

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1992

EXPLANATORY MEMORANDUM

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



## CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1992

### OUTLINE

This Bill proposes to amend the Customs Tariff (Anti-Dumping) Act 1975 as part of a legislative package to effect a series of reforms to Australia's anti-dumping and countervailing system announced by the Government on 5 December 1991.

This Bill is the subsidiary part of the package; the principal elements of the proposed anti-dumping amendments are contained in the Customs Legislation (Tariff Concessions and Anti-Dumping) Bill 1992.

The principal purpose of this Bill is to vest a new power in the Minister to apply either anti-dumping or countervailing duties, or both, where the Minister is satisfied that the combined effect of dumping and subsidisation has caused or threatened material injury to an Australian industry, or has materially hindered the establishment of an Australian industry (Clauses 3 and 4 refer).

### Financial Impact Statement

The proposed amendments in this Bill have no direct financial implications.



CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1992NOTES ON CLAUSESShort title etc.

Clause 1 provides for the Act to be cited as the Customs Tariff (Anti-Dumping) Amendment Act 1992 (subclause (1) refers).

Subclause (2) identifies the Customs Tariff (Anti-Dumping) Act 1975 as the Principal Act being amended by this Act.

Commencement

Clause 2 provides for a Proclamation commencement for this Act (subclause (1)). As noted in the Outline, this Act is the subsidiary part of the anti-dumping legislative package, the main part of which is contained in the Customs Legislation (Tariff Concessions and Anti-Dumping) Bill 1992. The anti-dumping elements of that Bill are also to commence by Proclamation, which is proposed to be effected as soon as is practicable after that Bill receives the Royal Assent, when the requisite approved forms have been amended consistent with the new requirements in that Bill. It is proposed to proclaim the commencement of this Bill at the same time.

- . The Proclamation commencement of this Act is subject to the standard "sunset" provision in Acts which are expressed to commence by Proclamation; namely, that if the Act is not proclaimed in a period of six months after the date on which the Act receives the Royal Assent, the Act is deemed to commence on the first day after that period (subclause (2)).

Dumping duties

Clause 3 Amends section 8 of the Principal Act as follows:

paragraph (a) inserts a new subsection 8(5AA) to link up with the proposed new section 269TJA of the Customs Act 1901, inserted by Clause 18 of the Customs Legislation (Tariff Concessions and Anti-Dumping Bill) 1992, which together with this new provision is intended to clarify the treatment of concurrent dumping and subsidisation.

- . Under the present legislation, while the Minister can be fully satisfied in a given case that the dumping and subsidisation of

goods are jointly causing material injury, the Minister might not be able to apply either dumping or countervailing duties. This is because, under the provisions of subsections 269TG(1) and (2) of the Customs Act 1901, and section 8 of the Principal Act, the Minister may only take anti-dumping action when he or she is satisfied that the dumping, of itself, is causing material injury; and similarly, under the provisions of subsections 269TJ(1) and (2) of the Customs Act 1901, and section 10 of the Principal Act, the Minister may only take countervailing action when he or she is satisfied that subsidisation, of itself, is causing material injury. It may well be impossible, however, for the Minister to be satisfied on each of these separate questions.

- Thus, for example, it may be established that goods are both dumped and subsidised, and the Minister may be satisfied;
  - . that the price of the goods is causing material injury, and,
  - . that that price is affected by the dumping and subsidisation, and, therefore,
  - . that the dumping and subsidisation are jointly causing material injury.
- On such a finding, the proposed amendments will now permit the application of dumping or countervailing measures, or both, without the need to quantify how much of the injury is the result of one or the other. Rather, by force of the amendment, the legislation will countenance an assumption that dumping has caused material injury, and, similarly, that subsidisation has caused material injury.
- . paragraph (a) also provides however, similar to the existing subsection 8(5A), that the Minister must have regard to the desirability of ensuring that the total duty (ie. the combination of dumping and countervailing duty that may be imposed) is no more than that which is necessary to remove the injury caused by the dumping and the subsidy.

- This gives legislative effect to the status quo as it currently applies to dumping or subsidy cases, and reflects the express requirements of the General Agreement on Tariffs and Trade (GATT) of which Australia is a signatory.

paragraphs (b) and (c) amend section 8 of the Principal Act as a consequence of the proposed changes to the tariff concessions Part of the Customs Act 1901, also contained in the Customs Legislation (Tariff Concessions and Anti-Dumping) Bill 1992.

- . paragraph (b) deletes the word "Commercial" from the title of Commercial Tariff Concession Order in subsection (7), as a consequence of the omission of that word in the orders referred to in the new Part XVA of the Customs Act 1901.
- . paragraph (c) inserts a new subsection (9) into section 8 of the Principal Act; the new subsection is a standard savings provision, to effectively preserve references to Commercial Tariff Concession Orders under the repealed Part XVA of the Customs Act 1901.

#### Countervailing duties

Clause 4 amends section 10 of the Principal Act, relating to the imposition of countervailing duties, in the same manner and for the same reasons as detailed in Clause 3 above.

