

Superseded by Act 361 ✓

No. 16 OF 1959

105

CUSTOMS (DUMPING AND SUBSIDIES)
ORDINANCE, 1959

An Ordinance to provide for the imposition of anti-dumping and countervailing duties where goods have been dumped in the Federation or are being or have been imported into the Federation under subsidy.

[2nd April, 1959]

IT IS HEREBY ENACTED by the Yang di-Pertuan Agong with the advice and consent of the Legislative Council as follows:

1. This Ordinance may be cited as the Customs (Dumping and Subsidies) Ordinance, 1959, and shall come into operation on such date as the Minister may by notification in the Gazette appoint. Short title and commencement.
L.N. 92/59 W.E.F. 2.4.59

2. (1) In this Ordinance, unless the context otherwise requires— Interpretation.

“General Agreement” means the General Agreement on Tariffs and Trade concluded at Geneva in the year 1947;

“Minister” means the Minister for the time being charged with responsibility for import and export control.

(2) References to—

(a) 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, to materials of the goods or to something else), and include—

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

(ii) the giving of favourable treatment to producers or exporters in the course of administering any government control over the exchange or 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;

- (b) producing goods include references to growing or manufacturing goods and to the application of any process in the course of producing goods;
- (c) the country in which goods originated shall be taken, in a case where there are two or more countries which answer that description, as a reference to any of those countries;
- (d) the country from which goods are exported to the Federation are references to the country from which they were consigned to the Federation; and goods which in the course of consignment from any country to the Federation pass through or are transhipped in any third country shall not on that account be regarded for the purposes of this Ordinance as having been exported from that third country.

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(3) This Ordinance shall be construed as one with the Customs Ordinance, 1952, and, subject to the foregoing provisions of this section, section 2 of the Customs Ordinance, 1952, shall apply for the interpretation of this Ordinance as it applies for the interpretation of the Customs Ordinance, 1952.

Export price.

3. For the purposes of this Ordinance, in relation to goods imported into the Federation the export price of such goods from the country in which the goods originated or from which they are exported shall be determined as follows:

(a) if the Comptroller is satisfied—

(i) that the goods are imported under a contract of sale which is a sale in the open market between a buyer and seller independent of each other; and

(ii) as to the price on that sale; and

(iii) 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—

(iv) the cost of insurance and freight from the port or place of export in the said country to the port or place of import; and

(v) any other costs, charges or expenses incurred in respect of the goods after they left the port or place of export,

except in so far as any such costs, charges or expenses have to be met separately by the purchaser; or

- (b) in any other case, the export price shall be determined by the Comptroller by reference to a sale of such goods (or of any goods in which such first-mentioned goods were incorporated) in the open market between a buyer and seller independent of each other.

4. For the purposes of this Ordinance, the fair market price of any goods in a country shall be determined as follows:

Fair market price.

- (a) subject to the provisions of paragraph (b) of this section, 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 such 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; or

- (b) if it appears to the Comptroller that goods of that description are not being sold in such country, or not being sold 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 Comptroller by reference to any price obtained for goods of that description when exported from such country, with adjustments made for the purpose mentioned in paragraph (a) or, if the Comptroller 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 Comptroller to be proper:

Provided that 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.

Origin of goods.

5. For the purposes of this Ordinance goods shall be regarded as having originated in a country—

- (a) if those goods were wholly produced in such country; or
- (b) if some stage in the production of the goods was carried out in such 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 such country (but before the import of the goods into the Federation) was less than twenty-five *per centum* 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 such 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 Federation was less than twenty-five *per centum* of the cost of production of the goods as so imported:

Provided that where—

- (a) the export price of any goods from the country in which they originated is in question, and
- (b) 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 Comptroller 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.

Dumping.

6. For the purposes of this Ordinance 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 the Federation 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.

7. (1) Where it is represented to the Yang di-Pertuan Agong that goods of any class or description are being or have been imported into the Federation in circumstances in which they are, under the provisions of this Ordinance, regarded as having been dumped or subject to the giving of a subsidy, and that, having regard to all the circumstances, it would be in the national interest so to do, he may, by order published in the *Gazette*, fix a duty or duties to be levied on goods of any class or description imported into the Federation, and to be paid by the importer thereof:

Power of the Yang di-Pertuan Agong to impose duties.

Provided that where the Yang di-Pertuan Agong is not satisfied that the effect of the dumping or of the giving of the subsidy is such as to—

- (i) cause or threaten material injury to an established industry in the Federation; or
- (ii) retard materially the establishment of an industry in the Federation,

the Yang di-Pertuan Agong shall make no such order if it appears to him that to do so would conflict with the obligations of the Government of the Federation under the provisions for the time being in force of the General Agreement.

