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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry,
Technology and Commerce, Senator the Honourable John N. Button)



CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) BILL 1992

OUTLINE

This Bill proposes to amend Part XVB of the Customs Act 1901 and the Anti-Dumping Authority Act 1988 as part of the legislative package announced by the Government in December 1991 to introduce a new system for the imposition and collection of dumping and countervailing duties. This Bill provides the mechanism for the determination of interim and final duties, as well as introducing the two means by which subsequent adjustments of duty liability can be effected, while the other Bill in the package, the Customs Tariff (Anti-Dumping) Amendment Bill (No. 2) 1992 introduces the new taxing regime for the imposition and collection of both interim and final dumping and countervailing duties.

At present dumping duties are imposed by the Minister under the Customs Tariff (Anti-Dumping) Act 1975 if he or she is satisfied that goods exported to Australia have been dumped (i.e., their export price is less than their normal value), and that dumping is causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry. Likewise, countervailing duties may be imposed if the Minister is satisfied that goods exported to Australia have had financial assistance, for example a subsidy, bounty, reduction or remission of freight, and, because of that financial assistance, material injury to an Australian industry is caused or threatened.

Under the present regime, dumping duty is not payable where the dumping margin is purportedly eliminated by an exporter raising the export price of the goods to the level of their normal value. This Bill proposes to alter that approach, and to strengthen the overall operation of the anti-dumping regime, by adopting a position similar to that used by other signatories to the General Agreement on Tariffs and Trade; that is, to impose an "up-front" duty regardless of the actual export price or subsidy paid on the particular goods, and then provide a facility for the importer to have his or her actual duty liability assessed by the Minister at a later stage with the possibility of having any excess "up-front" duty repaid.

The main proposals contained in this Bill which implement this new scheme relate to:

- i) the introduction of a mandatory obligation to include in a dumping duty notice or countervailing duty notice the factors relevant to the determination of duty payable under the Customs Tariff (Anti-Dumping) Act 1975, i.e., in the case of dumping duties, the normal value, export price, and non-injurious price of goods of that kind, and, in the case of countervailing duties, the amount of financial assistance by way of subsidy, bounty, or the like, and the non-injurious price of goods of that kind (clauses 11,12,13 and 14 refer).

This disclosure obligation is subject to a standard confidentiality exception, so that where information is provided in confidence, disclosure can be limited on a "need to know" basis; and

- ii) the introduction of two mechanisms to enable subsequent adjustments of the dumping duty or countervailing duty payable, via
- a) firstly, a repayment mechanism in new Division 4 of Part XVB. This will ensure consistency with the General Agreement on Tariffs and Trade (GATT) requirement that where duty is collected in excess of the actual dumping margin, there is to be a facility for importers to be repaid that excess. This will be achieved by the importer applying to have his or her actual duty liability calculated according to the normal value and export price for each consignment of goods, the subject of a dumping or countervailing duty notice, which is imported in a particular 6 month period (clause 15, new sections 269V and 269W refer). If this results in the total interim duty collected being in excess of the total actual duty liability for all imports of relevant goods during that 6 month period, then the importer will be entitled to be repaid this excess (clause 15, new sections 269X and 269Y refer). An importer will have no right to seek a repayment for a particular 6 monthly period until the actual expiration of that period, and then will only have the right to apply for a repayment provided the application is made not more than 6 months after the end of that particular 6 monthly period (clause 15, new subsections 269V(2) and 269Y(4) refer). Where an application is made in time, a negative repayment decision by Customs will be reviewable by the Anti-Dumping Authority (clause 15, new subsection 269X(7) and clause 19 refer), and
- b) secondly, a review facility whereby the Minister can review the rate of interim duty at any time, or an importer, exporter or a member of the Australian industry can request the Minister, by application to Customs, to review the rate of interim dumping or countervailing duty in place and substitute another rate of duty. This request can only be made 12 months after the date the original duty notice was published, or 12 months after the Minister last reviewed the rate of duty, and, where such a request is made within the prescribed limits, a strictly time-limited review of the factors relevant to the determination of duty payable under the Customs Tariff (Anti-Dumping) Act 1975 will be undertaken (Clause 15, new sections 269Z, 2A, 2B, 2C and 2D refer).

