

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

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



CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1989

OUTLINE

This Bill proposes a major restructuring of the Customs Tariff (Anti-Dumping) Act 1975 with the transfer of a series of existing sections from that Act into Part XVB of the Customs Act 1901.

The purpose of the transfer is to avoid possible difficulties with the requirements of Section 55 of the Constitution, arising from the High Court Decision on the effect of that Section in Air Caledonie International and others v. The Commonwealth (24 November 1988).

- The High Court's decision in part dealt with the breadth of the Section 55 Constitutional requirement that laws imposing taxation or, in this case, duties of customs, shall deal only with the imposition of taxation, or duties of customs;
- It had previously been considered that the prohibition on the mixing of taxing and non-taxing matters in legislation would not be infringed where an Act dealing only with the imposition of duties of Customs amended a principal Act which contained provisions dealing with other matters. Thus, Commonwealth drafting practice over the years has countenanced a situation where Bills enacted by Parliament are drafted with a view to the anti-mixing or anti-tacking prohibition, but the Principal Acts as amended are not so considered.
- The High Court's Decision last year now construes Section 55 as extending to laws in the form in which they stand from time to time after enactment, with the requirement that such laws deal only with the imposition of taxation (or duties of customs etc.). Thus, laws imposing duties of customs must remain in a separate Act from laws dealing with "non-taxing" matters.

The repeal of the sections of the Customs Tariff (Anti-Dumping) Act 1975 effected by this Bill, and the transfer of those sections to the Customs Act 1901, effected in the companion Customs Legislation (Anti-Dumping) Bill 1989, removes from the Customs Tariff (Anti-Dumping) Act 1975 those provisions which have been rendered doubtful in the light of the High Court's decision.

- The sections remaining in the Customs Tariff (Anti-Dumping) Act 1975 are as follows: section 1, section 2, section 6, section 7, subsections 8(3) to (8), subsections 9(3) to (8), subsections 10(3) to (6) and (8) to (9), subsections 11(3) to (6) and (8) to (9), section 16 and section 21.

A concordance of the Customs Tariff (Anti-Dumping) Act's proposed repealed provisions and the new Customs Act provisions (as proposed to be inserted by the Customs Legislation (Anti-Dumping) Bill 1989) appears at the end of this Explanatory Memorandum, for ease of reference. In the transfer, some provisions have undergone slight redrafting, to accord with modern drafting style (references to his or her, for instance).

Financial Impact Statement

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

Notes on Clauses

Short Title

Clause 1 provides for the citation of this Act as the Customs Tariff (Anti-Dumping) Amendment Act 1989 and provides that wherever the term "Principal Act" appears in this Act, this is a reference to the Customs Tariff (Anti-Dumping) Act 1975.

Commencement

Clause 2 provides for the Act to commence on a day to be fixed by Proclamation, with the exception of clauses 1 and 2 (the machinery provisions) which commence on the day on which the Act receives the Royal Assent (subclauses (1) and (2)).

Subclause 3 is the standard drafting corollary to a Proclamation commencement, providing that those provisions which are to commence by Proclamation will commence six months after the date of Royal Assent if in fact the Proclamation has not occurred by then.

- . No specific date has yet been fixed for Proclamation.

Repeal of sections 3 to 5A (inclusive)

Clause 3 provides for the repeal of sections 3,4,4A,5,5AA and 5A of the Customs Tariff (Anti-Dumping) Act 1975.

- . The repealed sections, most of which are transferred to the Customs Act 1901 by the companion Bill in this package (the Customs Legislation (Anti-Dumping) Bill 1989) relate to the following:

Section 3 is a repeal and savings provision which is no longer required due to the passage of time;

Section 4 is an interpretation provision which is no longer required as the terms it defines will no longer appear in the Customs Tariff (Anti-Dumping) Act 1975; those terms which are not already defined for the purposes of the Customs Act 1901 are now to be defined in sections 269T and 269TAA of the Customs Act 1901 by virtue of the Customs Legislation (Anti-Dumping) Bill 1989.

Section 4A is concerned with the export price of goods and the corresponding provision is to be section 269TAB of the Customs Act 1901.

