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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Customs Tariff (Anti-Dumping) Amendment
(Countervailing Duties) Bill 1982

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Business and
Consumer Affairs the Honourable N.A. Brown Q.C., M.P.)

Customs Tariff (Anti-Dumping) Amendment

(Countervailing Duties) Bill 1982

Purpose of the Bill

The purpose of this Bill is to amend the Customs Tariff (Anti-Dumping) Act 1975 to enable Australia to implement the principle that the treatment accorded Australian exports in countervailing duty measures by other countries will be met with reciprocal countervailing action by Australia in relation to exports to Australia from the countries in question.

Countervailing duties are special duties of Customs which are charged, collected and paid on goods upon which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods by the Government of the country of origin or export.

Australia became bound by the provisions of the GATT Subsidies and Countervailing Duties Code on 28 October 1981. This Code recognises that members of the Code might apply domestic subsidies but prohibits members from using export subsidies on manufactured and mineral products. The Code tolerates however export subsidies on agricultural products if a member does not gain a more than equitable share of world export trade or prejudice the trade of another member. Irrespective of product type, proof of material injury or threat of material injury is required before countervailing action can be taken by one member against another.

As Australia is now a member of the Code, the Government views it as very important that countervailing duty measures are applied by countries on a fair and equitable basis.

Another member of the Code, the United States, has legislation that permits countervailing action without applying the "injury test". Moreover the U.S.A. is capable of adopting a broader definition of a subsidy than Australia. The problems created for Australia in this regard were highlighted early last year when the USA threatened such countervailing action against Australian lamb exports.

This difficulty of the non application of the injury test to Australian exports was overcome for the time being when Australia became a member of the Code.

Nevertheless the Government has decided that as a matter of trade policy and notwithstanding the "injury test" requirement of the Code, Australia needs the facility to be able to take countervailing action without requiring proof that exports to Australia, if subsidised, are causing or threatening material injury to a domestic industry in cases where countries do not accord Australian exports the same test in their

countervailing actions. Additionally, Australia proposes to adopt as appropriate a similar approach to the definition of subsidy to that applied by other countries in countervailing actions against Australian exports.

Clause 2 of the Bill proposes to amend section 10 of the Customs Tariff (Anti-Dumping) Act to insert appropriate provisions to give effect to the Governments decision.

Clause 1

Citation of the amending Act and identification of the Customs Tariff (Anti-Dumping) Act 1975 as the Principal Act.

Clause 2

- (a) Amends section 10 of the Act to insert new provisions into the Act to enable implementation of the principle that the treatment accorded Australian exports in countervailing duty measures by other countries will be met with reciprocal countervailing action in relation to exports to Australia from the countries in question.

Proposed sub-sections 2B, 2C and 2D

Have the effect of providing for the imposition of a countervailing duty on goods exported to Australia from a country on a reciprocal basis, if that country imposes a countervailing duty on goods exported from Australia in circumstances where the country -

- (i) uses the same concept of assistance as provided for in the existing Act but without the proper application of an "injury test" - proposed sub-section 2B;
- (ii) uses a different concept of assistance to that in the existing Act but with the application of an "injury test" - proposed sub-section 2C; or
- (iii) uses a different concept of assistance and does not properly apply an "injury test" - proposed sub-section 2D;

Proposed sub-section 2E

Defines the term "prescribed assistance" for the purposes of section 10 of the Act. The definition includes any assistance, incentive, exemption, privilege or benefit (whether financial or otherwise).

- (b) omits sub-section 10(4) of the Principal Act and inserts a new sub-section setting out the methods under which the countervailing duty is determined for the purposes of sub-sections (1), (2), 2B, 2C and 2D;
- (c) makes a formal amendment to sub-section 7; and

- (d) inserts a new sub-section to enable the Minister to determine the amount of prescribed assistance if he is satisfied that adequate information cannot be obtained to otherwise determine the amount.

Clause 3

Amends section 14 of the Principal Act to exclude from the obligation of the provisions of that section, the action that may be taken pursuant to proposed sub-sections 10(2B), (2C) or (2D). Section 14 of the Principal Act has the effect of prohibiting the imposition of a countervailing duty if it is inconsistent with the obligations of Australia under any international agreement relating to tariffs or trade. The provisions proposed by this Bill may be inconsistent with Australia's obligations in this regard but the Government has decided that, as a matter of trade policy, Australia requires the means whereby reciprocal countervailing action can be taken against the countervailing treatment accorded Australian exports by other countries.