injury to an established industry in another treaty country which is the country of origin of any like goods (that is, any identical or comparable goods) imported into the United Kingdom.
- (5) Subject to subsection (3)(a) above, an order made in the exercise of the power described in that subsection may include such provisions with respect to the description of the goods chargeable with duty and with respect to the cases in which duty is chargeable as may appear to the Board of Trade to be required for the purposes of this Act, including provisions limiting the description of the goods by reference to the particular persons or organisations by whom the goods were produced or who were concerned with the production of the goods in some specified manner.

2 Relief by reference to actual margin of dumping

- (1) Where it appears to the Board of Trade that relief under this section should be available as respects a duty imposed by an order under section 1 above they may, if they think fit, by the same or another order apply the provisions of this section in relation to the duty.
- (2) Where this section applies in relation to any duty, the importer of any goods chargeable with the duty as being goods of which a specified country is the country of origin or, as the case may be, country of exportation may apply to the Board of Trade for relief from the duty on those goods.
- (3) If on an application so made the Board of Trade are satisfied that the export price of the goods from that country with the amount of the duty added to it exceeds the fair market price of the goods in that country, the Board shall notify the Commissioners of Customs and Excise of the amount of the excess, and the Commissioners shall remit or repay the duty up to that amount.
- (4) An application under this section as respects any goods shall not be made more than six months after the duty has been paid on the goods, and in connection with any such application the applicant shall furnish such information and evidence as the Board of Trade may require from him for ascertaining the export price or fair market price in the country in question.
- (5) If a person for the purposes of an application under this section—
 - (a) makes any statement which is false in a material particular; or

- (b) produces any account, estimate, return or other document which is false in a material particular ;

the amount of any duty remitted or repaid under this section on the application shall be recoverable as a debt due to the Crown; and if the statement was made or the document was produced knowingly or recklessly, that person shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £100 or to both.

3 Ascertainment of export price from country of origin (basic rules)

- (1) In relation to goods imported into the United Kingdom the export price from the country of origin, if the goods were wholly produced in that country, shall for the purposes of this Act be determined in accordance with subsection (2) or (3) below.
- (2) If goods are imported under a contract of sale which is a sale in the open market between buyer and seller independent of each other, and the Board of Trade are satisfied as to that fact, as to the price on that sale and as to such other facts as are material for this purpose, the export price shall be the price on that sale subject to a deduction for the cost of insurance and freight from the port or place of exportation in the country to the port or place of importation, and for any other costs, charges or expenses incurred in respect of the goods after they left the port or place of exportation, except so far as any such costs, charges or expenses have to be met separately by the purchaser.
- (3) If subsection (2) above does not apply, the Board of Trade shall determine the export price by reference to such sale of the goods (or of any goods in which they were incorporated) as the Board may select with such adjustments as may appear to the Board to be proper.
- (4) In referring to a sale in the open market between buyer and seller independent of each other subsection (2) above presupposes—
- (a) that the price is the sole consideration ; and
 - (b) that the price made is not influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the seller or any person associated in business with him and the buyer or any person associated in business with him (other than the relationship created by the sale of the goods in question); and
 - (c) that no part of the proceeds of the subsequent resale, use or disposal of the goods will accrue either directly or indirectly to the seller or any person associated in business with him.

Two persons shall for this purpose be deemed to be associated in business with one another if, whether directly or indirectly, either of them has any interest 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.

4 Ascertainment of fair market price in country of origin (basic rules)

- (1) For the purposes of this Act relating to dumping the fair market price of goods in the country of origin, if the goods were wholly produced in that country, shall be determined as follows.

- (2) Subject to subsections (3) and (4) below, the fair market price shall be taken to be the price at which goods of the description in question (that is to say, any identical or comparable goods) are being sold in the ordinary course of trade in the country for consumption or use there, but subject to any necessary adjustments, whether for differences in conditions and terms of sale, for differences in taxation or otherwise, which may be required to ensure comparability.
- (3) Subject to subsection (4) below, if it appears to the Board of Trade that goods of that description are not being sold in the country, or not in such circumstances that the fair market price can be determined in accordance with subsection (2) above, the fair market price shall be determined by the Board either—
- (a) by reference to any price obtained for goods of that description when exported from that country, with adjustments made to ensure comparability; or
 - (b) if the Board think fit, by reference to the cost or estimated cost of production of the goods the dumping of which is in question, with such additions in respect of administrative, selling or other costs and profit as may appear to the Board of Trade to be proper.

