

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

ADP/1/Add.18/Rev.1

SCM/1/Add.18/Rev.1

5 June 1984

Special Distribution

Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and
Countervailing Measures

INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of Australia

Reproduced herewith is the text of the Customs Tariff (Anti-Dumping) Act 1975 as amended by the Customs Tariff (Anti-Dumping) Amendment Act 1984. (The copy of this Amendment Act is included as Attachment 1).

Also attached as relevant background information are the Customs Tariff (Anti-Dumping) Miscellaneous Amendments Act 1984 (Attachment 2) and Australian Customs Notice No. 84/63 of 29 March 1984 (Attachment 3) which summarises the major legislative changes arising from the most recent review of Australia's anti-dumping and countervailing legislation.

AN ACT

Relating to certain Special Duties of Customs

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:-

1. This Act may be cited as the Customs Tariff (Anti-Dumping) Act 1975.

Short title

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Commencement

3. (1) The following Acts are repealed:-

Repeal and saving

Customs Tariff (Dumping and Subsidies) Act 1961
Customs Tariff (Dumping and Subsidies) Act 1965.

(2) Subject to sub-section (3), where, immediately before the date of commencement of this Act, a special duty was payable on any goods under the Customs Tariff (Dumping and Subsidies) Act 1961 in consequence of the publication by the Minister of a notice in the Gazette specifying those goods, the special duty continues to be payable on those goods, and may be charged and collected, in accordance with that Act on and after that date notwithstanding the repeal of the Acts specified in sub-section (1).

(3) The Minister may, by notice published in the Gazette, revoke a notice referred to in sub-section (2), and, upon the revocation of the notice, the special duty on goods specified in the notice ceases to be payable, and shall not be charged or collected, on goods entered for home consumption on or after the date of revocation.

(4) The reference in sub-section (2) to the Customs Tariff (Dumping and Subsidies) Act 1961 shall be read as including a reference to that Act as amended and in force from time to time.

4. (1) In this Act, unless the contrary intention appears -

Interpretation
Amended by No. 66,
1981, s.2

"determination" means a determination in writing;

"direction" means a direction in writing;

"importer", in relation to goods exported to Australia, means -

Sub-section amended
by No. 53, 1982,
s.3

- (a) in a case to which paragraph (b) does not apply - the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they are landed;
- (b) in the case of goods taken from parts beyond the seas to an Australian installation or goods on board an overseas installation at the time when it is attached to the Australian seabed - the beneficial owner of the goods at the time when they are imported into Australia; or
- (c) in the case of goods being an overseas installation that becomes attached to the Australian seabed - the beneficial owner of the installation at the time when it is imported into Australia.

(2) For the purposes of this Act, a purchase or sale of goods shall not be treated as an arms length transaction if -

- (a) there is any consideration payable for or in respect of the goods other than their price;
- (b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- (c) in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

An associate
Amended by No.
1, 1984, s.3

Amended by
No. 1, 1984,
s. 3

(3) Without limiting the generality of sub-section (2), where -

Sub-section (3)
substituted by
No. 1, 1984,
s.3

- (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
- (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss,

the Minister may, for the purposes of paragraph (2)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

Sub-section (3A)
substituted by
No. 1, 1984, s.3

(3A) In determining for the purposes of sub-section (3) whether goods are sold by an importer at a loss, the Minister shall have regard to -

- (a) the amount of the price paid or to be paid for the goods by the importer;
- (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods;
- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
- (d) such other matters as the Minister considers relevant.

Sub-section (3B)
substituted by
No. 1, 1984, s.3

(3B) For the purposes of this Act, 2 persons shall be deemed to be associates of each other if, and only if -

- (a) both being natural persons -
 - (i) they are connected by a blood relationship or by marriage or by adoption; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate -
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
 - (ii) both of them together control, directly or indirectly, a third body corporate; or
 - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
- (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
- (e) they are members of the same partnership.

(4) A reference in this Act to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.

Inserted by No. 66,
1981, s.2

(5) For the purposes of this Act, where, during the exportation of goods to Australia, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

Certain off-shore
installations to the
part of Australia
Inserted by No. 53,
1982, s.4

4AA. (1) For the purposes of this Act, where an overseas installation becomes attached to the Australian seabed, the installation shall, subject to sub-section (4), be deemed to be part of Australia.

(2) For the purposes of this Act, an installation that, at the commencement of this sub-section, is attached to the Australian seabed shall, subject to sub-section (4), be deemed to be part of Australia.

(3) For the purposes of this Act, an installation (other than an installation that is deemed by sub-section (1) to be part of Australia) that becomes attached to the Australian seabed shall, subject to sub-section (4), be deemed to be part of Australia.

(4) An installation that is deemed to be part of Australia by virtue of the operation of this section shall, for the purposes of this Act, cease to be part of Australia if -

- (a) the installation is detached from the Australian seabed, or from another installation that is attached to the Australian seabed, for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits); or
- (b) after having been detached from the Australian seabed otherwise than for the purpose referred to in paragraph (a), the installation is moved for the purpose of being taken to a place outside the outer limits of Australian waters (whether or not the installation is to be taken to a place in Australia before being taken outside those outer limits).

CUSTOMS TARIFF (ANTI-DUMPING) ACT- 1975

4AB. (1) Where an overseas installation (not being an installation referred to in sub-section (2)) becomes attached to the Australian seabed, the installation and any other goods on the installation at the time when it becomes so attached shall, for the purposes of this Act, be deemed to have been exported to Australia and to have been imported into Australia at the time when the installation becomes so attached.

Installations and goods deemed to be imported inserted by No. 53, 1982, s.4

(2) Where an overseas installation -

- (a) is brought to a place in Australia; and
- (b) is to be taken from that place into Australian waters for the purpose of becoming attached to the Australian seabed,

the installation and any goods on the installation at the time when it is brought to that place shall, for the purposes of this Act, be deemed to have been exported to Australia and to have been imported into Australia at the time when the installation is brought to that place.

4AC. Where goods are taken from parts beyond the seas on to an Australian installation, the goods shall, for the purposes of this Act, be deemed to have been exported to Australia and to have been imported into Australia upon being taken on to the installation.

Goods taken to installations inserted by No. 53, 1982, s.4

4A. (1) For the purposes of this Act, the export price of any goods exported to Australia is -

Export price inserted by No. 66, 1981, s.3

(a) where -

- (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- (ii) the purchase of the goods by the importer was an arms length transaction

Sub-paragraph substituted by No. 1, 1984, s.4

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation;

(b) where -

- (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation);
- (ii) the purchase of the goods by the importer was not an arms length transaction; and
- (iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer, the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

Sub-paragraph substituted by No 1, 1984, s.4

An associate amended by No. 1, 1984, s.4

(c) in any other case - the price that the Minister determines having regard to all the circumstances of the exportation.

(2) A reference in paragraph (1) (b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to -

- (a) any duties of Customs or sales tax paid or payable on the goods;
- (b) any costs, charges or expenses arising in relation to the goods after exportation; and
- (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding sub-sections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of sub-section (3), the Minister may disregard any information that he considers to be unreliable.

