

1980-81

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

(CIRCULATED BY THE AUTHORITY OF THE  
MINISTER FOR BUSINESS AND CONSUMER  
AFFAIRS, THE HONOURABLE JOHN MOORE, M.P.)



## Customs Tariff (Anti-Dumping) Amendment Bill 1981

### Purpose of the Bill

The main purpose of this Bill is to bring the Customs Tariff (Anti-Dumping) Act 1975 into line with provisions of the revised GATT Anti-Dumping Code and the GATT Subsidies and Countervailing Measures Code which were concluded in the Tokyo Round of the Multilateral Trade Negotiations in 1979. The Bill also remedies inadequacies which have become apparent in the light of administration of the Act since its commencement in 1975.

At this stage, the Government has decided in principle to accede to the revised GATT Anti-Dumping Code only. Since the existing legislation covers both dumping and countervailing measures, it is convenient also to include amendments to the Act to bring it into conformity with the GATT Subsidies and Countervailing Measures Code.

The changes to conform with the changes made in the revised GATT Anti-Dumping Code are contained in Clause 11 and those relating to the GATT Subsidies and Countervailing Measures Code are in Clauses 9 and 11. The other clauses of the Bill contain amendments to remedy the inadequacies in the principal Act.

- Clause 1 - Short title
- Clause 2 - Amends section 4 of the Principal Act by:-
- (i) omitting the definition of "export price" (as to which see clause 3);
  - (ii) inserting new definitions of "determination" and "direction";
  - (iii) providing that the definition of "business associates" will have general application throughout the Act; and
  - (iv) providing for the in transit provision also to have general application.
- Clause 3 - Inserts new provisions for the assessment of the "export price" of goods exported to Australia. The definition of export price was previously contained in section 4 of the Principal Act and that definition has been found to be deficient in a number of respects. The revised provision makes it clear that the method of assessment of export price to be applied is dependent upon whether or not there is a business association between the exporter and the importer of the goods. It also clarifies the assessment of the export price where the goods have been exported on consignment for sale in Australia. Proposed sub-sections 4(3) and (4) are to ensure that the export price may be determined on the basis of available reliable information.
- Clause 4 - Amends section 5 of the Principal Act to:-
- (i) remedy a number of minor deficiencies relating to the criteria for the assessment of normal value;
  - (ii) insert additional criteria for the assessment of normal value for goods exported from Centrally Planned Economy countries. This criteria conforms to the Subsidies and Countervailing Measures Code and has equal application for both anti-dumping and countervailing measures; and
  - (iii) make it clear that the Minister may disregard any information relating to the assessment of normal value which he considers to be unreliable. In such cases the normal value is then to be assessed by the Minister using the best information which is otherwise available.

Clause 5 - Amends section 8 of the Principal Act to -

- (i) insert new provisions conforming to the revised GATT Anti-Dumping Code to ensure that action may be taken where injury to an Australian industry is threatened or where the establishment of an Australian industry is being hindered;
- (ii) empower the Minister to suspend indefinitely any dumping action if he accepts an undertaking given by an exporter to raise prices to a non-injurious level; and
- (iii) omit the provision whereby goods may be exempted from dumping duty if a dumping margin not exceeding 10% is evident.

Clause 6 - Amends section 9 of the Principal Act to -

- (i) insert new provisions conforming to the revised Anti-Dumping Code to ensure that action may be taken where material or threatened injury is being caused to a producer or manufacturer in a third country by the export of goods to Australia at prices injurious to that producer or manufacturer;
- (ii) omit the provision whereby goods may be exempted from third country dumping duties if a dumping margin not exceeding 10% is evident; and
- (iii) make some minor machinery and consequential amendments.

Clause 7 - Amends section 10 of the Principal Act to -

- (i) make it clear that this section applies where any subsidy, bounty, reduction or remission of freight has occurred in the country of origin of the goods or the country of export;
- (ii) ensure compliance with the revised GATT Subsidies and Countervailing Measures Code by allowing countervailing duties to be imposed where injury to an Australian industry is threatened or where the establishment of an Australian industry is being hindered; and

- (iii) empower the Minister to indefinitely suspend action if he accepts an undertaking given by the exporter of the goods or the Government of the exporting country to offset the effect of any subsidy, bounty etc. which is causing injury.

Clause 8 - Amends section 11 of the Principal Act to -

- (i) make it clear that the section applies where any subsidy, bounty, reduction or remission of freight has occurred in the country of origin of the goods or the country of export;
- (ii) ensure that the third country countervailing duty provisions may apply where any injury is threatened to an industry in a third country and that the injury must be material injury; and
- (iii) insert a provision requiring that the Minister's action in imposing duties pursuant to that section be dependent upon a request being made by the Government of the third country.

Clause 9 - Amends the Principal Act by inserting a new section 11A to enable the Minister to determine, for the purpose of assessing countervailing duties, the amount of any subsidy, bounty, reduction or remission of freight in the case of goods exported from Centrally Planned Economy Countries.

This amendment is the counterpart to that made in Clause 4 of the Bill in respect of the assessment of normal values for dumping purposes.

Clause 10 - Amends section 12 of the Principal Act to ensure that both inland and export freight are taken into account in considering whether goods have been exported to Australia freight-free or at less than normal freight and, in such cases, to ensure that both inland and export freight are included in the assessment of normal freight.

Clause 11 - Amends section 13 of the Principal Act to conform with the revised Anti-Dumping Code and the Subsidies and Countervailing Measures Code by -

- (i) enabling retrospective countervailing action to be taken in similar circumstances to that already provided for in the Principal Act in relation to retrospective anti-dumping action;
- (ii) enabling retrospective countervailing and anti-dumping action to be taken when an undertaking given by an exporter or by a foreign government has been violated; and
- (iii) including a provision that retrospective action shall not extend beyond the date of the violation of the undertaking.

Clause 12 - Amends section 15 of the Principal Act by inserting a requirement that the Minister must first refuse a request for the revocation of a notice before he may be requested to refer the matter to the Industries Assistance Commission.

Clause 13 - Makes formal amendments to the Principal Act as set out in the Schedule thereto.

Clause 14 - Incorporates a savings provision to ensure that a notice made under the Principal Act remains in force as if it had been made under the Principal Act as amended by this Bill.

