

ANGUILLA

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CHAPTER C185

CUSTOMS DUTIES (DUMPING AND SUBSIDIES) ACT

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CUSTOMS DUTIES (DUMPING AND SUBSIDIES) ACT

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CUSTOMS DUTIES (DUMPING AND SUBSIDIES) ACT

Interpretation

1. In this Act—

"fair market price" means the price determined in accordance with the provisions of section 8;

"General Agreement on Tariffs and Trade" means the agreement concluded at Geneva in 1947 as amended or replaced from time to time;

"importer", in relation to any goods at any time between their importation and the time 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.

Cases where customs duties may be imposed

2. (1) Where it appears to the Governor in Council—

(a) that goods of any description are being or have been imported into Anguilla in circumstances in which they are under the provisions of this Act to be regarded as having been dumped; or

(b) that some government or other authority outside Anguilla has been giving a subsidy affecting goods of any description which are being or have been imported into Anguilla, and that, having regard to all the circumstances, it would be in the interest of Anguilla;

he may exercise the power conferred on him by this Act to impose and vary duties of customs in such manner as he thinks necessary to meet the dumping or the giving of the subsidy, but, where the Governor in Council is not satisfied 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 Anguilla or is such as to retard materially the establishment of an industry in Anguilla, the Governor in Council shall not exercise that power if it appears to him that to do so would conflict with the provisions for the time being in force of the General Agreement on Tariffs and Trade.

(2) For the purposes of this Act, imported goods shall be regarded as having been dumped—

(a) if the export price from the country in which the goods originated is less than the fair market price of the goods in that country; or

(b) in a case where the country from which the goods were exported to Anguilla is different from the country in which they originated—

(i) if the export price from the country in which the goods originated is less than the fair market price of those goods in that country, or

(ii) if the export price from the country from which the goods were so exported is less than the fair market price of those goods in that country.

(3) References in this Act to giving a subsidy are references to giving, directly or indirectly, a bounty or subsidy on the production or export of goods (whether by grant, loan, tax relief or in any other way and whether related directly to the goods themselves or to materials of the goods or to something else) and shall include—

(a) the giving of any special subsidy on the transport of a particular product; and

(b) the giving of favourable treatment of 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 export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

Order imposing duties

3. (1) The power which the Governor in Council may exercise under this Act is a power by order to impose on goods of a description specified in the order a duty of customs chargeable on the import of the goods into Anguilla at a rate specified in the order.

(2) The matters by reference to which the description of goods in an order is framed shall include either the country in which the goods originated or the country from which the goods were exported to Anguilla.

(3) Subject to the provisions of subsection (2), an order under this section 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 Governor in Council to be required for the purposes of this Act, and in particular—

(a) 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;

(b) provisions defining the rate of duty by reference to value or weight or other measure of quantity;

(c) provisions directing that duty be charged for any period or periods whether continuous or not, or without any limit of period, or at different rates for different periods or parts of periods; and

(d) in connection with the commencement, variation or termination of a duty, provisions authorising repayments in respect of duty where it is shown that the prescribed conditions are fulfilled.

(4) 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 the provisions of any other Law for the time being in force in Anguilla, 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.

Relief in respect of duties

4. (1) Where it appears to the Governor in Council that relief under this section should be available as respects a duty imposed by an order under this Act (being an order made to afford protection against dumping), he may, if he thinks fit, in that or a subsequent order under this Act 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 originating in or, as the case may be, exported from a specified country, may apply to the Governor in Council for relief from the duty on those goods.

(3) If on an application so made the Governor in Council is 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 Governor in Council shall cause the Comptroller of Customs to be notified of the amount of the excess and the Comptroller of Customs 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 6 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 Governor in Council may require from him for ascertaining the export price or fair market price.

(5) The foregoing provisions of this section shall have effect in relation to a duty imposed by an order under this Act (being an order made to afford protection against the giving of a subsidy) as if references to the fair market price in a country were 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.

(6) 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 is liable on summary conviction to imprisonment for a term of 3 months or to a fine of $20,000 or to both.

Drawback, etc., of duties

5. (1) The Governor in Council may by order provide for the allowance of drawback in respect of all or any duties under this Act on the export of goods in such circumstances and subject to such conditions as he 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 Governor in Council may specify.

Power to require information from importers

6. (1) The Comptroller of Customs may require the importer of any goods to state such facts concerning the goods and their history as he may think necessary to determine whether the goods are goods originating in a country specified in an order under this Act or are goods exported from any country and to furnish him in such form as he may require with proof of any statements so made; and, if such proof is not furnished to his satisfaction or the required facts are not stated, the goods shall be deemed for the purposes of this Act to have originated in, or, as the case may be, to have been exported from, such country as he may determine, but the Comptroller of Customs shall require proof of the country in which goods originated in relation to any duty under this Act in the case only of goods exported from such countries as the Governor in Council may direct in relation to that duty.

(2) Where an order under this Act limits the description of goods in respect of which duty is chargeable under this Act or the cases in which duty is so chargeable so that the question whether any, and if so what, duty is chargeable on the goods depends on other matters besides the country in which the goods originated or from which they were exported, the Comptroller of Customs may also require the importer to state such facts as he may think necessary to determine that question so far as regards those other matters and to furnish them in such form as he may require with proof of any statement so made; and if such proof is not furnished to his satisfaction or the required facts are not stated, those facts shall be deemed for the purposes of duty under this Act to be such as he may determine.

Ascertainment of export price

7. In relation to goods imported into Anguilla, the export price from the country in which the goods originated or from which they were exported shall be determined as follows—

(a) if the 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 Governor in Council is 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 export in the country to the port or place of import, and for any other costs, charges or expenses incurred in respect of the goods after they left the port or place of export, except so far as any such costs, charges or expenses have to be met separately by the purchaser;

(b) if paragraph (a) does not apply, the Governor in Council shall determine the export price by reference to such sale of the goods (or of any goods in which the first-mentioned goods were incorporated) as he may select with such adjustments as may appear to him to be proper.

Ascertainment of fair market price

8. The fair market price of any goods in a country shall for the purposes of this Act be determined as follows—

(a) subject to paragraph (b), 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 for the purpose of ensuring that the comparison between the fair market price and the export price is effectively a comparison between the prices on two similar sales;

(b) if it appears to the Governor in Council 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 paragraph (a), the fair market price shall be determined by the Governor in Council by reference to any price obtained for goods of that description when exported from the country, with adjustments made for the purpose mentioned in paragraph (a), or, if the Governor in Council thinks 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 selling cost and profit as may appear to the Governor in Council to be proper;

(c) no account shall be taken under this section of any application of restrictions or charges on the export of materials from any country so as to favour producers in that country who use those materials in goods produced by them.

Construction of references to country of origin, etc.

9. (1) Goods shall be regarded for the purposes of this Act as having originated in a country—

(a) if those goods were wholly produced in that country;

(b) 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 import of the goods into Anguilla) was less than 25% of the cost of production of the goods as so imported; or

(c) 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 Anguilla was less than 25% of the cost of production of the goods as so imported.

(2) Where the export price of any goods from the country in which they originated is in question 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 that country, the deductions to be made

by the Governor in Council in the price by reference to which the export price 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 the fair market price 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 that country.

(3) Any reference in this Act to the country in which goods originated shall be taken, in a case where there are 2 or more countries which answer to that description, as a reference to any of those countries.

Regulations

10. The Governor in Council may by regulation 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 or production is to be ascertained.

Citation

11. This Act may be cited as the Customs Duties (Dumping and Subsidies) Act, Revised Statutes of Anguilla, Chapter C185.

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