The price by reference to which a determination is made under paragraph (a) above may be the highest admissible price, but should be a representative price.

- (4) If it appears to the Board of Trade that the system of trading in the country is such, as a result of government monopoly and control, that the fair market price there cannot appropriately be determined in accordance either with subsection (2) or with subsection (3) above, then there shall be taken as representing the fair market price such price as the Board may determine by reference to any price obtained for goods of that description when exported to the United Kingdom from another country, with adjustments made to ensure comparability.
- (5) References in this section to adjustments required or made to ensure comparability are references to adjustments required or made to ensure that the comparison between the fair market price and the export price is effectively a comparison between the prices on two similar sales.
- (6) No account shall be taken under this section of any application of restrictions or charges on the exportation of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

5 Meaning of " country of origin," and adjustments of rules as to export price and fair market price

- (1) For the purposes of this Act " country of origin ", in relation to goods which were wholly produced in any country, means that country.
- (2) For goods not wholly produced in one country, a country shall be regarded for the purposes of this Act as their country of origin—
- (a) if some stage in the production of the goods was carried out in that country and the cost of carrying out such stages, if any, in the production of the goods as were carried out after those goods last left that country (but before the importation of the goods into the United Kingdom) was less than 25 per cent, of the cost of production of the goods as so imported; or
 - (b) if some stage in the production of any components or materials incorporated in the goods was carried out in that country and the cost of carrying out such

stages in production as were carried out after those components or materials last left that country to convert those components or materials into the goods as imported into the United Kingdom was less than 25 per cent. of the cost of production of the goods as so imported ;

and any reference in this Act to the country of origin shall be taken, in a case where there are two or more countries which answer to that description, as a reference to any of those countries.

- (3) Where a country is to be regarded under subsection (2) above as the country of origin of any goods, and some stage in the production of the goods, or of any components or materials incorporated in the goods, was carried out after they last left the country, then the export price of the goods from that country, or their fair market price in it, shall be determined as (in accordance with section 3 or 4 above) the corresponding price is to be determined in the case of goods wholly produced in a country except that—
- (a) the deductions to be made by the Board of Trade in the price by reference to which the export price from that country is to be ascertained shall include a deduction for the cost of carrying out any such stage in the production of the goods and in the production of any components or materials incorporated in the goods; and
 - (b) the fair market price in that country shall be the fair market price of those goods or, as the case may be, of those components or materials in the state in which they left the country.

6 Meaning of " country of exportation ", and export price and fair market price there

- (1) For the purposes of this Act "country of exportation ", in relation to any goods, means the country from which they were consigned to the United Kingdom ; and where goods, in the course of consignment from any country to the United Kingdom, pass through or are transhipped in any third country, that third country shall not on that account be regarded for purposes of this Act as the country of exportation.
- (2) The export price of goods from a country as the country of exportation, or the fair market price of goods in a country as the country of exportation, shall be determined as (in accordance with section 3 or 4 above) the corresponding price from or in the country of origin is to be determined in the case of goods wholly produced in one country.

Principal provisions as to countervailing duties

7 Charge of, and relief from, duties to offset subsidies

- (1) Where it appears to the Board of Trade—
- (a) that some government or other authority outside the United Kingdom has been giving a subsidy affecting goods of any description which are being or have been imported into the United Kingdom ; and
 - (b) that, having regard to all the circumstances, it would be in the national interest; they may exercise in such manner as they think necessary to meet the giving of the subsidy the power described in section 1(3) above, subject however to the restriction imposed by section 1(3)(b) on the exercise of the power as regards treaty countries (the

Status: This is the original version (as it was originally enacted).

reference in section 1(4) to the effect of the dumping being replaced for this purpose by a reference to the effect of the giving of the subsidy).