Section 5 is concerned with the normal value of goods and the corresponding provision is to be section 269TAC of the Customs Act 1901.

Section 5AA allows the Minister to reascertain certain normal values and the corresponding provision is to be section 269TAD of the Customs Act 1901.

Section 5A deals with material injury to industry and the corresponding provision is to be section 269TAE of the Customs Act 1901.

#### Dumping duties

Clause 4 amends section 8 of the Customs Tariff (Anti-Dumping) Act 1975 by:

- . omitting subsections (1), (2), (2AA) and (2A). The corresponding provisions are to appear in subsections 269TG (1), (2), (3) and (4) of the Customs Act 1901 (subclause (a));
- . amending subsection (3) as a consequence of the repeal of the subsections in subclause (a) above;
  - declarations that section 8 of the Customs Tariff (Anti-Dumping) Act 1975 applies to goods will now be made under subsections 269TG(1) and (2) of the Customs Act 1901 (subclause (b));
- . amending subsection (5A) in line with current Commonwealth drafting practice to ensure that specific reference is made to the feminine gender as well as the masculine gender (subclause (c));
- . amending subsection (5A) as a consequence of the repeal of subsections (1) and (2);
  - the repealed provisions are to appear as paragraphs 269TG(1)(b) and (2)(b) of the Customs Act 1901 (subclause (d));

#### Third country dumping duties

Clause 5 amends section 9 of the Customs Tariff (Anti-Dumping) Act 1975 by:

- . omitting subsections (1), (2) and (2A). The corresponding provisions are to appear in subsections 269TH(1), (2) and (3) of the Customs Act 1901 (subclause (a));

- . amending subsection (3) as a consequence of the repeal of the subsections in subclause (a) above;
  - declarations that section 9 of the Customs Tariff (Anti-Dumping) Act 1975 applies to goods will now be made under subsections 269TH(1) and (2) of the Customs Act 1901 (subclause (b));
- . amending subsection (5A) in line with current Commonwealth drafting practice to ensure that specific reference is made to the feminine gender as well as the masculine gender (subclause (c));
- . amending subsection (5A) as a consequence of the repeal of subsections (1) and (2);
  - the repealed provisions are to appear as paragraphs 269TH(1)(b) and (2)(b) of the Customs Act 1901 (subclause (d));

#### Countervailing duties

Claus 6 amends section 10 of the Customs Tariff (Anti-Dumping) Act 1975 by:

- . omitting subsections (1), (2), (2A), (2B), (2C), (2D), and (2E). The repealed provisions are to appear in subsections 269TJ(1) to (7) of the Customs Act 1901 (subclause (a));
- . amending subsection (3) as a consequence of the repeal of the subsections in subclause (a) above;
  - declarations that section 10 of the Customs Tariff (Anti-Dumping) Act 1975 applies to goods will now be made under subsections 269TJ(1), (2), (4), (5) or (6) of the Customs Act 1901 (subclause (b)). Similarly, paragraph (4)(a) is amended consequentially in subclause (c), to take account of the fact that subsections (1), (2) and (2B) are omitted with the corresponding provisions being subsections 269TJ (1), (2) and (4) of the Customs Act 1901, and in subclause (d), that subsections 10(2C) and (2D) of the Customs Tariff (Anti-Dumping Act) 1975 are now subsections 269TJ(5) and (6) of the Customs Act 1901;
- . amending subsection (5A) in line with current Commonwealth drafting practice to ensure that

specific reference is made to the feminine gender as well as the masculine gender (subclause (e));