Financial Impact Statement

The measures contained in this Bill (and the corresponding amendments to the Customs Tariff (Anti-Dumping) Amendment Bill (No. 2) 1992) relating to the introduction of the new system for the imposition and collection of anti-dumping and countervailing duties, are expected to result in additional salary and administrative costs totalling \$0.4m in 1992-93 and \$0.75m in 1993-94 and 1994-95, in present dollar values.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short title etc.

Clause 1 provides for the Act to be cited as the Customs Legislation (Anti-Dumping Amendments) Act 1992.

Commencement

Clause 2 provides for the Act to commence on the following days:

Subclause (1) provides for clauses 1 and 2 to commence on the day on which the Act receives the Royal Assent. These are machinery provisions relating to the short title and commencement of the Act.

Subclause (2) provides for a retrospective 10 July 1992 commencement of clause 8. That clause amends the Customs Act 1901.

- . This provision is a technical amendment consequential on the anti-dumping amendments effected by Act No. 89 of 1992, which commenced by Proclamation on 10 July 1992.

Subclause (3) provides for a Proclamation commencement of the remaining provisions of the Act which introduce a new system for the imposition and collection of dumping and countervailing duties by determining the method of final assessment of duty liability and providing for review of interim duty rates.

- . The amendments are intended to commence in January 1993, primarily to allow administrative procedures for the new regime to be implemented and to ensure industry awareness of the new requirements.
- . The Proclamation commencement is subject to the standard "sunset" provision in Acts which are expressed to commence by Proclamation; namely, that if the relevant provisions are not proclaimed within a period of six months after the date on which the Act receives the Royal Assent, the provisions are deemed to commence on the first day after that period (subclause (4)).

PART 2 - AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

Clause 3 identifies the Customs Act 1901 as the Principal Act being amended by this Part.

Interpretation

Clause 4 amends certain definitions in section 269T of the Principal Act and inserts some new definitions in that section as follows:

- . omits the present definitions of "countervailing duty" and "dumping duty" and inserts new definitions which make clear that countervailing duty and dumping duty do not include interim countervailing duty and interim dumping duty (paragraph 4(a));
- . inserts a definition of "affected party" in relation to an application for review of the rate of interim duty (paragraph 4(b))
 - the parties included in the definition are the only parties who can make application for a review of the rate of interim dumping duty;
- . inserts a definition of "importation period" which has the effect of splitting up the 5 year period for which a particular notice is in force into 11 periods; 1 period is the time covered by the relevant notice under subsection 269TG(1), TH(1), TJ(1) or TK(1), and the other 10 are each 6 month periods beginning on the day of publication of the relevant notice under subsection 269TG(2), TH(2), TJ(2) or TK(2) (paragraph 4(b));
- . inserts a definition of "interim countervailing duty" and "interim dumping duty" by referring to the provisions in the Customs Tariff (Anti-Dumping) Act 1975 (the Anti-Dumping Act) which impose the interim duties (paragraph 4(b)); and
- . inserts definitions of "prospective notice" and "retrospective notice" to clarify the quite distinct roles of the notices under subsections 269TG(1), TH(1), TJ(1) and TK(1) as compared with the notices under subsections 269TG(2), TH(2), TJ(2) and TK(2). The former group apply to goods imported into Australia prior to the date of publication of the notices, and the latter group refer to goods imported into Australia after the date of publication of the

Paragraph 4(c) inserts two new subsections into the Principal Act as follows:

- . new subsection 269T(4D) which specifies the "variable factors relevant to the determination of duty payable under the Anti-Dumping Act". These variable factors are the factors relating to the calculation of dumping duty or countervailing duty, that is, the factors which the Minister must ascertain for each particular consignment of goods within a particular importation period to determine the actual duty payable for that period; and
- . new subsection 269T(4E) which specifies the "variable factors relevant to the determination of interim duty payable on goods". These variable factors are the factors which the Minister must include in the relevant 269TG, 269TH, 269TJ or 269TK notices.

Insertion of new section

Clause 5 introduces a new section 269TACA into the Principal Act. This section inserts the concept of a "non-injurious price" into the Principal Act. The non-injurious price is a key concept for the imposition of dumping and countervailing duties (subsections 8(5A), 9(5A), 10(3C) and 11(5) of the Anti-Dumping Act refer) in that, pursuant to Australia's GATT obligations, the Minister must have regard to the desirability of imposing a lesser amount of duty than the full margin of dumping or the full amount of subsidy if that lesser duty would be sufficient to remove the injury to the Australian industry or industry of the third country as the case may be. One of the reforms of the new scheme is that the notice published under the relevant section (i.e., section 269TG, 269TH, 269TJ or 269TK) will include the non-injurious price, or the price at which injury, the threat of injury or the recurrence of the injury would be prevented.