(5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

Inserted by No. 1, 1984, s.4

CUSTOMS TARIFF (ANTI-DUMPING) ACT, 1975

Normal value of
goods
Amended by No. 66,
1981, s.4

5. (1) Subject to this section, for the purposes of this Act, the normal value of any goods exported to Australia is the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

Amended by No. 1,
1984, s.5
Sub-section (2)(a)
and (b) No. 1, 1984,
s.5

(2) Subject to this section, where the Minister -

(a) is satisfied that -

(i) by reason of the absence of sales that would be relevant for the purpose of determining a price under sub-section (1); or

(ii) by reason that the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under sub-section (1) are not suitable for use in determining such a price,

the normal value of goods exported to Australia cannot be ascertained under sub-section (1); or

(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under sub-section (1),

the normal value of the goods for the purposes of this Act is -

(c) except where paragraph (d) applies, the sum of -

(i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export -

(A) such amounts as the Minister determines would be the delivery charges and other costs necessarily incurred in that sale; and

(B) an amount calculated in accordance with such rate as the Minister determines would be the rate of profit on that sale; or

(d) where the Minister so directs, the price determined by the Minister to be representative of the price paid for like goods sold in the ordinary course of trade in the country of export for export to a third country, being sales that are arms length transactions.

Amended by No. 1,
1984, s.5

Amended by No. 1,
1984, s.5

Inserted by No. 1,
1984, s.5

(2A) Where the Minister gives a direction under paragraph (2)(d) in relation to the ascertainment of the normal value of goods for the purposes of this Act, the price determined by the Minister for the purposes of that paragraph -

(a) shall be a price that, by reason of the quantity of goods, being like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and

(b) may be the highest price paid for like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions.

Sub-section (3)
substituted by
No. 66, 1981,
s.4

(3) Subject to sub-sections (4) and (5), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding sub-sections by reason that the Government of the country of export -

(a) has a monopoly, or substantial monopoly of the trade of the country; and

(b) determines or substantially influences the domestic price of goods in that country,

the normal value of the goods for the purposes of this Act shall be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

(c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;

Amended by No. 1,
1984, s.5

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

- (d) a value equal to the price determined by the Minister to be representative of the price of like goods produced or manufactured in a country determined by the Minister and sold for export from that country to another country in the ordinary course of trade, being sales that are arms length transactions;
- (e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:
 - (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
 - (ii) such amounts as the Minister determines are the delivery charges and other costs necessarily incurred in selling the like goods;
 - (iii) an amount calculated in accordance with such rate as the Minister determines is to be regarded as the rate of profit on the sale of the like goods;
- (f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.

Inserted by No. 1,
1984, s.5

(3A) Where the normal value of goods for the purposes of this Act is a value ascertained in accordance with paragraph (3)(d), the price determined by the Minister for the purposes of that paragraph -

Sub-section (3A)
Inserted by No. 1,
1984, s.5

- (a) shall be a price that, by reason of the quantity of goods, being like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and
- (b) may be the highest price paid for like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions.

(4) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding sub-sections, the normal value of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4A) For the purposes of sub-section (4), the Minister may disregard any information that he considers to be unreliable.

Sub-section (4A)
Inserted by No. 66,
1981, s.4

(5) Where the normal value of goods exported to Australia is the price paid for like goods and that price and the export price of the goods exported -

- (a) relate to sales occurring at different times;
- (b) are not in respect of identical goods; or
- (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate,

that price paid for like goods is to be taken to be that price paid adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

(6) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (3)(e), the Minister shall make such adjustments, in determining the costs to be determined by him in pursuance of that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

Sub-section (6)
Inserted by No. 1,
1984, s.5

(7) Where -

- (a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
- (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Act as if the country of origin were the country of export,

Amended by No. 66,
1981, s.4

he may direct that the normal value of the goods shall be so ascertained.

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

(8) For the purposes of sub-section (7), the country of origin of goods is -

- (a) in the case of unmanufactured raw products - the country of which they are products; or
- (b) in any other case - the country in which the last significant process in the manufacture or production of the goods was performed.

Sub-section (9)
Inserted by No. 1,
1984, s.5

(9) Where the Minister is satisfied, in relation to goods exported to Australia, that -

- (a) the price paid for like goods -
 - (i) sold for home consumption in the country of export in sales that are arms length transactions; or
 - (ii) sold in the country of export for export to a third country in sales that are arms length transactions, is, and has been for an extended period of time and in respect of a substantial quantity of goods, less than the sum of -
 - (iii) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
 - (iv) such other amounts as the Minister determines to be the costs necessarily incurred in the sale of the goods by the seller of the goods; and
- (b) it is likely that the seller of the goods referred to in paragraph (a) will not be able to fully recover the amounts referred to in sub-paragraphs (a) (iii) and (iv) within a reasonable period of time,

the price so paid for the goods referred to in paragraph (a) shall be taken not to have been paid in the ordinary course of trade.

Section (5A)
Inserted by No. 1,
1984, s.6

5A. (1) In determining, for the purposes of section 8 or 10 whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this sub-section referred to as the 'country of export'), the Minister may, without limiting the generality of that section, have regard to -

- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export;
- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export;
- (c) any change or likely change, during a particular period, in the proportion that -
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia,
 bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia;
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export;
- (e) the difference between -
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia;
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia;

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
- (h) in a case where the determination is being made for the purposes of section 10 and the goods are agricultural products - whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

(2) In determining, for the purposes of section 9 or 11, whether material injury to a producer or manufacturer in a third country has been or is being caused or is threatened or would or might have been caused by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this sub-section referred to as the 'country of export'), the Minister may, without limiting the generality of that section, have regard to -

- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export;
- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export;
- (c) any change, or likely change, during a particular period, in the proportion that -
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold or consumed in Australia,bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia;
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export;
- (e) the difference between -
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia;
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia;
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia; and
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.

(3) A reference in sub-section (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to a producer or manufacturer in a third country, in relation to goods of a particular kind exported to Australia is a reference to -

- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (b) the degree of utilization of the capacity of the industry, producer or manufacturer to produce or manufacture goods of that kind, or like goods;
- (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer -
 - (i) for which there are sales or forward orders; or
 - (ii) which are held as stocks;

- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (e) the level of profits earned in the industry, or by the producer or manufacturer, that are attributable to the production or manufacture of goods of that kind, or like goods;
- (f) the level of return on investment in the industry or in the business of the producer or manufacturer;
- (g) cash flow in the industry or in the business of the producer or manufacturer;
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry or by the producer or manufacturer in relation to the production or manufacture of goods of that kind, or like goods;
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (k) the ability of persons engaged in the industry, or of the producer or manufacturer, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
- (m) investment in the industry or in the business of the producer or manufacturer.

Incorporation

6. The Customs Act 1901 (in this Act referred to as the Customs Act) is incorporated and shall be read as one with this Act.

