

1983

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (No.2) 1983

EXPLANATORY MEMORANDUM

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

OUTLINE

This Bill proposes to amend the Customs Tariff (Anti-Dumping) Act 1975 as a consequence of a review of Australia's anti-dumping and countervailing legislation.

The major amendments in the Bill:-

- (i) provide for alignment of the definition of business associate with the definition of related persons in section 154 of the Customs Act (Clause 3);
- (ii) provide that the Minister may deal with sales dumping or i.e. "hidden dumping" arrangements irrespective of whether the parties are associates (Clause 4);
- (iii) provide that the invoiced export prices between associates may be accepted if the prices are in relation to purchases in arms length transactions (Clause 4);
- (iv) provide that it will not be mandatory to assess the normal value of goods using the price of sales "by other sellers of like goods" when the exporter does not sell like goods, to those exported, in the domestic market (Clause 5);
- (v) provide that in establishing the normal value on the basis of like goods sold to third countries, the Minister may determine a representative price which may be the highest price (Clause 5);
- (vi) provide that where the Government of the country of export has a monopoly, or substantial monopoly of the trade of the country and determines or substantially influences the domestic price of goods in that country then the normal value can be established in a third country (Clause 5);
- (vii) provide that where normal value is established under (vi) above in a third country, and the normal value is the price paid for like goods sold to another country, the Minister may determine a representative price which may be the highest price (Clause 5);
- (viii) provide that where normal values are established on the basis of a constructed price, allowances may be made to ensure that the normal value ascertained is properly comparable with the export price (Clause 5);

- (ix) provide that the Minister may disregard sales at a loss, for normal value purposes, as not having been made in the ordinary course of trade if they have been made over an extended period of time and in substantial quantities and are at prices which would not permit recovery of all costs within a reasonable period of time (Clause 5);
- (x) provide an indicative but not exhaustive definition of the factors which, when taken together or singly, constitute material injury to an Australian industry, (or to a producer or manufacturer in a third country in the case of third country action) (Clause 6);
- (xi) make it clear that the Minister may determine as the dumping duty or countervailing duty a sum sufficient to prevent injury, which does not exceed the margin of dumping or the amount of subsidy (Clauses 7 to 10); and
- (xii) make it clear that the Minister may determine the amount of subsidy, bounty, reduction or remission of freight or other financial assistance, having regard to all relevant information, if he is satisfied sufficient information has not been furnished (Clause 9).

NOTES ON CLAUSES

- Clause 1 Short title and identification of the Customs
Tariff (Anti-Dumping) Act 1975 as the Principal
Act.
- Clause 2 Commencement date to be the date of Royal
Assent.
- Clause 3 Amends section 4 of the Principal Act to:
- (i) amend section 4(2)(c) of the Act to
provide a discretion to the Minister for
him to determine that a purchase or sale
of goods is not an arms length
transaction when he considers a buyer or
an associate receives a reimbursement or
benefit in respect of the whole or any
part of the price. This provision is
required to provide flexibility to enable
the Minister to counter sales dumping
i.e. hidden dumping;
 - (ii) remake section 4(3) of the Act to provide
that where the Minister is satisfied that
an importer has sold goods at a loss, the
Minister may treat that sale as
indicating that the importer or an
associate will directly or indirectly be
reimbursed for that loss. This provision
is complimentary to the amendment
proposed in (i) above;
 - (iii) insert a new sub-section 4(3A) into the
Act to indicate matters to which the
Minister is to have regard when
determining whether goods are sold by an
importer at a loss; and
 - (iv) insert a new sub-section 4(3B) into the
Act to define the circumstances in which
two persons shall be deemed to be
associates of each other. This provision
is similar to the definition of related
persons in section 154 of the Customs Act
relating to the valuation of imported
goods.
- Clause 4 Amends section 4A of the Principal Act to
enable -
- (i) the Minister to deal with sales dumping
i.e. hidden dumping arrangements

irrespective of whether the parties are associates of each other; and

- (ii) the invoiced export prices between associates to be accepted if the prices are in relation to purchases in arms length transactions.