(2) Where, on receiving any representations under sub-section (1), the Yang di-Pertuan Agong is satisfied that—

- (a) a *prima facie* case exists of the dumping or subsidising of goods;
- (b) it is desirable that a duty should be imposed under sub-section (1); and
- (c) it is impossible to establish the export price or fair market price of goods without so much delay as would prejudice the national interest if no duty under sub-section (1) were imposed in the meanwhile:

he may thereupon make an order under sub-section (1) (hereinafter called an "interim order") imposing such duty

as is necessary in the opinion of the Yang di-Pertuan Agong temporarily to counteract the effect of such dumping or subsidy:

Provided that as soon as such export price or fair market price, as the case may be, has been established the Yang di-Pertuan Agong may revoke or vary such interim order in such manner as he may consider necessary.

(3) Any order made under this section shall, at the next meeting of the House of Representatives, be laid on the table of such House and shall, at the expiration of ten days from being so laid, or of such extended period as the House of Representatives may by resolution direct, cease to have effect if and in so far as it is not confirmed by a resolution passed by the House of Representatives within the said ten days or, if such period has been extended, within such extended period.

(4) Where an order ceases to have effect in whole or in part as provided by sub-section (3), then any duty levied in pursuance of such order or, as the case may be, of such part thereof as ceases to have effect, shall be repayable in accordance with the provisions of the Customs Ordinance, 1952.

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Provisions
of orders
under
section 7.

8. (1) An order made under section 7 shall prescribe—

(a) the class or description of the goods liable to the duty imposed thereby; and

(b) the rate of the duty imposed thereby.

(2) An order made under section 7 may prescribe such provisions with respect to the goods chargeable with duty and to the cases in which duty is chargeable thereunder as may appear to the Yang di-Pertuan Agong necessary for the purposes of this Ordinance and in particular, and without prejudice to the generality of the foregoing, may prescribe

(a) limiting the class or 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) defining the rate of duty by reference to value or weight or other measure of quantity;

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

(d) in connection with the commencement, variation or determination of a duty, authorising repayments in respect of duty where it is shown that any conditions prescribed by such order are fulfilled.

9. (1) Where it appears to the Yang di-Pertuan Agong that relief under this section should be available as respects a duty imposed by an order under section 7 (being an order made to afford protection against dumping) he may, if he thinks fit, in that or a subsequent order made under section 7 apply the provisions of this section in relation to that duty.

Relief from duty.

(2) Where this section applies in relation to any duty the importer of any goods in respect of which an order has been made under section 7 may apply to the Minister for relief from duty on such goods.

(3) If on any application under this section the Minister is satisfied that the export price of the goods, with the amount of the duty added thereto, exceeds the fair market price of identical or comparable goods, he may in his discretion remit or repay the amount of the excess duty; and the Comptroller shall on the direction of the Minister remit or repay the duty up to the amount of such excess.

(4) An application under this section in respect of any goods shall be made within six months of the payment of duty on such goods.

(5) In making any application under this section the importer shall furnish the Minister with such information and evidence as the Minister may require from him for ascertaining the export price or fair market price.

(6) The foregoing provisions of this section shall have effect in relation to a duty imposed by an order under section 7 (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.

10. Except in so far as may be otherwise provided in any order made under section 7, any duty levied thereunder shall be deemed for the purposes of collecting and enforcing the collection thereof to be a customs duty imposed under the Customs Ordinance, 1952.

Duties under section 7 deemed to be customs duties for purpose of collection. 42 of 1952.

Power to require information from importers.

11. (1) The Comptroller 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 made under section 7 or 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 the satisfaction of the Comptroller, or the required facts are not stated, the goods shall be deemed to have originated in, or, as the case may be, to have been exported from, such country as the Comptroller may determine.

(2) Where an order made under section 7 limits the class or description of goods in respect of which duty is chargeable under this Ordinance, 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 may 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 him in such form as he may require with proof of any statements so made; and if such proof is not furnished to the satisfaction of the Comptroller or the required facts are not stated, those facts shall be deemed for the purposes of duty under this Ordinance to be such as the Comptroller may determine.

Power of Comptroller to delegate.

12. The Comptroller may, subject to such conditions and restrictions as he may prescribe, delegate all or any of the power conferred on him by this Ordinance to such senior officers of customs as he may think fit.

Duty to be additional to that imposed by other law. 42 of 1952.

13. Any duty chargeable under this Ordinance on any goods shall be chargeable in addition to any other duty for the time being chargeable thereon under the Customs Ordinance, 1952, or any other written law.

Regulations.

14. The Yang di-Pertuan Agong may make regulations—

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

- (c) prescribing the manner in which the cost of different stages of production is to be carried out;
- (d) generally for the purpose of carrying this Ordinance into effect.

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