Imposition of duties of Customs

7. Duties of Customs are imposed in accordance with this Act.

Dumping duties
Amended by No. 66,
1981, s.5; No. 136,
1982, Schedule

8. (1) Subject to section 13, where the Minister is satisfied, as to any goods that have been exported to Australia, that -

(a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and

(b) by reason thereof -

(i) material injury to an Australian industry has been or is being caused or is threatened or the establishment of an Australian industry has been or may be materially hindered; or

(ii) in a case where security has been taken under section 42 of the Customs Act in respect of any duty that may become payable on the goods under this section - material injury to an Australian industry would or might have been caused if the security had not been taken,

the Minister may, by notice published in the Gazette, declare that this section applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind, that -

(a) the amount of the export price of goods of that kind that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of goods of that kind that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) by reason thereof, material injury to an Australian industry has been or is being caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered,

the Minister may, by notice published in the Gazette (whether or not he has made, or proposes to make, a declaration under sub-section (1) in respect of goods of that kind that have been exported to Australia), declare that this section applies to goods of that kind -

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

Amended by
No. 136, 1982,
Schedule

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

where the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may -

Sub-section (2A),
substituted by
No. 1, 1984, s.7

- (a) give notice in writing to the exporter stating that -
 - (i) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with paragraph (b); and
 - (ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and
- (b) whether or not a notice has been given to the exporter in accordance with paragraph (a), suspend indefinitely his export of that consignment if he is given and accepts an undertaking by the exporter, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry.

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as dumping duty.

(4) Subject to sub-section (5), the dumping duty in respect of goods is a sum equal to the amount by which the amount of the export price of the goods is less than the amount of the normal value of the goods.

(5) The Minister may, by notice published in the Gazette, direct that the dumping duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the dumping duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(5A) In exercising his powers under sub-section (5) in relation to dumping duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of dumping duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in paragraph (1)(b) or (2)(b), as the case requires.

Inserted by No. 1,
1984, s.7

(6) A notice under sub-section (5) applies to goods entered for home consumption on or after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.

Amended by No. 66,
1981, s.5

(7) The Minister may, by notice in writing, exempt goods from dumping duty if he is satisfied -

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- (b) that a Commercial Tariff Concession Order under Part XVA of the Customs Act 1901 in respect of the goods is in force;
- (c) that -
 - (i) the tariff classification in Schedule 3 to the Customs Tariff Act 1982 that applies to the goods, or, where the goods are goods to which section 27 of that Act applies, the item in Part 1 of Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and
 - (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;
- (d) that -
 - (i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Part I of Schedule 4 on the goods; and
 - (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or
- (e) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

Paragraph 7(b)
Inserted by No. 20,
1983, s.3

Sub-paragraph
(7)(c)(i)
substitute by
No. 114, 1982, s.3;
No. 136, 1982,
Schedule

Sub-paragraph (7)
(d)(i) substituted
by No. 114, 1982,
s.3

(8) Where the Minister exempts goods from the dumping duty under sub-section (7) by reason of his being satisfied as to a matter specified in paragraph (7)(a), (c), or (d) the instrument of exemption shall be published in the Gazette.

Amended by No. 66,
1981, s.5

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

Third country
dumping duties
Amended by No. 66,
1981, s.6; No. 136,
1982, Schedule

9. (1) Subject to section 13, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that -

(a) the amount of the export price of the goods is less than the amount of the normal value of the goods; and

(b) by reason thereof -

(i) material injury to a producer or manufacturer in a third country has been or is being caused or is threatened; or

(ii) in a case where security has been taken under section 42 of the Customs Act in respect of any duty that may become payable on the goods under this section - material injury to a producer or manufacturer in a third country would or might have been caused if the security had not been taken,

the Minister, if requested by the Government of the third country so to do, may, by notice published in the Gazette, declare that this section applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that -

(a) the amount of the export price of goods of that kind so produced or manufactured that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of goods of that kind so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and

(b) by reason thereof, material injury to a producer or manufacturer in a third country has been or is being caused or is threatened,

the Minister, if requested by the Government of the third country so to do, may, by notice published in the Gazette (whether or not he has made, or proposes to make, a declaration under sub-section (1) in respect of goods of that kind so manufactured or produced that have been exported to Australia), declare that this section applies to goods of that kind so produced or manufactured -

(c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

(d) the amount of the export price of which is less than the amount of their normal value.

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as third country dumping duty.

(4) Subject to sub-section (5), the third country dumping duty in respect of goods is a sum equal to the amount by which the amount of the export price of the goods is less than the amount of the normal value of the goods.

(5) The Minister may, by notice published in the Gazette, direct that the third country dumping duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the third country dumping duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(5A) In exercising his powers under sub-section (5) in relation to third country dumping duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of third country dumping duty in respect of those goods is not greater than is necessary to prevent the injury, or a recurrence of the injury, referred to in paragraph (1)(b) and (2)(b), as the case requires.

(6) A notice under sub-section (5) applies to goods entered for home consumption after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.

(7) The Minister may, by notice in writing, exempt goods, from third country dumping duty if he is satisfied -

(a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or

(c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(8) Where the Minister exempts goods from the third country dumping duty under sub-section (7) by reason of his being satisfied as to a matter specified under paragraph (7)(a), the instrument of exemption shall be published in the Gazette.

Amended by No. 66,
1981, s.6; No. 136,
1982, Schedule

Amended by
No. 91, 1983, s.3

inserted by No. 1,
1984, s.8

Sub-section (7)
amended by No. 66,
1981, s.6

Paragraph (7)(b)
repealed by No. 66,
1981, s.6

Amended by No. 66,
1981, s.6

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

10. (1) Subject to section 11, where the Minister is satisfied as to any goods that have been exported to Australia, that -

- (a) in the country of origin or the country of export of the goods there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of those goods a subsidy, bounty, reduction or remission of freight or other financial assistance; and
- (b) by reason thereof -
 - (i) material injury to an Australian industry has been or is being caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered; or
 - (ii) in a case where security has been taken under section 42 of the Customs Act in respect of any duty that may become payable on the goods under this section - material injury to an Australian industry would or might have been caused if the security had not been taken,

the Minister may, by notice published in the Gazette, declare that this section applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind that -

- (a) there has been paid or granted, directly or indirectly upon the production, manufacture, carriage or export of goods of that kind that have already been exported to Australia, and there may be paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and
- (b) by reason thereof, material injury to an Australian industry has been or is being threatened, or the establishment of an Australian industry has been or may be materially hindered,

the Minister may, by notice published in the Gazette (whether or not he has made, or proposes to make, a declaration under sub-section (1) in respect of goods of that kind that have been exported to Australia), declare that this section applies to goods of that kind -

- (c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and
 - (d) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.
- (2A) Where the export of a consignment of goods to Australia has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may -
- (a) give notice in writing to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment stating that -
 - (i) the Minister is of the opinion that it would be appropriate for the Government or exporter to whom the notice is given to give an undertaking in accordance with paragraph (b); and
 - (ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and
 - (b) whether or not a notice has been given to the Government of the country of origin, or of the country of export, or to the exporter in accordance with paragraph (a), suspend indefinitely his consideration of the export of that consignment if he is given and accepts -
 - (i) an undertaking by the Government of the country of origin, or of the country of export, of the goods in the consignment, in terms that are satisfactory to the Minister, that that Government will, in relation to any future export trade to Australia in goods of the same kind as the goods in the consignment, review any financial assistance by that Government and make any changes that may be found to be necessary to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry; or

Countervailing duties

Amended by No. 66, 1981, s.7; No. 114, 1982, s.4, No. 136, 1982, Schedule

Amended by No. 136, 1982, Schedule

Sub-section (2A) inserted by No. 1, 1984, s.9

- (ii) an undertaking by the exporter of the goods in the consignment, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry.