- (2) References in this Act to giving a subsidy are references to giving, directly or indirectly, a bounty or subsidy on the production or exportation of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves, to materials of the goods or to something else), and include—
- (a) the giving of any special subsidy on the transport of a particular product; and
 - (b) the giving of favourable treatment to producers or exporters in the course of administering any governmental control over the exchange of currencies where such treatment has the effect of assisting a reduction of the prices of goods offered for export;

but do not include the application of restrictions or charges on the exportation of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

- (3) Section 2 above may be applied to a duty imposed by an order under this section as it may be applied to a duty imposed by an order under section 1; but, where it is applied by virtue of this subsection, references to the fair market price in a country shall be replaced in it by references to the export price from that country increased by such amount (if any) as may be necessary to offset the effect of the giving of the subsidy.

Provisional and retrospective charges to duty

8 Power to impose retrospective duties after provisional charge

- (1) Subject to subsection (5) below, an order under section 1 or 7 above may impose a duty on goods of any description for a period before the making of the order if, by a preliminary order made under subsection (2) below and remaining in force, a provisional charge to the duty (or a greater duty) was imposed during that period on goods of that description.
- (2) Subject to subsections (4) and (5) below, the Board of Trade may by an order under this subsection (in this Act referred to as a " preliminary order ") impose a provisional charge to duty under section 1 or 7 above on goods of any description if at any time it appears to the Board, on the facts so far before them, that the conditions of subsection (1)(a) of the section as to the dumping or subsidisation of imports into the United Kingdom are fulfilled and that in the circumstances it is expedient to impose such a charge.
- (3) A preliminary order, if not previously revoked, shall cease to have effect at the expiration of three months beginning with the date it comes into force, except in so far as it is extended by a further order made within that period, and in so far as it is so extended, shall cease to have effect at the expiration of six months beginning with that date.
- (4) Section 1(3)(a) and (5) above shall apply to a preliminary order as they apply to orders made in the exercise of the power described in section 1(3).
- (5) The powers conferred by this section shall be subject to the following restrictions on their exercise in respect of the dumping or subsidisation of goods of any description as being goods of which the country of origin, or country of exportation, is a treaty country, that is to say:—

- (a) a preliminary order shall not be made unless the facts so far before the Board of Trade indicate that the effect of the dumping or of the giving of the subsidy is such as to cause or threaten material injury to an established industry in the United Kingdom ; and
- (b) an order shall not be made imposing a duty retrospectively unless the Board of Trade are satisfied, as regards importations made during or before the period of the provisional charge, that the effect of the dumping or of the giving of the subsidy has been such as to cause material injury to an established industry in the United Kingdom.

9 Effect of preliminary order

- (1) No duty shall be leviable by virtue only of a provisional charge imposed by a preliminary order; but, subject to that and to the following provisions of this section, a preliminary order shall, as regards the period for which it is in force, have the same operation as if the charge to duty had not been provisional.
- (2) Where any imported goods which are or may be subject to a provisional charge are entered for home use, whether on importation or from warehouse, then notwithstanding anything in subsection (1) above or in the Customs and Excise Act 1952—
 - (a) delivery of the goods without payment of duty shall not be refused by reason of the provisional charge if the importer gives security to the satisfaction of the Commissioners of Customs and Excise for the payment of any duty which may be retrospectively charged on the goods by reference to that provisional charge ;
 - (b) security shall be so given where payment of the duty provisionally charged would, if the duty were leviable, be required;
 - (c) where security is given by virtue of this subsection the customs Acts as they apply by virtue of subsection (1) above shall have effect as if the security were one given under section 255 of the Customs and Excise Act 1952 (security for duty not immediately ascertainable).
- (3) Without prejudice to the generality of subsection (1) above, the like relief in respect of a provisional charge to duty may be given by way of remission of the charge as if the charge were not provisional (and section 2 above may be applied accordingly); and the amount of any relief given in respect of a provisional charge on any goods shall, if a duty is retrospectively charged on the goods by reference to that provisional charge.—
 - (a) be set off against the amount of the retrospective duty; and
 - (b) be treated as given on account of any corresponding relief from the retrospective duty.
- (4) The lapsing of a provisional charge to duty on the revocation or expiration of the preliminary order shall not affect the liability to any penalty, forfeiture or prosecution in respect of things done during the period of the provisional charge.