Repeal of section

Clause 6 repeals section 269TAD of the Principal Act.

Section 269TAD provided a mechanism whereby the Minister could reascertain the normal value relating to a notice under section 269TG or 269TH. Given the extensive review mechanism provided for in the new Division 5 of the Principal Act, which includes a reascertainment of the normal value, section 269TAD is redundant.

Ascertainment of equivalent amount in Australian currency

Clause 7 is a minor amendment consequential on the introduction of the new interim duty regime. The purpose of section 269TAH is to ensure that the equivalent amount in Australian currency of an amount in another country's currency is to be determined in accordance with a fair rate of exchange. This fair rate of exchange must be reflected for both the imposition of duty payable and interim duty payable.

Consideration of application

Clause 8 is a minor technical amendment consequential upon changes introduced by Act No. 89 of 1992, which commenced on 10 July 1992.

Preliminary finding

Clause 9 is a minor amendment consequential on the introduction of the new interim duty regime. It reflects the new scenario whereby securities are taken pursuant to section 42 of the Principal Act in respect of any interim duty that may become payable and not duty that may become payable.

Comptroller to have regard to same considerations as Minister in certain circumstances

Clause 10 amends section 269TE of the Principal Act consequential upon the amendments to the Anti-Dumping Act, to ensure that where the Comptroller puts on provisional measures at the conclusion of a positive preliminary finding under section 269TD, he or she need not to have regard to the non-injurious price; that is, the provisional measures must be put on at the full margin of dumping or subsidisation.

Clauses 11, 12, 13 and 14 of this Act amend sections 269TG, 269TH, 269TJ and 269TK respectively to provide for two substantive reforms as follows:

- . the Minister must publish in the relevant notices the variable factors relevant to the determination of interim duty (as defined in new subsection 269T(4E)). This will include a statement of the non-injurious price, which previously has not been publicly notified in the relevant notice; and
- . the publication is subject to a new confidentiality provision. Where the Minister does not include the variable factors because of this provision, the Comptroller can provide that information on a "need to know" basis.

Dumping duties

Clause 11 amends section 269TG of the Principal Act to provide for the above reforms as follows:

paragraph 11(a) amends subsection 269TG(3) to provide that the notices published under subsections 269TG(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant normal value, export price and non-injurious price.

- . This reform, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TG(1) notice and the subsection 269TG(2) notice) can be quite different. The subsection 269TG(1) notice should include a statement of what was the normal value, export price and non-injurious price for goods already exported to Australia, and the subsection 269TG(2) notice should include a statement of what would be the normal value, export price and non-injurious price for goods exported to Australia in the future.

Paragraph 11(b) inserts new subsection 269TG(3A) into the Principal Act to provide a standard confidentiality limitation upon the Minister's obligation to publish the factors referred to in new subsection 269TG(3). Where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person's business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TG(3A)(a)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TG(3A)(b) permits the Comptroller to notify that confidential value or price upon request.

- . The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the normal value would not receive information with regard to the non-injurious price.

Third country dumping duties

Clause 12 amends section 269TH of the Principal Act to provide for the above reforms as follows:

paragraph 12(a) amends subsection 269TH(3) to provide that the notices published under subsections 269TH(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant normal value, export price and non-injurious price.

- . This reform, like clause 11, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TH(1) notice and the subsection 269TH(2) notice) can be quite different. The subsection 269TH(1) notice should include a statement of what was the normal value, export price and non-injurious price for goods already exported to Australia, and the subsection 269TH(2) notice should include a statement of what would be the normal value, export price and non-injurious price for goods exported to Australia in the future.

Paragraph 12(b) inserts new subsection 269TH(4) into the Principal Act to provide the standard confidentiality limitation upon the Minister's obligation to publish the factors referred to in new subsection 269TC(3). Similar to the reforms contained in paragraph 11(b) where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person's business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TH(4)(a)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TH(4)(b) permits the Comptroller to notify that confidential value or price upon request.

- . The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the normal value would not receive information with regard to the non-injurious price.

Countervailing duties

Clause 13 amends section 269TJ of the Principal Act to provide for the reforms mentioned above as follows:

paragraph 13(a) inserts a new subsection 269TJ(11) to provide that the notices published under subsections 269TJ(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant subsidy and non-injurious price.