Sub-section (2B)
Inserted by No. 68,
1982, s.2; Amended
by No. 136, 1982,
Schedule

(2B) Where the Minister is satisfied that -

- (a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties;
- (b) those duties are imposed because it is alleged that there is paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind a subsidy, bounty, reduction or remission of freight or other financial assistance; and
- (c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country has been or is being caused or is threatened, or the establishment of an industry in that country has been or may be materially hindered, by reason of the payment or grant of that subsidy, bounty, reduction or remission of freight or other financial assistance,

the Minister may, by notice published in the Gazette, declare that this section applies to goods specified in the notice -

- (d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and
- (e) upon the production, manufacture, carriage or export of which there is paid or granted, directly or indirectly, a subsidy, bounty, reduction or remission of freight or other financial assistance.

Sub-section (2C)
Inserted by No. 68,
1982, s.2; Amended
by No. 136, 1982,
Schedule

(2C) Where the Minister is satisfied that -

- (a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties;
- (b) those duties are imposed because it is alleged that -
- (i) prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and
- (ii) material injury to an industry in that country has been or is being caused or is threatened, or the establishment of an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance; and
- (c) prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed has been paid or granted in relation to goods exported from that country to Australia and material injury to an Australian industry has been or is being caused or is threatened, or the establishment of an Australian industry has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance,

the Minister may, by notice published in the Gazette, declare that this section applies to goods specified in the notice, being goods of a kind mentioned in paragraph (c) -

- (d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and
- (e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

Sub-section (2D)
Inserted by No. 68,
1982, s.2; Amended
by No. 136, 1982,
Schedule

(2D) Where the Minister is satisfied that -

- (a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties;

- (b) those duties are imposed because it is alleged that prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and
- (c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country has been or is being caused or is threatened, or the establishment of an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance,

the Minister may, by notice published in the Gazette, declare that this section applies to goods specified in the notice -

- (d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and
- (e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(2E) A reference in this section to prescribed assistance in relation to goods is a reference to any assistance, incentive, exemption, privilege or benefit (whether financial or otherwise) in relation to goods other than the payment or grant of a subsidy, bounty, reduction or remission of freight or other financial assistance on the production, manufacture, carriage or export of the goods.

Sub-section (2E)
Inserted by No. 68,
1982, s.2

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as countervailing duty.

(4) Subject to sub-section (5), the countervailing duty in respect of goods is -

- (a) in the case of countervailing duty in respect of goods to which this section applies by virtue of sub-section (1), (2) or (2B) - a sum equal to the amount of the 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; or
- (b) in the case of countervailing duty in respect of goods to which this section applies by virtue of sub-section (2C) or (2D), a sum equal to -
 - (i) if the prescribed assistance that has been paid or granted, directly or indirectly, in relation to the goods was financial assistance - the amount of that financial assistance; or
 - (ii) if the prescribed assistance that has been granted, directly or indirectly, in relation to the goods was not financial assistance, whichever of the following is determined by the Minister to be appropriate:
 - (A) the cost of granting that assistance;
 - (B) the value of that assistance to the person to whom was granted.

(5) The Minister may, by notice published in the Gazette, direct that the countervailing duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the countervailing duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(5A) In exercising his powers under sub-section (5) in relation to countervailing duty in respect of goods to which this section applies by virtue of sub-section (1) or (2), the Minister shall have regard to the desirability of ensuring that the amount of countervailing duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in paragraph in (1)(b) or (2)(b), as the case requires.

Sub-section (5A)
Inserted by No. 1,
1984, s.9

(6) A notice under sub-section (5) applies to goods entered for home consumption after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.

(7) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods to be ascertained under the preceding sub-sections, that amount shall be such amount as is determined by the Minister having regard to all relevant information.

Sub-section (7)
Substituted by
No. 1, 1984, s.9

(7A) If the Minister is satisfied in a case to which paragraph (4)(b) applies that adequate information as to the amount, cost or value of the prescribed assistance in relation to goods cannot be obtained, the amount, cost or value of that prescribed assistance shall, for the purpose of this section, be such as is determined, in writing, by the Minister.

Sub-section 7A
Inserted by No. 69,
1982, s.2

CUSTOMS TARIFF (ANTI-DUMPING) ACT, 1975

(8) The Minister may, by notice in writing, exempt goods from countervailing duty if he is satisfied -

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

Paragraph (aa)
Inserted by
No. 20, 1983, s.4

(aa) that a Commercial Tariff Concession Order under Part XVI of the Customs Act 1901 in respect of the goods is in force;

(b) that -

Sub-paragraph
(7)(d) 8(b) substituted
by No. 114, 1982, s.4

(i) the tariff classification in Schedule 3 to the Customs Tariff Act 1982 that applies to the goods, or, where the goods are goods to which section 27 of that Act applies, the item in Part I of Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

(c) that -

Sub-paragraph
(8)(c)(i) substituted
by No. 114, 1982, s.4

(i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Part I of Schedule 4 on the goods; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or

(d) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(9) Where the Minister exempts goods from countervailing duty under sub-section (8) by reason of his being satisfied as to a matter specified in paragraph (8)(a), (b), and (c), the instrument of exemption shall be published in the Gazette.

(10) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales shall be deemed to be financial assistance paid to him.

Third country
countervailing
duties
Amended by No. 66,
1981, s.8; No. 136,
1982, Schedule

11. (1) Subject to section 13, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that -

(a) in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of those goods a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) by reason thereof -

(i) material injury to a producer or manufacturer in a third country has been or is being caused; or is being threatened; or

(ii) in a case where security has been taken under section 42 of the Customs Act in respect of any duty that may become payable on the goods under this section - material injury to a producer or manufacturer in a third country would or might have been caused if the security had not been taken,

the Minister if requested by the Government of the third country so to do may, by notice published in the Gazette, declare that this section applies to those goods.

Amended by No. 66,
1981, s.8; No. 136,
1982, Schedule

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that -

(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind that have already been exported to Australia, and there may be paid or granted directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and

(b) by reason thereof material injury to a producer or manufacturer in a third country has been or is being caused or is being threatened,

the Minister if requested by the Government of the third country to do may, by notice published in the Gazette (whether or not he has made or makes, a declaration under sub-section (1) in respect of goods of that kind that have been exported to Australia), declare that this section applies to goods of that kind -

- (c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and
- (d) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.

(3) There shall be charged, collected and paid on goods to which this section applies a special duty of Customs, to be known as the third country countervailing duty.

