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PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT (TENDERS) BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the  
Minister for Business and Consumer Affairs,  
the Honourable John Moore, M.P.)

## CUSTOMS AMENDMENT (TENDERS) BILL 1981

### Purpose of the Bill

The purpose of this Bill is to amend the Customs Act 1901 to introduce a scheme for the calling and dealing with tenders for the right to import, at concessional rates of duty, certain quantities of goods subject to import "quota" allocation.

This Bill, which forms part of a package of Bills, is designed to give effect to the Government's decision to allocate by tender a proportion of the available tariff "quota" on a range of textile, clothing and footwear products. This decision follows the Government's in principle acceptance of the Industries Assistance Commission's recommendations contained in its 1980 Textiles, Clothing and Footwear report.

The proposed tender scheme will introduce a degree of flexibility into the "quota" regime by providing easier access to low cost imports to new importers and to importers wishing to increase their market shares. It is an essential element of the scheme, however, that all tender "quota" allocated should be fully utilised in order to minimise increases in the effective rate of protection and the scarcity value of quota. It is also important to guard against capricious or manipulative tendering practices.

This Bill provides the enabling legislation for:

- . the Minister to formulate a scheme calling for, and dealing with, tenders for the right to import certain quantities of tariff quota goods at concessional duty rates;
- . tenderers to give an undertaking to the effect that if their tender is accepted they will import the "quota" allocated to them under the scheme within a 12 month period;
- . tenderers to acknowledge in the undertaking a determined value for the purposes of the penalties liable under the related Customs Undertakings (Penalties) Bill 1981 and the Customs Securities (Penalties) Bill 1981;
- . tenderers to transfer, with the approval of the Minister, the right to import "quota" to other persons; and
- . the Customs to have the right to require securities to be applied for payment of any penalty that may become liable.

Customs Amendment (Tenders) Bill 1981

Clause 1 Citation of the Amendment Act and identification of the Customs Act 1901 as the Principal Act.

Clause 2 Commencement date to be the day of Royal Assent.

Clause 3 Amends section 42 of the Principal Act to insert a provision to provide that the right of the Customs to require and take a security includes the right to require and take security for the payment of any penalty that may become payable under the proposed Customs Undertakings (Penalties) Act 1981. The penalty under the proposed Customs Undertakings (Penalties) Act is to be imposed in cases where a successful tenderer breaches an undertaking given pursuant to proposed section 267(1) (as to which see Clause 3).

Clause 4 Inserts a new Part XV into the Principal Act to provide for a scheme under which tenders are called for and dealt with for the right to import specified quantities of particular goods or particular goods of a specified value at concessional rates of duty.

Section 265

Contains interpretative provisions for this Part and in particular defines "scheme" to mean a scheme formulated by the Minister under section 266.

Section 266

Empowers the Minister to formulate a scheme for the calling and dealing with tenders. Such a scheme is to provide that the call for tenders shall include statements which set out for the purposes of application of the proposed Customs Undertakings (Penalties) Act 1981 and the Customs Securities (Penalties) Act 1981 the -

- (i) unit value to be applied to the goods where a tender relates to goods of a specified quantity; and
- (ii) the prescribed percentage of the value of the goods. Such percentages will be applied as a penalty if the undertaking given by the successful tenderer is breached.

Proposed section 266(3) sets out the criteria under which the Minister is to determine the unit value to be applied to the goods under proposed section 266(2).

#### Section 267

Requires an undertaking to be given by a person who furnishes a tender to the effect that if the tender is accepted and -

- (i) the Customs Tariff Act 1966 is altered to set out the rates of duty applicable to the goods, as determined in accordance with the tender; and
- (ii) a determination under section 273 of the Act is made by the Minister which applies to the tender goods,

the person will import those goods and enter them for home consumption under appropriate items during the year to which the tender relates.

#### Section 268

Enables a scheme to provide for the transfer, with the approval of the Minister, from one person to another, of a right to import tender goods if the required undertaking and security is given by the transferee.

#### Section 269

Provides for the variance or revocation, with the approval of the Minister, of an undertaking given in accordance with section 267 or 268.

#### Section 269A

Provides that a penalty payable by a person under the Customs Undertakings (Penalties) Act 1981 or the Customs Securities (Penalties) Act 1981 is a debt due to the Commonwealth and may be recovered by an action in a court of competent jurisdiction.