- . This reform, like clauses 11 and 12, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TJ(1) notice and the subsection 269TJ(2) notice) can be quite different. The subsection 269TJ(1) notice should include a statement of what was the relevant subsidy and non-injurious price for goods already exported to Australia, and the subsection 269TJ(2) notice should include a statement of what would be the relevant subsidy and non-injurious price for goods exported to Australia in the future.

Paragraph 13(b) inserts new subsection 269TJ(12) into the Principal Act to provide the standard confidentiality limitation upon the Minister's obligation to publish the factors referred to in new subsection 269TJ(3). Where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person's business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TJ(12)(c)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TJ(12)(d) permits the Comptroller to notify that confidential amount or price upon request.

- . The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the relevant subsidy would not receive information with regard to the non-injurious price.

Third country countervailing duties

Clause 14 amends section 269TK of the Principal Act to provide for the reforms mentioned above as follows:

paragraph 14(a) introduces a new subsection 269TK(5) to provide that the notices published under subsections 269TJ(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant subsidy and non-injurious price.

- . This reform, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TK(1) notice and the subsection 269TK(2) notice) can be quite different. The subsection 269TK(1) notice should include a statement of what was the relevant subsidy and non-injurious price for goods already exported to Australia, and the subsection 269TK(2) notice should include a statement of what would be the relevant subsidy and non-injurious price for goods exported to Australia in the future.

Paragraph 14(b) inserts new subsection 269TK(6) into the Principal Act to provide the standard confidentiality limitation upon the Minister's obligation to publish the factors referred to in new subsection 269TK(5). Where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person's business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TK(6)(c)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TK(6)(d) permits the Comptroller to notify that confidential amount or price upon request.

- . The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the relevant subsidy would not receive information with regard to the non-injurious price.

Insertion of new Divisions

Clause 15 inserts two new Divisions into Part XVB of the Principal Act which introduce the two new mechanisms by which adjustments can be effected to the interim dumping or countervailing duty paid pursuant to a dumping or countervailing notice.

- . New Division 4 introduces a repayment mechanism whereby duty collected in excess of the actual dumping margin (in the case of dumping duties) or the actual subsidy (in the case of countervailing duties) can be repaid. The Division introduces 4 new sections which prescribe the administrative requirements of a duty assessment/repayment application, including the time limits which govern the process, the decisions and review rights which are available, and the final recommendations to the Minister which flow from those decisions.
- . New Division 5 introduces a review facility whereby an importer, exporter or a member of the Australian industry can request the Minister, by application to Customs, to review the factors relevant to the determination of the duty payable on goods (in the case of dumping duty, the normal value, export price, and non-injurious price of goods of that kind, and in the case of countervailing duty, the amount of subsidy, bounty or the like, and the non-injurious price of goods of that kind). The Division introduces 5 new sections which prescribe the administrative requirements of review applications, including the time limits which govern the process, and the decisions and recommendations to the Minister which flow from those decisions.

Division 4 - Dumping duty or countervailing duty assessment

Importers may apply for duty assessment in certain circumstances

New section 269V prescribes the formal requirements to be observed by an importer wishing to apply for a repayment of excess dumping or countervailing duty which he or she has paid, including the time before which an application cannot be made, and then, the time limits within which an application must be made.

New subsection (1) provides the formal right to a repayment of excess dumping or countervailing duty which has been paid over the preceding 6

month importation period. It proceeds on the GATT Anti-Dumping Code ground (Article 8.3 refers) that if subsequent to the application of anti-dumping duty, it is found that the duty collected exceeds the actual dumping margin (or, in the case of countervailing duties, the actual subsidy), the amount paid in excess is to be reimbursed as quickly as possible.

- . Under the time limits prescribed in subsection (2), and 269Y(4), an application for a repayment cannot be made until the expiration of the relevant 6 monthly period in which the goods the subject of the application were entered for home consumption (ie. imported and entered for home consumption in the terms of s.68 and 71A of the Principal Act), and, following that time bar, the application must be made within a further 6 months (new subsection (2) paragraph (a) refers); otherwise, the opportunity to seek a repayment is extinguished (new subsection 269Y(4) refers).

new subsection (2) requires that in addition to the time constraint of 6 months before which repayment applications can be made, an application for a duty repayment must be in respect of the total amount of interim duty paid on all imported goods the subject of a particular notice (ie., all importations of relevant goods over the entire relevant 6 monthly importation period), and the applicant must establish that total payment exceeds by a specified amount that which should have been payable (new subsection (2) paragraph (b) refers).