(4) Subject to sub-section (5), the third country countervailing duty in respect of goods is a sum equal to the amount of the 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.

(5) The Minister may, by notice published in the Gazette, direct that the third country countervailing duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the third country countervailing duty that would be payable in respect of the goods under sub-section (4), and the notice has effect accordingly.

(5A) In exercising his powers under sub-section (5) in relation to third country countervailing duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of third country countervailing duty in respect of those goods is not greater than is necessary to prevent the injury, or a recurrence of the injury, referred to in paragraph (1)(b) or (2) (b), as the case requires.

Sub-section (5A)
Inserted by No. 1,
1984, s.10

(6) A notice under sub-section (5) applies to goods entered for home consumption after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that sub-section applied to the goods.

(7) If the Minister is satisfied that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods cannot be obtained, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance shall, for the purpose of this section, be such as is determined, in writing, by the Minister.

(8) The Minister may, by notice in writing, exempt goods from third country countervailing duty if he is satisfied -

Amended by No. 66,
1981, s.8

- (a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or
- (b) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(9) Where the Minister exempts goods from third country countervailing duty under sub-section (8) by reason of his being satisfied as to a matter specified under paragraph (8)(a), the instrument of exemption shall be published in the Gazette.

(10) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales shall be deemed to be financial assistance paid to him.

11A. Where the Minister is satisfied that it is inappropriate to ascertain the amount of a subsidy, bounty, reduction or remission of freight or other financial assistance referred to in sub-section 10(1) or (2) or 11(1) or (2) except in accordance with this section by reason that the Government of the country of export -

Amount of subsidy
may be determined
by Minister for
purposes of
sections 10 or 11
Inserted by No. 66,
1981, s.9

- (a) has a monopoly, or substantial monopoly, of the trade of the country; or
- (b) determines or substantially influences the domestic price of goods in that country,

the Minister may, for the purposes of section 10 or 11, as the case may be, determine the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance, as the case may be, on the basis that the normal value of the goods is such value as is ascertained in accordance with sub-section 5(3).

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

Freight less than
normal freight
Amended by No. 66,
1981, s.10

12. (1) Where the Minister is satisfied that, by reason of any circumstances, including the granting of rebates, refunds or other allowances, goods exported to Australia have been carried whether within the country of export for the purpose of exporting the goods to Australia or from the country of export to Australia or both, freight free, or the amount of freight paid or payable in respect of the carriage of the goods is less than the normal freight in relation to the goods -

- (a) the Minister shall be deemed, for the purposes of section 10, or section 11, to be satisfied that a reduction of freight has been granted upon the carriage of the goods; and
- (b) where a special duty of Customs imposed by section 10 or section 11 is chargeable (whether by virtue of this section or otherwise) on goods as to which the Minister is so satisfied, the Minister shall be deemed, for the purposes of sub-section 10(7), or sub-section 11(7), to be satisfied that the amount of the reduction of freight that has been granted upon the carriage of goods is an amount equal to -
 - (i) in the case of goods carried freight free - the amount of the normal freight in relation to the goods; and
 - (ii) in the case of other goods - the amount by which the normal freight in relation to the goods exceeds the amount or the net amount of the freight paid or payable in respect of the carriage of the goods.

Amended by No. 66,
1981, s.10

(2) In this section, "normal freight", in relation to goods exported to Australia, means -

- (a) the amount of freight that would have been payable in respect of the carriage of the goods within the country of export for the purpose of exporting the goods from that country to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the time of that carriage, in respect of the carriage of like goods, and to any other matter that the Minister considers relevant;
- (b) the amount of freight that would have been payable in respect of the carriage of the goods from the country of export to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the date of exportation of the goods, in respect of the carriage of like goods by sea or, if like goods are regularly carried by aircraft, by aircraft, and to any other matter that the Minister considers relevant; or
- (c) the sum of the amount of freight referred to in paragraph (a) and the amount of freight referred to in paragraph (b), as the case may be.

Retrospective
Notices

13. (1) Subject to this section, the Minister shall not cause a notice to be published under sub-section 8(1), 9(1), 10(1) or 11(1) in respect of goods that have been entered for home consumption.

(2) Sub-section (1) does not prevent the publication of a notice under sub-section 8(1), 9(1), 10(1) or 11(1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 of the Customs Act in respect of any duty that might become payable under section 8, 9, 10 or 11 of this Act, as the case may be (not being security that has been cancelled) by reason of the publication of such a notice or in relation to which the Customs had the right to require and take such security (not being security that would have been cancelled in accordance with the Customs Act if it had been taken).

(3) Sub-section (1) does not prevent the publication of a notice under sub-section 8(1) in respect of goods that have been entered for home consumption to which, by virtue of sub-section (4) of this section, this sub-section applies, if -

- (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 of the Customs Act in respect of any duty that might be payable on goods of the same kind under section 8 of this Act or, within that period, the Customs had the right to require and take such security; and
- (b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason of the amount of the export price of the goods exported being less than the amount of the normal value of the goods exported, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

(4) Sub-section (3) applies to goods -

- (a) that have been imported into Australia by an importer who knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry; or
- (b) that are goods of a kind the exportation of which to Australia on a number of occasions has caused, or but for the publication of a notice under section 8 in respect of goods of that kind, would have caused material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.

(5) Sub-section (1) does not prevent the publication of a notice under sub-section 10(1) in respect of goods that have been entered for home consumption if -

Added by No. 66,
1981, s.11

- (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 of the Customs Act in respect of any duty that might be payable on goods of the same kind under section 10 of this Act or, within that period, the Customs had the right to require and take such security; and
- (b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason that, in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods a subsidy, bounty, reduction or remission of freight or other financial assistance (including financial assistance of the kind referred to in sub-section 10(10)).

(6) Where -

Added by No. 66,
1981, s.11

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with sub-section 8(2A) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 of the Customs Act in respect of any duty under section 8 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 8(1) in respect of goods that -

- (c) have been exported by the exporter;
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that -
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(7) Where -

Added by No. 66,
1981, s.11

- (a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with sub-section 10 (2A) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission security has been taken under section 42 of the Customs Act in respect of any duty under section 10 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 10 (1) in respect of goods that -

- (c) are the produce or manufacture of that country or have been exported from that country, as the case may be;
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that -
 - (i) was not earlier than the day on which that act or omission occurred; and

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975

(i) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

Added by No. 66,
1981, s.11

(8) Where -

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with sub-section 10 (2A) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 of the Customs Act in respect of any duty under section 10 of this Act that might be payable on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security,

sub-section (1) does not prevent the publication of a notice under sub-section 10(1) in respect of goods that -

- (c) have been exported by the exporter;
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that -
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

Section 14 repealed
by No. 136, 1982, s.3

Reference to
Industries
Assistance
Commission of
matters relating
anti-dumping
duties

15. (1) The Minister may refer to the Industries Assistance Commission (in this section referred to as "the Commission") for inquiry and report a question as to the existence of any fact, or facts, as to the existence of which he is required to be satisfied before causing a notice to be published under sub-section 8(1), 8(2), 9(1), 9(2), 10(1), 10(2), 11(1), 11(2) or 20(1).

