

1998

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (NO. 2) 1998

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice and Customs,
Senator the Hon Amanda Vanstone)

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (NO. 2) 1998

OUTLINE

This Bill amends the *Customs Tariff (Anti-Dumping) Act 1975* to clarify, in combination with the amendments to the *Customs Act 1901* proposed in the Customs (Anti-dumping Amendments) Bill 1998, provisions of these Acts which relate to the manner in which interim dumping and countervailing duties are collected.

The amendments make it clear that such interim duties can be imposed pending final assessment of any dumping or countervailing duties, notwithstanding that the actual export price and normal value, or the fact that a countervailable subsidy has been received, have not yet been ascertained.

Although these amendments are to be taken to have commenced on 1 January 1993, the date on which the interim dumping and countervailing duties were introduced, they will not require importers to pay an amount of dumping duty beyond that which has previously been demanded. The amendments merely seek to ensure that approximately \$12 million in interim duties collected since 1 January 1993 is not subject to legal challenge.

FINANCIAL IMPACT STATEMENT

The amendments in this Bill, in combination with those proposed in the Customs (Anti-dumping Amendments) Bill 1998, will ensure that approximately \$12 million collected in interim duties since 1 January 1993 is not subject to legal challenge.

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1997

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for this Act to be cited as the *Customs Tariff (Anti-Dumping) Amendment Act 1998*.

Clause 2 - Commencement

This clause provides for the commencement provisions of the various amendments contained in this Act as set out below.

Subclause 2(1) provides that, subject to subclause (2), this Act is taken to have commenced on 1 January 1993. Items 4, 6, 8, 10, 12, 14, 16 and 18 of Schedule 1 to the Customs (Anti-dumping Amendments) Bill 1998 are also taken to have commenced on 1 January 1993. Those items, and the amendments proposed in this Bill, all relate to the clarification of the collection of interim dumping and countervailing duties. The interim duty regime was introduced by the *Customs Legislation (Anti-Dumping Amendments) Act 1992*, which commenced on 1 January 1993. Interim duties have been collected since that date in accordance with the intention of the regime and these amendments will ensure that approximately \$12 million in interim duties collected since 1 January 1993 is not subject to legal challenge.

Subclause 2(2) provides that items 2, 4, 6, 7 and 9 of Schedule 1 commence on the day on which this Act receives the Royal Assent. These are all minor technical amendments to correctly cite references to the *Customs Act 1901* (the Customs Act) and correct grammatical errors in the *Customs Tariff (Anti-Dumping) Act 1975* (the Anti-Dumping Act).

Clause 3 - Schedule(s)

This clause is the formal enabling provision for the Schedule to this Act providing that each Act specified in the Schedule is amended or repealed in accordance with the applicable terms of the Schedule.

The clause also provides that the other items of the Schedules have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation (item 10 of Schedule 1 refers).

SCHEDULE 1 - AMENDMENT OF THE CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

Item 1 - Subsection 8(2)

Item 1 repeals subsection 8(2) and substitutes a new subsection 8(2). The new subsection recasts the current subsection 8(2) to include the words "in relation to which the amount of the export price is less than the amount of the normal value" to make it clear that actual values must be ascertained (or be taken to have been ascertained under subsection 269Y(4) of the Customs Act) for the purposes of imposing final dumping duty. The amendment is complementary to those proposed to subsections 269TG(1) and (2) of the Customs Act in items 4 and 6 of the Customs (Anti-Dumping Amendments) Bill 1998, which make it clear that actual values need not be ascertained for the purpose of imposing interim dumping duties.

Items 3, 5 and 8

Items 3, 5 and 8 effect similar amendments to those in item 1 above to the corresponding provisions in subsections 9(2), 10(1) and 11(1) in respect of final third country dumping duty, final countervailing duty and final third country countervailing duty, respectively. The amendments make it clear that actual values, or the fact that a countervailable subsidy has been received, must be ascertained (or be taken to have been ascertained under subsection 269Y(4) of the Customs Act) for the purposes of imposing final dumping or countervailing duty.

Items 2, 4, 7 and 9 - Subsections 8(5A), 9(5A), 10(3B) and 11(4)

Item 2 effects a minor technical amendment to correct the omission of the words "of the Customs Act" after the reference to subsection 269TG(1) or (2).

This amendment confirms that subsection 8(5A) is referring to subsection 269TG(1) or (2) of the Customs Act.

Items 4, 7 and 9 effect similar technical amendments in respect of the references to subsections 269TH(1) or (2); 269TJ(1) or (2) and 269TK(1) or (2) of the Customs Act in subsections 9(5A), 10(3B) and 11(4), respectively, of the Anti-Dumping Act.

Item 6 - Subsection 10(3)

This item effects a minor technical amendment by inserting the word "the" after the words "on goods". The amendment corrects the grammar of the provision.

Item 10 - Saving provisions

Subitem 10(1) inserts a saving provision to ensure that any dumping duty imposed and any dumping duty or interim duty collected as a result of a notice given by the Minister under subsection 269TG(1) or (2) or 269TH(1) or (2) of the Customs Act on or after 1 January 1993 is taken for all purposes, to have been so imposed or collected in accordance with the *Customs Tariff (Anti-Dumping) Act 1975* as amended by this Bill.

This amendment is designed to prevent any legal challenge to the imposition and collection of those duties.

Subitem 10(2) effects a similar amendment as subitem 10(1) in terms of countervailing or interim countervailing duty imposed and collected as a result of a notice given by the Minister under subsections 269TJ(1) or (2) or 269TK(1) or (2) of the Customs Act.

Subitem 10(3) provides that, for the purposes of this item, the words "dumping duty" and "countervailing duty" have the same meanings as in Part XVB of the Customs Act, i.e., the terms include "third country" dumping duty and "third country" countervailing duty.