Clause 5

Amends section 5 of Principal Act to:

- (i) provide that it will not be mandatory for the Minister to assess the normal value of goods by using the price of sales of like goods by parties other than the exporter, when the exporter does not sell like goods, to those exported, in the domestic market;
- (ii) enable the Minister to determine a normal value based upon a representative price for sales for export to a third country, which may be the highest export price;
- (iii) in cases where the Government of the exporting country has a monopoly of trade and determines or substantially influences the price - enable the Minister to disregard for normal value purposes, prices for goods sold in the exporting country and determine the normal value of those goods using prices in a third country. The existing provision (sub-section 5(3) of the Act) provides a choice between the Government of the country of export having a monopoly of trade or substantially influencing the price;
- (iv) enable the Minister to determine a normal value based upon a representative price for sales for export from a third country to another country, which may be the highest export price;
- (v) provide that where normal values of goods are established on the basis of a price constructed in accordance with section 5(2)(c) or 5(3)(e) of the Act, adjustments may be made to ensure that the normal value ascertained is properly comparable with the export price; and
- (vi) enable the Minister to disregard sales at a loss, for normal value purposes, as not having been made in the ordinary course

of trade if they have been made over an extended period of time in substantial quantities and are at prices which would not permit recovery of all costs within a reasonable period of time.

Provisions (i) to (v) above are designed to more clearly give effect to the requirements of the GATT Anti-Dumping Code. The provisions of (vi) above clarify, for the purposes of the Principal Act, the meaning of "goods sold in the ordinary course of trade".

Clause 6

Inserts a new section 5A into the Principal Act to:

- (i) provide matters to which the Minister may have regard to in determining for the purposes of sections 8 or 10 of the Act, whether there has been any material injury to an Australian industry or any material hindrance to the establishment of an Australian industry; and
- (ii) provide matters to which the Minister may have regard to in determining for the purposes of section 9 or 11 of the Act whether there has been any material injury to a producer or manufacturer in a third country.

Clause 7

- (i) amends sub-section 8(2A) of the Principal Act as a consequence of the inclusion of the new section 269U proposed to be included into the Customs Act 1901 by clause 7 of the Customs Tariff (Anti-Dumping) Miscellaneous Amendments Bill 1983. This clause relates to the convening of meetings of the representatives of Australian industry who are parties to an anti-dumping complaint; and
- (ii) inserts a new sub-section 8(5A) into the Principal Act to make it clear that in exercising his powers in relation to dumping duty under sub-section 8(5) of the Act, the Minister may determine the amount of dumping duty on goods to be a sum sufficient to prevent injury to an industry in Australia or a recurrence of the injury, or to remove the hindrance to the establishment of an industry in Australia.

Clause 8 Similar to the provisions of clause 7 of the Bill, inserts a new sub-section 9(5A) into the Principal Act to make it clear that in exercising his power in relation to third country dumping duty under sub-section 9(5) of the Act, the Minister may determine the amount of third country dumping duty on goods to be a sum sufficient to prevent injury or a recurrence of the injury to a manufacturer or producer in the third country.

Clause 9 (i) amends section 10 of the Principal Act to have the same effect as the provisions of clause 7, but in relation to countervailing duty under sub-section 10(5) of the Act; and

 (ii) remakes sub-section 10(7) of the Principal Act to provide that where the Minister is satisfied that sufficient information has not been furnished or is not available to ascertain the amount of any financial assistance in relation to goods, that amount shall be such amount as the Minister determines, having regard to all relevant information. This aligns the provisions of section 10(7) of the Act with a similar provision in respect of anti-dumping action under section 5(4) of the Act.

Clause 10 similar to the provisions of clause 8 of the Bill, inserts a new sub-section 11(5A) into the Principal Act to make it clear that in exercising his powers in relation to third country countervailing duty under sub-section 11(5) of the Act, the Minister may determine the amount of third country countervailing duty on goods to than be a sum sufficient to prevent the injury or recurrence of the injury to a manufacturer or producer in the third country.

Clause 11 Inserts a new sub-section 15(3A) into the Principal Act to provide that requests to the Minister to refer matters to the Industries Assistance Commission are to be in writing and verified by statutory declaration or witnessed by a notary public. This amendment is proposed as a consequence of the inclusion of the new section 269V proposed to be included into the Customs Act 1901 by clause 7 of the Customs Tariff (Anti-Dumping) Miscellaneous Amendments Bill 1983.