(2) Where -

- (a) a person engaged in, or concerned in the establishment of, an Australian industry requests the Minister to cause a notice to be published under sub-section 8(1), 8(2), 10(1) or 10(2) in relation to goods of a kind with which persons engaged in that industry are concerned; and
- (b) the Minister informs the person, in writing, that he does not propose to accede to the request,

the person may, not later than 30 days after being so informed, request the Minister, in writing, to refer to the Commission for inquiry and report the question as to the existence of a fact, or facts, specified in the request, being a fact or facts as to the existence of which the Minister is required to be satisfied before causing the notice to be published.

Amended by No. 66,
1981, s.12

(3) Where -

- (a) a person engaged in, or concerned in the establishment of, an Australian industry or engaged, or proposing to engage, in the business of importing into Australia goods of a particular kind requests the Minister to revoke a notice in force under sub-section 8(1), 8(2), 9(1), 9(2), 10(1), 10(2), 11(1) or 11(2), being a notice relating to goods of a kind with which persons engaged in that industry are concerned or relating to goods of the kind imported, or proposed to be imported, by the person, as the case may be; and
- (b) the Minister informs the person, in writing, that he does not propose to accede to the request,

the person may, not later than 30 days after being so informed, request the Minister, in writing, to refer to the Commission for inquiry and report the question as to the existence of a fact or facts specified in the request, being a fact or facts as to the existence of which, if the notice were not in force, the Minister would be required to be satisfied before causing the notice to be published.

Sub-section (3A)
Inserted by
No. 1, 1984, s.11

(3A) A request under paragraph (2)(a) or (3)(a) shall be in writing and shall be verified by statutory declaration or witnessed by a notary public exercising his function in a place outside the Commonwealth and the territories.

(4) Where the Minister receives a request under sub-section (2) or (3) to refer a question to the Commission for inquiry and report, he shall, unless that question has been referred to the Commission for inquiry and report within the period of 2 years immediately preceding the request, refer the question to the Commission for inquiry and report.

(5) Where the Minister refers a question to the Commission under this section, that question shall, for the purposes of the Industries Assistance Commission Act 1973, be deemed to have been referred to the Commission in accordance with that Act by the Minister administering that Act.

16. The several duties imposed by this Act shall be separately charged, notwithstanding that more than one duty applies to any particular goods.

Duties to be charged separately

17. (1) For the purposes of sections 8, 9, 10, 11 and 12 and any other purpose of this Act, the equivalent amount in Australian currency of an amount in a currency other than Australian currency shall be ascertained in accordance with a fair rate of exchange at the appropriate date.

Ascertainment of equivalent amount in Australian currency

(2) For the purpose of this section, the Minister may, where he considers it desirable so to do for the avoidance of doubt, specify, by notice published in the Gazette, a means of ascertaining a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to a currency -

- (a) on a date, or during a period, preceding the date of publication of the notice; or
- (b) from and including the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

(3) The rate of exchange ascertained in relation to a currency in pursuance of sub-section (2) shall, for the purpose of calculating the amount of duty payable on any goods exported on the date or during the period to which the rate so specified applies, be the rate of exchange that shall be applied for the purpose of sub-section (1) in respect of the currency specified in the notice.

18. A notice under sub-section 8(2), 9(2), 10(2) or 11(2) in respect of a kind of goods, may, without limiting the generality of those provisions be expressed to apply to -

Power to specify goods

- (a) goods of that kind exported from a particular country; or
- (b) goods of that kind exported by a particular exporter.

19. (1) The Minister may, by writing under his hand, delegate to a person, either generally or otherwise all or any of his powers and functions under this Act except his powers under sub-sections 8(1), 8(2), 8(5), 9(1), 9(2), 9(5), 10(1), 10(2), 10(5), 11(1), 11(2) and 11(5) and under section 15.

Delegation

(2) A delegate of the Minister is, in the exercise of his powers and the performance of his functions under this Act, other than in his being satisfied, or having an opinion, as to any matter, subject to the directions of the Minister.

20. (1) The Minister may, by notice published in the Gazette, revoke a notice published in pursuance of this Act and shall do so if he is satisfied that, if the notice were not in force, he would not be authorised by this Act to cause the notice to be published.

Revocation of notices

(2) A notice of revocation under sub-section (1) has effect from a date specified in the notice, which, except in the case of the revocation of a notice that directed the manner of ascertaining the amount of a special duty of Customs imposed by this Act, may be a date earlier than the date of publication of the notice of revocation in the Gazette.

(3) Upon the revocation of notice that declared that a section of this Act applies to goods, the special duty on the goods ceases to be payable, and shall not be charged or collected on goods entered for home consumption on or after the date of effect of the notice of revocation.

21. The special duties of Customs payable under this Act are in addition to such other duties of Customs (if any) as are payable under any other Act.

Special duties to be additional to ordinary duties

CUSTOMS TARIFF (ANTI-DUMPING) ACT 1975NOTES

1. The Customs Tariff (Anti-Dumping) Act 1975 as shown in this reprint comprises the Customs Tariff (Anti-Dumping) Act 1975 as amended. Particulars of the Principal Act and the Amending Acts are set out in the following table:

Act	Number and Year	Date of Assent	Date of Commencement	Application, saving or transitional provisions
Customs Tariff (Anti-Dumping) Act 1975	76, 1975	20 June 1975	20 June 1975	
Customs Tariff (Anti-Dumping) Amendment Act 1981	66, 1981	12 June 1981	10 July 1981	S.14
Customs Tariff (Anti-Dumping) Amendment (Off-shore installations) Act 1982	53, 1982	16 June 1982	See Note (1) below	
Customs Tariff (Anti-Dumping) Amendment (Countervailing Duties) Act 1982	68, 1982	24 August 1982	21 September 1982	
Customs Tariff (Anti-Dumping) Amendment Act 1982	114, 1982	22 November 1982	See Note (2) below	S.5
Customs Tariff Anti-Dumping Amendment Act (No. 2) 1982	136, 1982	23 December 1982	24 December 1982	
Customs Tariff (Anti-Dumping) Amendment Act 1983	20, 1983	14 June 1983	See Note (3) below	
Customs Tariff (Anti-Dumping) Amendment Act (No. 2) 1983	1, 1984	14 March 1984	14 March 1984	

(1) Section 2 of the Customs Tariff (Anti-Dumping) Amendment (Off-shore Installations) Act provides:

"This Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the twenty-eighth day after the day on which the (Off-shore Installations) Amendment Act 1982 receives the Royal Assent."

The Off-shore Installations (Miscellaneous Amendments) Act 1982 received the Royal Assent on 16 June 1982. The twenty-eighth day after the day on which that received the Royal Assent is 14 July 1982.

(2) Section 2 of the Customs Tariff (Anti-Dumping) Amendment Act 1982 provides that that Act shall come into operation on the day on which the Customs Tariff Act 1982 comes into operation. That Act was proclaimed to come into operation on 1 January 1983.

