



Customs Tariff (Anti-Dumping) Amendment Act (No. 2) 1992

No. 206 of 1992

An Act to amend the *Customs Tariff (Anti-Dumping) Act 1975*, and for related purposes

[Assented to 21 December 1992]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Customs Tariff (Anti-Dumping) Amendment Act (No. 2) 1992*.

5 (2) In this Act, “**Principal Act**” means the *Customs Tariff (Anti-Dumping) Act 1975*¹.

Commencement

2.(1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

10 (2) The remaining provisions of this Act commence on the day the provisions referred to in subsection 2(3) of the *Customs Legislation (Anti-Dumping Amendments) Act 1992* commence.

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Insertion of new section

3. After section 2 of the Principal Act the following section is inserted:

Interpretation

“3. In this Act:

‘**relevant subsidy**’, in relation to goods, means a subsidy, bounty, reduction or remission of freight or other financial assistance that has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods.”.

Dumping duties

4. Section 8 of the Principal Act is amended:

(a) by omitting subsections (3), (4), (5), (5A), (5AA), (5B) and (6) and substituting the following subsections:

“(2) There is imposed, and there must be collected and paid, on goods to which this section applies by virtue of a notice under subsection 269TG(1) or (2) of the Customs Act, a special duty of Customs, to be known as dumping duty calculated in accordance with subsection (6).

“(3) Pending final assessment of the dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act, an interim dumping duty is payable on those goods.

“(4) Subject to subsection (5), the interim dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to the sum of:

(a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and

(b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the amount by which the latter export price exceeds the former.

“(5) The Minister must, by signed notice, direct that the element of interim dumping duty referred to in paragraph (4)(a) in respect of particular goods be ascertained:

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- 5 (a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or
- (b) by reference to a measure of the quantity of those particular goods; or
- 10 (c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods;
- and the notice has effect accordingly.

15 “(5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a notice under subsection 269TG(1) or (2), if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:

- 20 (a) the export price of goods of that kind as so ascertained or last so ascertained; and
- (b) that lesser duty;
- does not exceed that non-injurious price.

25 “(5B) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TG of that Act and a notice under section 269TJ of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (5) in relation to interim dumping duty in respect of the goods, have regard to the desirability of fixing the amount of interim dumping duty in respect of the goods such that the sum of:

- 30 (a) the export price of those particular goods; and
- (b) the amount of the interim dumping duty as so fixed; and
- 35 (c) the amount of interim countervailing duty as fixed under section 10;

does not exceed the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of those notices.

40 “(5C) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

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“(5D) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.”

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“(6) The dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to:

(a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or

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(b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the first-mentioned notice—the difference between:

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(i) the amount that the Minister ascertains to be the export price of those particular goods; and

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(ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.”;

(b) by inserting in subsection (7) “interim dumping duty and” before “dumping duty”;

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(c) by omitting from subsection (8) “the dumping duty” and substituting “interim dumping duty and dumping duty”.

Third country dumping duties

5. Section 9 of the Principal Act is amended:

(a) by omitting subsections (3), (4), (5), (5A), (5B) and (6) and substituting the following subsections:

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“(2) There is imposed, and there must be collected and paid, on goods to which this section applies by virtue of a notice under subsection 269TH(1) or (2) of the Customs Act, a special duty of Customs, to be known as third country dumping duty calculated in accordance with subsection (6).

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“(3) Pending final assessment of the third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act, an interim third country dumping duty is payable on those goods.

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“(4) Subject to subsection (5), the interim third country dumping duty payable on goods the subject of a notice under

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subsection 269TH(1) or (2) of the Customs Act is an amount equal to the sum of:

(a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and

(b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the amount by which the latter export price exceeds the former.

“(5) The Minister must, by signed notice, direct that the element of interim third country dumping duty referred to in paragraph (4)(a) in respect of particular goods be ascertained:

(a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or

(b) by reference to a measure of the quantity of those particular goods; or

(c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

“(5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a dumping duty notice under subsection 269TH(1) or (2), if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:

(a) the export price of goods of that kind as so ascertained or last so ascertained; and

(b) that lesser duty;

does not exceed that non-injurious price.