Manner of making application for duty assessment

New section 269W sets out the manner in which an importer must apply to have his or her actual duty liability calculated according to the normal value and export price for each consignment of goods the subject of a dumping or countervailing duty notice which is imported in a particular 6 month period.

The application must be in writing and contain:

- . a full description of the goods of that kind in each consignment imported during the particular 6 month period (new paragraph 269W(1)(a));
- . information concerning the amount of interim duty paid on each consignment (new paragraph 269W(1)(b)); and

- . a statement of the normal value and export price applying to the goods in each consignment in the case of an application for assessment of dumping duty (new paragraph 269(1)(c)) or of the amount of relevant subsidy paid on and the export price of the goods in the case of countervailing duty assessment (new paragraph 269W(1)(d)).

New subsection 269W(1) provides that the application may be lodged with Customs in the standard fashion (hand delivery, pre-paid post or by facsimile), and it is taken to have been lodged when it is first received by an officer of Customs doing duty in relation to applications for review of interim duty, who must then record the day of lodgement on the application (new subsections 269W(2) and (3)).

Consideration of duty assessment applications

New section 269X sets out the formal investigative process for the consideration of a duty assessment application in which the applicant/importer contends that the total interim duty paid on goods over a particular importation period exceeded the total duty payable, and as a result, a repayment of the excess duty paid is appropriate.

New subsection (1) imposes a maximum time limit of 180 days for the investigation and examination by the Australian Customs Service of the applicant's claim for a repayment of excess interim duty paid.

- The recommendation by Customs is dealt with under subsection (6).

New subsection (2) provides the Comptroller with investigative powers to seek information in addition to that provided by the applicant.

New paragraph (2)(a) allows the Comptroller to invite a person he or she considers may be able to supply relevant information to lodge a written submission within a period specified in the invitation.

- . This is not a means by which the principal processing time limit of 180 days can be avoided, as the date which the Comptroller may set for return of such a submission cannot be later than 150 days after the lodgement of the application.

New paragraph 2(b) allows the Comptroller to similarly seek further information from the

applicant, but now up to the maximum time limit for the making of a decision ie., 180 days.

New subsections (3) and (4) provide that where the Comptroller uses the investigative power vested by subsection (2), and in fact proposes to have regard to that information, the Comptroller must give the applicant an opportunity to comment on the information.

- This obligation is subject to the standard confidentiality exception if, in the opinion of the Comptroller, the information was provided in confidence and the Comptroller is of the opinion its disclosure to the applicant would adversely affect the business or commercial interests of the supplier.

New subsection (5) provides the obligation on the Comptroller to come to a decision on the evidence provided by the applicant, such other material obtained under subsection (2), and any other material considered relevant, as to the amount of duty payable.

New subsection (6) provides the 3 types of recommendations that the Comptroller can decide to make to the Minister:

- . a recommendation that the Minister order a repayment of overpaid interim duty at least to that amount contended in the application (paragraph (6)(a)); or
- . a recommendation that the Minister order a repayment of overpaid interim duty, but not as much as contended in the application (paragraph (6)(b)); or
- . a recommendation that the Minister order that any duty in excess of the interim duty to be waived (paragraph (6)(c)).

Decisions to make recommendation under paragraphs (6)(b) and (6)(c) are decisions which the applicant may have reviewed by the Authority in the manner specified in clause 19 of this Act.

New subsection (7) provides that the Comptroller must, as soon as practicable, notify the applicant of the decision made, and where the decision is one that can be reviewed by the Authority, inform the applicant of the reasons for the decision and details of their review rights.

New subsection (8) provides that where the Comptroller has made a decision to recommend to

the Minister that the Minister order a repayment of overpaid interim duty at least to that amount contained in the application, then the Comptroller must, within 7 days, recommend to the Minister that such a repayment be made (paragraph (8)(a)). Paragraph 8(b) provides that where the Comptroller has made a decision that can be reviewed by the Authority as outlined above, and the applicant does not exercise the right to seek a review, then the Comptroller must, within 7 days, recommend to the Minister that the Minister give effect to the Comptroller's recommendation.