Miscellaneous provisions as to duties and reliefs from duty

10 Additional provisions as to charge of duties, and relief at commencement etc. of charge

- (1) Any duty chargeable under this Act on any goods shall be chargeable in addition to any other duty of customs for the time being chargeable thereon and, notwithstanding any other enactment (including, unless the contrary is expressly provided, any future enactment), the charge of duty under this Act shall not affect liability to customs duty chargeable under any other Act or the amount of any such duty.
- (2) Section 259 of the Customs and Excise Act 1952 and section 5 of the Finance Act 1957 (which make provision as to duties and drawbacks in respect of dutiable parts or ingredients) shall not have effect in relation to duties under this Act.
- (3) A duty under this Act—
 - (a) may be made chargeable by reference to value or to weight or other measure of quantity;
 - (b) may be imposed, varied or removed for any period or periods, whether continuous or not, or without limit of period;
 - (c) may be made chargeable at different rates for different periods.
- (4) In connection with the commencement, variation or termination of a duty under this Act, the order relating to the duty may include provisions authorising repayments in respect of duty where it is shown that the prescribed conditions are fulfilled.
- (5) In section 3(1) of the Import Duties Act 1958 (which provides that in general import duties are not chargeable on goods chargeable with other customs duties) for the words " subsection (4) of section 2 of the Customs Duties (Dumping and Subsidies) Act 1957 " there shall be substituted the words " subsection (1) of section 10 of the Customs Duties (Dumping and Subsidies) Act 1969 ".

11 Drawback on exportations from U.K

- (1) The Board of Trade may by order provide for the allowance of drawback in respect of all or any duties under this Act on the exportation of goods in such circumstances and subject to such conditions as they may specify.
- (2) The drawback may be in respect of duty paid on the goods or in respect of duty paid on materials used in the manufacture of the goods, and the rate of the drawback may be determined in such manner and by reference to such matters as the Board of Trade may specify.
- (3) An order under this section may provide—
 - (a) for drawback in respect of a provisional charge to duty to be allowed by way of remission of the charge as if duty secured were duty paid ; and
 - (b) for drawback of retrospective duty to be allowed on the exportation of goods at any time after the coming into force of the preliminary order by reference to which the duty is charged.

12 Other reliefs relating to exportations from U.K

(1) The following enactments providing for relief from import duties chargeable under section 1 of the Import Duties Act 1958, that is to say—

- (a) section 7 of that Act (which applies where the intention is to re-export the imported goods or goods incorporating them or manufactured or produced from them); and
- (b) section 1 of the Finance Act 1966 (which applies where the relief would conduce to the exportation of other goods);

shall apply in relation to duties under this Act as they apply in relation to duties under section 1 of the Import Duties Act 1958.

(2) The reference in subsection (1)(a) above to section 7 of the Import Duties Act 1958 is a reference to that section as amended by section 2(1) to (3) of the Finance Act 1965.

(3) Accordingly for section 7(4) of the Import Duties Act 1958 there shall be substituted;

—
“(4) This section shall apply in relation to duties under the Customs Duties (Dumping and Subsidies) Act 1969 as it applies in relation to import duties”;
and in section 1(1) of the Finance Act 1966 for the words " the Customs Duties (Dumping and Subsidies) Act 1957 " there shall be substituted the words " the Customs Duties (Dumping and Subsidies) Act 1969 ".

Supplementary

13 Construction of references to production of goods, and ascertainment of cost of production

(1) In this Act, references to producing goods include references to growing or manufacturing goods and to the application of any process in the course of producing goods.

(2) The Board of Trade may by regulations prescribe for the purposes of this Act—

- (a) the costs, charges and expenses to be taken into account in ascertaining costs of production or the cost of any stage in production;
- (b) the manner in which cost of production is to be ascertained in cases where different stages are carried out by different persons;
- (c) the manner in which the cost of different stages of production is to be ascertained.

(3) The power of the Board of Trade to make regulations under subsection (2) above shall be exercisable by statutory instrument.

14 Power to require information from importers

(1) The Commissioners of Customs and Excise may require the importer of any goods to state such facts concerning the goods and their history as the Commissioners may think necessary to determine whether the country of origin is a country specified in an order under this Act or what is the country of exportation.

(2) Where an order under this Act limits the description of goods in respect of which a charge is imposed under this Act or the cases in which it is imposed so that the question

whether goods are subject to any and, if so, what charge depends on other matters besides the country of origin or country of exportation, the Commissioners may also require the importer to state such facts as they may think necessary to determine that question so far as regards those other matters.