“(5B) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

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“(5C) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

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“(6) The third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or
- (b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim third country dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the first-mentioned notice—the difference between:
 - (i) the amount that the Minister ascertains to be the export price of those particular goods; and
 - (ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.”;
- (b) by inserting in subsection (7) “interim third country dumping duty and” before “third country dumping duty”;
- (c) by omitting from subsection (8) “the dumping duty” and substituting “interim third country dumping duty and third country dumping duty”.

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Countervailing duties

6. Section 10 of the Principal Act is amended:

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- (a) by omitting subsection (3) and substituting the following subsections:

“(1) There is imposed, and there must be collected and paid, on goods to which this subsection applies by virtue of a notice under subsection 269TJ(1), (2), (4), (5) or (6) of the Customs Act a special duty of Customs, to be known as countervailing duty.

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“(2) The countervailing duty on goods to which this section applies is to be calculated:

- (a) if this section applies by virtue of a notice under subsection 269TJ(1) or (2) under the Customs Act—in accordance with subsection (3E); and
- (b) if this section applies by virtue of a notice under

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subsection 269TJ(4), (5) or (6) of the Customs Act—in accordance with subsection (5).

“(3) Pending final assessment of the countervailing duty payable on goods subject of a notice under subsection 269TJ(1) or (2) of the Customs Act, an interim countervailing duty is payable on those goods.

“(3A) Subject to subsection (3B), the interim countervailing duty payable on goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act is an amount equal to the relevant subsidy in respect of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

“(3B) The Minister must, by signed notice, direct that the interim countervailing duty in respect of particular goods to which this section applies by virtue of a declaration under subsection 269TJ(1) or (2) be ascertained:

- (a) as a proportion of the export price of those particular goods; or
- (b) by reference to a measure of the quantity of those particular goods; or
- (c) by reference to a combination of a proportion of the export price of those particular goods and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

“(3C) The Minister must, in exercising his or her powers under subsection (3B) in respect of particular goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the sum of:

- (a) the relevant subsidy in respect of goods of that kind as so ascertained, or last so ascertained; and
- (b) the export price of those particular goods;

have regard to the desirability of fixing a lesser amount of duty such that the sum of the export price of those particular goods and the lesser duty does not exceed that non-injurious price.

“(3D) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TJ of that Act and a notice under section 269TG of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (3B) in relation to interim countervailing duty in respect of the goods, have regard to the desirability of fixing the amount of interim

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countervailing duty in respect of the goods such that the sum of:

- (a) the export price of those particular goods; and
- (b) the amount of the interim countervailing duty as so fixed; and
- (c) the amount of interim dumping duty as fixed under section 8;

does not exceed the non-injurious price of goods of that kind, as ascertained, or last ascertained, by the Minister for the purpose of those notices.

“(3E) The countervailing duty payable on goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the relevant subsidy in respect of those particular goods; or
- (b) if, in a notice under subsection (3B), the Minister determines that the interim countervailing duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind—the difference between:
 - (i) the amount that the Minister ascertains to be the export price of those particular goods; and
 - (ii) the lower of the sum of the amounts that the Minister ascertains to be the export price of, and the relevant subsidy in respect of, those particular goods and the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice under subsection 269TJ(1) or (2).”;

- (b) by omitting from subsection (4) the words preceding paragraph (a) and substituting the following:

“Subject to subsection (5), the countervailing duty in respect of other goods to which this section applies is:”;

- (c) by omitting paragraph (4)(a) and substituting the following paragraph:

“(a) in the case of goods to which this section applies by virtue of a notice under subsection 269TJ(4) of the Customs Act—an amount equal to the amount of the relevant subsidy in respect of the goods; or”;

- (d) by omitting from paragraph (4)(b) “countervailing duty in respect of goods to which this section applies by virtue of a declaration” and substituting “goods to which this section applies by virtue of a notice”;

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- (e) by omitting from paragraph (4)(b) “a sum” and substituting “an amount”;
- (f) by inserting in subsection (5) “referred to in subsection (4)” after “in respect of goods”;
- 5 (g) by omitting subsections (5A) and (5AA);
- (h) by inserting in subsection (5B) “(3B) or” after “subsection”;
- (i) by omitting subsections (6) and (7) and substituting the following subsections:

10 “(6) A notice under subsection (3B) or (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

15 “(7) If the Minister has determined, under subsection 269TJ(8) of the Customs Act, the amount of the relevant subsidy in relation to goods to which this section applies by virtue of a notice under subsection 269TJ(1), (2) or (4) of that Act, that amount is to be taken to be the amount of that relevant subsidy for the purposes of this section.”;

- 20 (j) by omitting from subsection (7A) “a declaration” and substituting “a notice”;
- (k) by inserting in subsection (8) “interim countervailing duty or” before “countervailing duty”;
- 25 (l) by inserting in subsection (9) “interim countervailing duty or” before “countervailing duty”.

Third country countervailing duties

7. Section 11 of the Principal Act is amended:

- (a) by omitting subsections (3), (4), (5), (5A), (5B), (6) and (7) and substituting the following subsections:

30 “(1) There is imposed, and there must be collected and paid, on goods to which this subsection applies by virtue of a notice under subsection 269TK(1) or (2) of the Customs Act a special duty of Customs, to be known as third country countervailing duty, calculated in accordance with subsection (7).

35 “(2) Pending final assessment of the third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act, an interim third country countervailing duty is payable on those goods.

40 “(3) Subject to subsection (4), the interim third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act is an

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amount equal to the relevant subsidy in respect of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

“(4) The Minister must, by signed notice, direct that the interim countervailing duty in respect of particular goods to which this section applies by virtue of a notice under subsection 269TK(1) or (2) be ascertained: 5

(a) as a proportion of the export price of those particular goods; or

(b) by reference to a measure of the quantity of those particular goods; or 10

(c) by reference to a combination of a proportion of the export price of those particular goods and a measure of the quantity of those particular goods; 15

and the notice has effect accordingly. 15

“(5) The Minister must, in exercising his or her powers under subsection (4) in respect of particular goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the sum of: 20

(a) the relevant subsidy as so ascertained, or last so ascertained; and

(b) the export price of those particular goods;

have regard to the desirability of fixing a lesser amount of duty such that the sum of the export price of those particular goods and the lesser duty does not exceed that non-injurious price. 25

“(6) If the Minister signs a notice under subsection (4), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person. 30

“(7) The third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act is an amount equal to: 35

(a) unless paragraph (b) applies—the relevant subsidy in respect of those particular goods; or

(b) if, in a notice under subsection (4), the Minister determines that the interim countervailing duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind—the difference between: 40

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- (i) the amount that the Minister ascertains to be the export price of those particular goods; and
- (ii) the lower of the sum of the amounts that the Minister ascertains to be the export price of, and the relevant subsidy in respect of, those particular goods and the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice under subsection 269TK(1) or (2).

“(7A) A notice under subsection (4) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

“(7B) If the Minister has determined, under subsection 269TK(3) of the Customs Act, the amount of any relevant subsidy in respect of goods to which this section applies by virtue of a notice under subsection 269TK(1) or (2) of that Act, that amount is to be taken to be the amount of that relevant subsidy for the purposes of this section.”;

- (b) by inserting in subsection (8) “interim third country countervailing duties” before “third country”;
- (c) by inserting in subsection (9) “interim third country countervailing duties” before “third country”.

Transitional

8. Despite the amendments of the Principal Act made by this Act, the provisions of the Principal Act as in force immediately before the day of commencement of the provisions referred to in subsection 2(3) of the *Customs Legislation (Anti-Dumping Amendments) Act 1992* continue to apply in relation to duty imposed on goods as a result of dumping duty notices or countervailing duty notices:

- (a) that are published by the Minister before that day; or
- (b) that are published by the Minister on or after that day but that apply to goods entered for home consumption before that day;

as if those amendments had not been made.

NOTE

1. No. 76, 1975, as amended. For previous amendments, see No. 66, 1981; Nos. 53, 68, 114 and 136, 1982; Nos. 20 and 91, 1983; No. 1, 1984; No. 39, 1985; Nos. 76 and 141, 1987; No. 69, 1988; No. 173, 1989; No. 70, 1990; and No. 90, 1992.

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*[Minister's second reading speech made in—
House of Representatives on 4 November 1992
Senate on 12 November 1992]*