Duty assessments

New section 269Y empowers the Minister to repay excess interim duty collected in cases where the interim duty collected exceeds the actual duty payable, or to waive unpaid duty in cases where the total interim duty collected is less than the actual duty payable. The relevant provisions detailing these procedures are as follows:

- . as soon as practicable after receiving a recommendation from the Authority (under new subsection 8B(3) of the Anti-Dumping Authority Act 1988, clause 19 of this Act refers) or from the Comptroller (under new subsection 269X(8)), the Minister must ascertain the normal value and export price relating to each consignment (in the case of an application for assessment of dumping duty) or the relevant subsidy and export price (in the case of an application for assessment of countervailing duty) (new paragraph 269Y(1)(a)).
- . Where the Minister decides that the total amount of interim duty collected exceeds the total duty payable then the Minister is to order the repayment of that excess (new paragraph 269Y(1)(b)
 - Where the Minister does so the Commonwealth is liable to make such a repayment (new subsection 269Y(3)).
- . Where the Minister decides that the total amount of interim duty collected falls short of the total duty payable, then the Minister waives the shortfall (new paragraph 269Y(1)(b)).
- Where the Minister does either of the above then the Minister must inform the applicant by providing a copy of the signed notice (new subsection 269Y(2)).
- . Where application is not made for a duty

assessment under new section 269V, then the interim duty collected is taken to be the duty payable (new subsection 269Y(4)).

Division 5 - Review of interim duty

Under the new scheme it is proposed to allow an affected party to seek a review of the rate of interim duty imposed by the Minister under the Anti-Dumping Act. The purpose of the review is to ensure that the rate of interim duty in force is an accurate reflection of the level of duty necessary to combat the identified dumping or subsidy. New sections 269Z, 269ZA, 269ZB, 269ZC and 269ZD implement the proposed review scheme as detailed below.

Circumstances in which review may be sought

New section 269Z specifies the conditions precedent to a review of interim duty as follows:

- . there must be a dumping duty notice or a countervailing duty notice published (new paragraph 269Z(1)(a));
- . an affected party must apply to the Comptroller, to request the Minister to review the rate of interim duty;
 - "affected party" is defined in paragraph 4(b) of this Act as an importer, exporter or producer of the goods or the Government of the exporting country. The definition is intentionally broad to enable all parties affected by the interim duty to be able to apply to have it reviewed (new paragraph 269Z(1)(b));
- . the affected party must consider it appropriate to review the rate of interim dumping duty because one or more of the normal value, export price or non-injurious price has changed, or that it is appropriate to review the rate of interim countervailing duty because either the relevant subsidy or non-injurious price has changed (new paragraph 269Z(1)(b));
- . the affected party can only make application for review 12 months after the day of publication of the duty notice or 12 months after the day of publication of the result of the last such review (new subsection 269Z(3)); and
- . where the Minister considers it appropriate to vary the rate of interim duty, the Minister can, at any time, request the

Comptroller to review that rate, i.e. the Minister is not subject to the 12 month time bar for applications for review (new subsection 269Z(2)).

Application for review of interim duty by affected party

New section 269ZA specifies how an application for review of interim duty is to be made and what it must contain as follows:

- . the application must be in writing (new subsection 269ZA(1));
- . the application must contain a description of the kind of goods the subject of notice (new paragraph 269ZA(1)(a));
- . the application must contain a statement of which of the normal value, the export price or non-injurious price (in the case of interim dumping duty) or the amount of the relevant subsidy or non-injurious price (in the case of interim countervailing duty) have changed (new paragraph 269ZA(1)(b));
- . the application must contain a statement of the amount by which the above factor or factors have changed, and the applicant must supply evidence to establish the new amount or amounts (new paragraph 269ZA(1)(c)); and
- . the application may be lodged with Customs in the standard fashion (hand delivery, pre-paid post or facsimile), and it is taken to have been lodged when it is first received by an officer of Customs doing duty in relation to applications for review of interim duty, who must then record the day of lodgement on the application (new subsections 269ZA(2) and (3)).

Consideration of the application for request for review

New section 269ZB outlines the procedure the Comptroller must follow in considering a request for review.

Upon the lodgement of an application from an affected party, or the receipt of the Minister's request to have the interim rate reviewed, the Comptroller must, within 25 days, make a public notification that it is proposed to review the rate of interim duty (new subsection 269ZB(1)).