- . amending subsection (5A) as a consequence of the repeal of subsections (1) and (2) and their proposed reenactment as corresponding provisions in subsections 269TJ(1) and (2) of the Customs Act 1901 (subclause (f));
- . amending subsection (5A) as a consequence of the repeal of paragraphs (1)(b) and (2)(b) and their proposed reenactment as corresponding provisions in paragraphs 269TJ(1)(b) and (2)(b) of the Customs Act 1901 (subclause (g));
- . omitting subsections (7) and (7A), which are proposed to be reenacted as subsections 269TJ(8) and (9) of the Customs Act 1901.
  - new subsections 10(7) and (7A) are inserted to provide the necessary linkage between determinations made by the Minister under proposed new subsections 269TJ(8) and 269TJ(9) of the Customs Act 1901 and declarations under subsections 269TJ(1), (2), (4), (5) or (6) of the Customs Act 1901, and section 10 of the Customs Tariff (Anti-Dumping) Act 1975 (subclause (h));
- . amending subsections (8) and (9) in line with current Commonwealth drafting practice to ensure that specific reference is made to the feminine gender as well as the masculine gender. In addition, the phrase "by reason of...being satisfied" is modernised in line with current drafting practice (subclauses (j) and (k));
- . omitting subsection (10). This subsection appears as corresponding provision subsection 269TJ(10) of the Customs Act 1901 (subclause (l));

#### Third-country countervailing duties

Clause 7 amends section 11 of the Customs Tariff (Anti-Dumping) Act 1975 by:

- . omitting subsections (1) and (2). The corresponding provisions are to appear in subsections 269TK (1) and (2) of the Customs Act 1901 (subclause (a));
- . amending subsection (3) to take account of the fact that declarations that section 11 of the



Customs Tariff (Anti-Dumping) Act 1975 applies to goods will now be made under subsections 269TK(1) or (2) of the Customs Act 1901 (subclause (b));

- . amending subsection (5A) in line with current Commonwealth drafting practice to ensure that specific reference is made to the feminine gender as well as the masculine gender (subclause (c));
- . amending subsection (5A) as a consequence of the repeal of paragraphs 11(1)(b) and 11(2)(b) (subclause (a) above) and their proposed reenactment as corresponding provisions in paragraphs 269TK(1)(b) and (2)(b) of the Customs Act 1901 (subclause (d));
- . omitting subsection (7), which is to be found in corresponding provision subsection 269TK(3) of the Customs Act 1901.
  - new subsection (7) is inserted to provide the necessary linkage between determinations made by the Minister under proposed new subsection 269TK(3) of the Customs Act 1901 and declarations under proposed new subsections 269TK (1) or (2) of the Customs Act 1901 and section 11 of the Customs Tariff (Anti-Dumping) Act 1975 (subclause (e));
- . amending subsections (8) and (9) in line with current Commonwealth drafting practice to ensure that specific reference is made to the feminine gender as well as the masculine gender. In addition, the phrase "by reason of...being satisfied" is modernised in line with current drafting practice (subclauses (i) and (k));
- . omitting subsection (10). This subsection appears as corresponding provision subsection 269TK(4) of the Customs Act 1901 (subclause (h)).

#### Repeal of further provisions

Clause 8 repeals sections 11A, 12, 12A, 12B, 13, 17, 18, 19, 20 and 22 of the Customs Tariff (Anti-Dumping) Act 1975. The repealed sections, most of which are transferred to the Customs Act 1901 by the companion Bill in this package (the Customs Legislation (Anti-Dumping) Bill 1989) relate to the following:

- . section 11A which deals with the Minister determining the amount of subsidy for the purposes of section 10 and 11 of the Customs

Tariff (Anti-Dumping) Act 1975, is to be section 269TAF of the Customs Act 1901;

- . section 12 which deals with freight, is to be section 269TAG of the Customs Act 1901;
- . section 12A which deals with the Minister giving notice of a decision not to impose duty, is to be section 269TL of the Customs Act 1901;
- . section 12B which deals with the period during which certain notices and undertakings remain in force, is to be section 269TM of the Customs Act 1901;
- . section 13 which deals with retrospective notices, is to be section 269TN of the Customs Act 1901;
- . section 17, which deals with the ascertainment of the equivalent amount in Australian currency, is to be section 269TAH of the Customs Act 1901;
- . section 19, which deals with the Minister's power to delegate his powers and functions, is to be incorporated into section 9 of the Customs Act 1901 and the transitional provision set out in clause 9 of this Bill specifically saves all existing delegations;
- . section 20, which deals with the revocation of notices, has its corresponding provision in section 269TAJ of the Customs Act 1901,
- . section 22, which is a regulation-making power, is no longer necessary. The general regulation-making power in section 270 of the Customs Act 1901 may be relied upon to make regulations for the purposes of Part XVB of the Customs Act 1901.