(3) Section 2 of the Customs Tariff (Anti-Dumping) Amendment Act 1983 provides that that Act shall come into operation on the day on which section 5 of the Customs Amendment Act 1983 comes into operation. Section 5 of that Act was proclaimed to come into operation of 1 July 1983.

ATTACHMENT 1



Customs Tariff (Anti-Dumping) Amendment Act 1984

No. 1 of 1984

An Act to amend the *Customs Tariff (Anti-Dumping) Act 1975*

[Assented to 14 March 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 1. (1) This Act may be cited as the *Customs Tariff (Anti-Dumping) Amendment Act 1984*.

(2) The *Customs Tariff (Anti-Dumping) Act 1975*¹ is in this Act referred to as the Principal Act.

Commencement

10 2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

3. Section 4 of the Principal Act is amended—

(a) by omitting from paragraph (2) (b) "a business associate" (wherever occurring) and substituting "an associate";

Customs Tariff (Anti-Dumping) Amendment No. 1, 1984

- (b) by inserting in paragraph (2) (c) "in the opinion of the Minister," before "the buyer" (first occurring);
- (c) by omitting from paragraph (2) (c) "a business associate" and substituting "an associate"; and
- (d) by omitting sub-section (3) and substituting the following sub-sections: 5
- "(3) Without limiting the generality of sub-section (2), where—
- (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and 10
- (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss,
- the Minister may, for the purposes of paragraph (2) (c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price. 15
- "(3A) In determining for the purposes of sub-section (3) whether goods are sold by an importer at a loss, the Minister shall have regard to— 20
- (a) the amount of the price paid or to be paid for the goods by the importer;
- (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; 25
- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
- (d) such other matters as the Minister considers relevant. 30
- "(3B) For the purposes of this Act, 2 persons shall be deemed to be associates of each other if, and only if—
- (a) both being natural persons—
- (i) they are connected by a blood relationship or by marriage or by adoption; or 35
- (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate—
- (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); 40
- (ii) both of them together control, directly or indirectly, a third body corporate; or

Customs Tariff (Anti-Dumping) Amendment No. 1, 1984

- (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
- 5 (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
- (e) they are members of the same partnership."

10 **Export price**

4. Section 4A of the Principal Act is amended—

- (a) by omitting sub-paragraph (1) (a) (ii) and substituting the following sub-paragraph:
- 15 "(ii) the purchase of the goods by the importer was an arms length transaction,";
- (b) by omitting sub-paragraph (1) (b) (ii) and substituting the following sub-paragraph:
- "(ii) the purchase of the goods by the importer was not an arms length transaction; and";
- 20 (c) by omitting from sub-paragraph (1) (b) (iii) "a business associate" and substituting "an associate"; and
- (d) by adding at the end thereof the following sub-section:
- 25 "(5) Paragraphs (1) (a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other."

Normal value of goods

5. Section 5 of the Principal Act is amended—

- (a) by omitting from sub-section (2) "is satisfied that";
- 30 (b) by omitting paragraphs (2) (a) and (b) and substituting the following paragraphs:
- "(a) is satisfied that—
- (i) by reason of the absence of sales that would be relevant for the purpose of determining a price under sub-section (1); or
- 35 (ii) by reason that the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under sub-section (1) are not suitable for use in determining such a price,
- 40 the normal value of goods exported to Australia cannot be ascertained under sub-section (1); or

Customs Tariff (Anti-Dumping) Amendment No. 1, 1984

- “(b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under sub-section (1).”;
- (c) by omitting from sub-section (2) “the normal value of goods exported to Australia cannot be ascertained under sub-section (1).”;
- (d) by omitting from paragraph (2) (d) “highest price” and substituting “price determined by the Minister to be representative of the price”;
- (e) by adding at the end of paragraph (2) (d) “, being sales that are arms length transactions”;
- (f) by inserting after sub-section (2) the following sub-section:
- “(2A) Where the Minister gives a direction under paragraph (2) (d) in relation to the ascertainment of the normal value of goods for the purposes of this Act, the price determined by the Minister for the purposes of that paragraph—
- (a) shall be a price that, by reason of the quantity of goods, being like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and
- (b) may be the highest price paid for like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions.”;
- (g) by omitting from paragraph (3) (a) “or” (last occurring) and substituting “and”;
- (h) by inserting in paragraph (3) (d) “determined by the Minister to be representative of the price” after “price”;
- (j) by inserting after sub-section (3) the following sub-section:
- “(3A) Where the normal value of goods for the purposes of this Act is a value ascertained in accordance with paragraph (3) (d), the price determined by the Minister for the purposes of that paragraph—
- (a) shall be a price that, by reason of the quantity of goods, being like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and
- (b) may be the highest price paid for like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the

Customs Tariff (Anti-Dumping) Amendment No. 1, 1984

ordinary course of trade, being sales that are arms length transactions.”;

(k) by inserting after sub-section (5) the following sub-section:

“(6) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2) (c) or (3) (e), the Minister shall make such adjustments, in determining the costs to be determined by him in pursuance of that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.”; and

10 (m) by adding at the end thereof the following sub-section:

“(9) Where the Minister is satisfied, in relation to goods exported to Australia, that—

(a) the price paid for like goods—

15 (i) sold for home consumption in the country of export in sales that are arms length transactions; or

(ii) sold in the country of export for export to a third country in sales that are arms length transactions,

is, and has been for an extended period of time and in respect of a substantial quantity of goods, less than the sum of—

20 (iii) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and

(iv) such other amounts as the Minister determines to be the costs necessarily incurred in the sale of the goods by the seller of the goods; and

25 (b) it is likely that the seller of the goods referred to in paragraph (a) will not be able to fully recover the amounts referred to in sub-paragraphs (a) (iii) and (iv) within a reasonable period of time,

30 the price so paid for the goods referred to in paragraph (a) shall be taken not to have been paid in the ordinary course of trade.”.

6. After section 5 of the Principal Act the following section is inserted:

Material injury to industry

35 “5A. (1) In determining, for the purposes of section 8 or 10, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this sub-section referred to as the ‘country of export’), the Minister
40 may, without limiting the generality of that section, have regard to—

(a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export;

Customs Tariff (Anti-Dumping) Act, 1964 No. 1, 1964

- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export;
- (c) any change or likely change, during a particular period, in the proportion that—
- (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia,
- bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia;
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export;
- (e) the difference between—
- (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia,
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia;
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
- (h) in a case where the determination is being made for the purposes of section 10 and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.
- “(2) In determining, for the purposes of section 9 or 11, whether material injury to a producer or manufacturer in a third country has been or is being caused or is threatened or would or might have been caused by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this sub-section referred to as the ‘country of export’), the Minister may, without limiting the generality of that section, have regard to—
- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export;

Customs Tariff (Anti-Dumping) Amendment No. 1, 1984

- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export;
- 5 (c) any change, or likely change, during a particular period, in the proportion that—
- (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
- (ii) the quantity of goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold or consumed in Australia,
- 10 bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia;
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export;
- 15 (e) the difference between—
- (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia; and
- (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia;
- 20
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured by the producer or manufacturer in the third country and sold in Australia; and
- 25
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.
- 30
- “(3) A reference in sub-section (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to a producer or manufacturer in a third country, in relation to goods of a particular kind exported to Australia is a reference to—
- 35 (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (b) the degree of utilization of the capacity of the industry, producer or manufacturer to produce or manufacture goods of that kind, or like goods;
- 40 (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer—
- (i) for which there are sales or forward orders; or
- (ii) which are held as stocks;

Customs Tariff (Anti-Dumping) Amendment No. 1, 1984

- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer;
- (e) the level of profits earned in the industry, or by the producer or manufacturer, that are attributable to the production or manufacture of goods of that kind, or like goods; 5
- (f) the level of return on investment in the industry or in the business of the producer or manufacturer;
- (g) cash flow in the industry or in the business of the producer or manufacturer; 10
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry or by the producer or manufacturer in relation to the production or manufacture of goods of that kind, or like goods;
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer; 15
- (k) the ability of persons engaged in the industry, or of the producer or manufacturer, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and 20
- (m) investment in the industry or in the business of the producer or manufacturer."