The notice must invite interested parties to make submissions (new subsection 269ZB(2)). The opportunity to make submissions extends to a wider group of people than just the affected parties - the intention is for the Comptroller to

receive sufficient information to be able to recommend to the Minister the best possible estimate of the appropriate rate of interim duty.

If submissions are not received by the Comptroller within 40 days of the public announcement of the inquiry then those submissions may be disregarded (new subsection 269ZB(2) and (3)).

After 100 days from the day of publication of the notice the Comptroller must give the Minister a report recommending whether the rate of interim duty should remain the same or be altered, and also provide to the Minister the reasons for the decision (new subsection 269ZB(4)).

- . It should be noted that the Comptroller is not limited to any particular information in coming to his or her recommendation; the Comptroller may take into account any information which he or she considers relevant.

Minister to consider recommendations

New section 269ZC outlines the process by which the Minister notifies a new rate of interim duty pursuant to a review.

After considering the Comptroller's recommendation and the reasons for the recommendation, the Minister must publish in the Gazette either the new variable factors relevant to the particular interim duty (new paragraph 269ZC(1)(a)), or a statement that the variable factors are to remain unchanged (new paragraph 269ZC(1)(b)).

- . If the Gazette notice specifies new variable factors, then the new factors, and therefore the new rate of interim duty, take effect from the day of publication of the Gazette notice.

Similar to the original notice pursuant to sections 269TG, 269TH, 269TJ or 269TK, the notice under subsection 269ZC(1) is subject to the same confidentiality provisions as are the notices under subsections 269TG(3A), 269TH(4), 269TJ(11) or 269TK(6).

Where the Minister publishes a notice under new paragraph 269ZC(1)(a) then the new figures are substituted into the respective notices, i.e. there is no necessity for the Minister to issue a new notice under section 269TG, 269TH, 269TJ or 269TK (new subsection 269ZC(3)).

Effect of review of interim duty on entitlement to seek duty assessment

New section 269ZD ensures that the review process contained in the new Division 5 of Part XVB is completely separate from the duty assessment process contained in the new Division 4 of Part XVB. Any alteration in the rate of interim duty under Division 5 in no way affects the ability of an importer to seek a duty assessment on like goods imported into Australia at the reviewed rate of interim duty.

Further Amendments

Clause 16 provides that the Principal Act is further amended as set out in the Schedule. The Schedule sets out minor consequential amendments to the Principal Act which are a necessary consequence of the introduction of the new system of imposing and collecting dumping and countervailing duties.

- . The word "interim" is inserted before the word "duty" wherever relevant in Part XVB of the Principal Act to reflect the new system of imposing "interim" and then "final" dumping or countervailing duties, especially in the case where the interim duty is to be collected in lieu of a security becoming payable.

Transitional

Clause 17 Gives effect to the Government's policy that the proposed new scheme of imposing and collecting interim dumping and countervailing duties pending their final assessment, is to apply to dumping and countervailing duty notices published by the Minister after the commencement of the proposed new scheme.

PART 3 - AMENDMENTS OF THE ANTI-DUMPING AUTHORITY ACT 1988

Principal Act

Clause 18 is a machinery clause which identifies the Anti-Dumping Authority Act 1988 as the Principal Act being amended by this Part.

Insertion of a new section

Clause 19 inserts a new section 8B into the Principal Act as follows:

Review of a negative preliminary decision under section 269X

New section 8B provides the Anti-Dumping Authority with the power to review a negative preliminary decision of the Comptroller on an application for assessment of final dumping or countervailing duty liability for goods on which interim dumping duty has been paid (Clause 15, new section 269X refers)

The negative preliminary decision is a decision by the Comptroller under new paragraph 269X(6)(b) or new paragraph 269X(6)(c) to repay less duty than that requested by the applicant.

After receiving such an application the Authority must, within 90 days, review the negative preliminary decision and decide whether to confirm the Comptroller's recommendation or to revoke the recommendation and substitute a new recommendation(subclause (1)).

Subclause (2) provides that in conducting a review the Authority may only have regard to the same information to which the Comptroller had regard when making the negative preliminary decision.

Subclause (3) provides that after confirming or revoking and substituting a recommendation, the Authority must as soon as practicable (but not later than 7 days) recommend to the Minister either the confirmed recommendation or the Authority's substituted recommendation.

Transitional

Clause 20 provides that the amendments to the Anti-Dumping Authority Act 1988 will only apply to dumping duty or countervailing duty notices published by the Minister after the commencement of the new system.

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