#### Transitional provisions

Clause 9 is a standard transitional and savings provision to ensure that any act or thing done under provisions of the Customs Tariff (Anti-Dumping) Act 1975 which are repealed and re-enacted in a similar form in Part XVB of the Customs Act 1901 continue to have effect. For instance, any dumping notice published in the Gazette continues to remain in force (subclause (1)):

Subclause (2) specifically saves any Ministerial delegations executed under repealed and re-enacted

provisions and subclause (3) specifically saves any Comptroller-General delegations executed under repealed and re-enacted provisions.

CONCORDANCECustoms Tariff (Anti-Dumping) Act 1975Customs Act 1901Current SectionProposed Section

1 ~ Short title	remains as is
2 - Commencement	remains as is
3 - Repeal and Saving	repealed
4 - Interpretation	repealed; certain definitions transferred to section 269T of the <u>Customs Act 1901</u>
. subsection 4(2),(3), (3A) and (3B)-arms length transaction	section 269TAA of the <u>Customs Act 1901</u>
. subsection 4(4)	subsection 269T(2A)
. subsection 4(5)	subsection 269T(2B)
4A - Export price	section 269TAB
5 - Normal value of goods	section 269TAC
. subsection 5(2A)	subsection 269TAC(3)
" 5(3)	" " (4)
" 5(3A)	" " (5)
" 5(4)	" " (6)
" 5(4A)	" " (7)
" 5(4B)	" " (8)
" 5(5)	" " (9)
" 5(6)	" " (10)
" 5(7)	" " (11)
" 5(8)	" " (12)
" 5(9)	" " (13)
5AA - Minister may re-ascertain certain normal values	section 269TAD
5A - Material injury to industry	section 269TAE
6 - Incorporation	remains as is
7 - Imposition of duties of Customs	remains as is
8 - Dumping duties	section 269TG
subsections (1) and (2)	subsection 269TG(1) and (2)
" (2AA)	" 269TG(3)
" (2A)	" 269TG(4)
subsections (3) to (8)	remains as is

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|-----|---|--|
| 9   | - Third country dumping duties<br>subsections (1) to (2A)<br><br>subsections (3) to (8)   | section 269TH<br>subsection 269TH(1) to (3)<br><br>remain  |
| 10  | - Countervailing duties<br>subsections (1) to (2E)<br><br>subsections (3) to (6)<br><br>subsections (7) to (7A)<br><br>subsections (8) to (9)<br><br>subsection (10)            | section 269TJ<br>subsections (1) to (7)<br><br>remain<br><br>subsections 269TJ (8) and<br>(9)<br><br>remains as is<br><br>subsection 269TJ(10)   |
| 11  | - Third country countervailing<br>duties<br><br>subsections (1) and (2)<br><br>subsections (3) to (6)<br><br>subsection (7)<br><br>subsection (8) to (9)<br><br>subsection (10) | section 269TK<br><br>subsection 269TK(1) and (2)<br><br>remains as is<br><br>subsection 269TK(3)<br><br>remains as is<br><br>subsection 269TK(4) |
| 11A | - Amount of subsidy may be<br>determined by Minister for<br>purposes of section 10 or 11  | section 269TAF   |
| 12  | - Freight less than normal<br>freight   | section 269TAG   |
| 12A | - Minister to give notice of<br>decision not to impose duty   | section 269TL  |
| 12B | - Period during which certain<br>notices and undertakings to<br>remain in force   | section 269TM  |
| 13  | - Retrospective notices   | section 269TN  |
| 16  | - Duties to be charged separately   | remains as is  |
| 17  | - Ascertainment of equivalent<br>amount in Australian currency  | section 269TAH   |
| 18  | - Power to specify goods  | section 269TP  |
| 19  | - Delegation  | relevant power now<br>section 9 of <u>Customs Act</u><br><u>1901</u>   |

- 20 - Revocation of notices etc section 269TAJ
- 21 - special duties to be additional to ordinary duties remains
- 22 - Regulations repealed - section 270 of the Customs Act 1901 can be relied upon to make regulations in respect of Part IVB of the Customs Act 1901, where the anti-dumping provisions now appear.