- (3) Where under this section an importer is required to state any facts, the Commissioners may require him to furnish them in such form as they may require with proof of any statements made, except that proof of the country of origin of any goods shall be required in relation to any charge under this Act only if the country of exportation is one to which (this subsection is by direction of the Board of Trade to apply for the purpose.
- (4) Where under this section an importer is required to state any facts or to furnish proof of any statement, and the required facts are not stated, or the proof is not furnished to the satisfaction of the Commissioners, the country of origin or country of exportation (if the requirement relates to that) or the other facts referred to in subsection (2) above (if the requirement is imposed under that subsection) shall be deemed for the purposes of this Act to be such as the Commissioners may determine.

15 Parliamentary procedure on orders, and power of revocation etc.

- (1) Any power of the Board of Trade to make orders under this Act shall be exercisable by statutory instrument, which in any case not falling within subsection (2) below shall be subject to annulment in pursuance of a resolution of the Commons House of Parliament.
- (2) Where an order under section 1 or 7 of this Act imposes or increases any duty, and does not do so only by the total or partial revocation of a previous order so as to annul the suspension of a duty removed for a period or periods by the previous order, the statutory instrument shall be laid before the Commons House of Parliament after being made, and the order shall cease to have effect at the end of twenty-eight days after that on which it is made (but without prejudice to anything previously done under the order or to the making of a new order) unless at some time before the end of those twenty-eight days the order is approved by resolution of that House.

In reckoning for the purposes of this subsection any period of twenty-eight days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the Commons House is adjourned for more than four days.

- (3) Where an order has the effect of altering the rate of duty on any goods in such a way that the new rate is not directly comparable with the old, it shall not be treated for the purposes of subsection (2) above as increasing the duty on those goods if it declares the opinion of the Board of Trade to be that, in the circumstances existing at the date of the order, the alteration is not calculated to raise the general level of duty on the goods.
- (4) Any power of making orders conferred on the Board of Trade by this Act shall include a power to vary or revoke an order made under the power.

16 Annual report to Parliament

- (1) As soon as may be after the end of each financial year the Board of Trade shall lay before each House of Parliament a report as to the orders (including preliminary orders) under which during that year there has been a charge to duty under this Act,

indicating the contents of those orders and their operation in that year in relation to goods which have been imported into the United Kingdom.

- (2) The report for any year shall deal also with any retrospective operation in relation to the preceding year of orders made during the year.

17 Miscellaneous definitions

In this Act—

" country " includes any territory ;

" importer " in relation to any goods at any time between their importation and the time when they are delivered out of customs charge, includes any owner or other person for the time being possessed of or beneficially interested in the goods -

" preliminary order " means an order under section 8(2) of this Act;

" treaty country " means a country in relation to which Her Majesty's Government in the United Kingdom is for the time being bound under the provisions of the General Agreement on Tariffs and Trade concluded at Geneva in the year 1947.

18 Repeal and transitional provisions

- (1) The Customs Duties (Dumping and Subsidies) Acts 1957 and 1968 and section 13(6) of the Import Duties Act 1958 are hereby repealed.
- (2) The repeal by this Act of the Customs Duties (Dumping and Subsidies) Acts 1957 and 1968 shall not invalidate any order or regulations made or other thing done under or in connection with those Acts; and as from the commencement of this Act, this Act and any other relevant enactment shall have the like effect in relation to any orders or regulations made or other things done under or in connection with those Acts as it would have in relation to a like thing done under or in connection with this Act.
- (3) Without prejudice to subsection (2) above so much of any document as refers expressly or by implication to any enactment repealed by this Act shall, if and so far as the context permits, be construed as referring to this Act or the corresponding enactment therein.
- (4) Nothing in subsection (2) or (3) above shall be taken to exclude the general application to this Act of section 38 of the Interpretation Act 1889 (which relates to repeals).

19 Short title, extent and commencement

- (1) This Act may be cited as the Customs Duties (Dumping and Subsidies) Act 1969.
- (2) It is hereby declared that this Act extends to Northern Ireland.
- (3) This Act shall come into force at the beginning of May 1969.