Dumping duties

7. Section 8 of the Principal Act is amended—

- (a) by omitting sub-section (2A) and substituting the following sub-section: 25

"(2A) Where the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may— 30

- (a) give notice in writing to the exporter stating that—
 - (i) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with paragraph (b); and 35
 - (ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and

- (b) whether or not a notice has been given to the exporter in accordance with paragraph (a), suspend indefinitely his consideration of the export of that consignment if he is given and accepts an undertaking by the exporter, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as 40

Customs Tariff (Anti-Dumping) Amendment No. 1, 1984

the goods in the consignment as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry.”;

(b) by inserting after sub-section (5) the following sub-section:

5 “(5A) In exercising his powers under sub-section (5) in relation to dumping duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of dumping duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in
10 paragraph (1) (b) or (2) (b), as the case requires.”

Third country dumping duties

8. Section 9 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

15 “(5A) In exercising his powers under sub-section (5) in relation to third country dumping duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of third country dumping duty in respect of those goods is not greater than is necessary to prevent the injury, or a recurrence of the injury, referred to in paragraph (1) (b) or (2) (b), as the case requires.”

20 **Countervailing duties**

9. Section 10 of the Principal Act is amended—

(a) by omitting sub-section (2A) and substituting the following sub-section:

25 “(2A) Where the export of a consignment of goods to Australia has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to goods of the same kind as the goods in the consignment, the Minister may—

30 (a) give notice in writing to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment stating that—

35 (i) the Minister is of the opinion that it would be appropriate for the Government or exporter to whom the notice is given to give an undertaking in accordance with paragraph (b); and

(ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and

40 (b) whether or not a notice has been given to the Government of the country of origin, or of the country of export, or to the exporter in accordance with paragraph (a), suspend

Customs Tariff Amendment Bill (No. 1, 1984)

indefinitely his consideration of the export of that consignment if he is given and accepts—

- (i) an undertaking by the Government of the country of origin, or of the country of export, of the goods in the consignment, in terms that are satisfactory to the Minister, that that Government will, in relation to any future export trade to Australia in goods of the same kind as the goods in the consignment, review any financial assistance by that Government and make any changes that may be found to be necessary to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry; or
 - (ii) an undertaking by the exporter of the goods in the consignment, in terms that are satisfactory to the Minister, that the exporter will so conduct his future export trade to Australia in goods of the same kind as the goods in the consignment as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry.”;
- (b) by inserting after sub-section (5) the following sub-section:
- “(5A) In exercising his powers under sub-section (5) in relation to countervailing duty in respect of goods to which this section applies by virtue of sub-section (1) or (2), the Minister shall have regard to the desirability of ensuring that the amount of countervailing duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in paragraph (1) (b) or (2) (b), as the case requires.”; and
- (c) by omitting sub-section (7) and substituting the following sub-section:
- “(7) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods to be ascertained under the preceding sub-sections, that amount shall be such amount as is determined by the Minister having regard to all relevant information.”.

Third country countervailing duties

10. Section 11 of the Principal Act is amended by inserting after sub-section (5) the following sub-section:

“(5A) In exercising his powers under sub-section (5) in relation to third country countervailing duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of third country countervailing duty in respect of those goods is not greater than is necessary to prevent the injury, or a recurrence of the injury, referred to in paragraph (1) (b) or (2) (b), as the case requires.”.

Customs Tariff (Anti-Dumping) Amendment, No. 1, 1984

References to Industries Assistance Commission of matters relating to anti-dumping duties

11. Section 15 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

- 5 “(3A) A request under paragraph (2) (a) or (3) (a) shall be in writing and shall be verified by statutory declaration or witnessed by a notary public exercising his function in a place outside the Commonwealth and the Territories.”.

NOTE

1. No. 76, 1975. For previous amendments, see No. 66, 1981; Nos. 53, 68, 114 and 136, 1982; and Nos. 20 and 91, 1983.

ATTACHMENT 2



**Customs Tariff (Anti-Dumping)
Miscellaneous Amendments Act 1984**

No. 2 of 1984

An Act to amend the *Customs Act 1901* and the *Industries Assistance Commission Act 1973* in relation to duties of customs under the *Customs Tariff (Anti-Dumping) Act 1975*

[Assented to 14 March 1984]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Customs Tariff (Anti-Dumping) Miscellaneous Amendments Act 1984*.

Commencement

- 2.** This Act shall come into operation on the day on which it receives the Royal Assent.

*Customs Tariff (Anti-Dumping) Miscellaneous
Amendments No. 2, 1984*

PART II—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

3. The *Customs Act 1901* is in this Part referred to as the Principal Act.

Interpretation

4. Section 154 of the Principal Act is amended by omitting from sub-paragraph (4) (a) (ii) "each" and substituting "one of them". 5

Powers of officers for purposes of section 164

5. Section 214A of the Principal Act is amended by omitting from sub-section (3) "\$500" and substituting "\$1,000".

6. After section 214A of the Principal Act the following section is inserted: 10

Powers of officers for purposes of the *Customs Tariff (Anti-Dumping) Act 1975*

"214B. (1) For the purposes of the *Customs Tariff (Anti-Dumping) Act 1975* an authorized officer may, at all reasonable times, enter premises where there are kept any accounts, books or other records relating to goods exported to Australia or manufactured or produced, or sold, in Australia and may inspect any such accounts, books, documents or other records and make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records. 15

"(2) Where an authorized officer proposes to enter any premises under sub-section (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises. 20

"(3) The occupier or person in charge of premises referred to in sub-section (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under sub-section (1). 25

Penalty: \$1,000.

"(4) An authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information that is relevant to the operation of the *Customs Tariff (Anti-Dumping) Act 1975* and relates to goods exported to Australia or manufactured or produced, or sold, in Australia to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to goods exported to Australia or manufactured or produced, or sold, in Australia as are referred to in the notice. 30 35

"(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of sub-section (4).

*Customs Tariff (Anti-Dumping) Miscellaneous
Amendments No. 2, 1984*

5 “(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under sub-section (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against this section or proceedings in respect of the falsity of any such answer.

10 “(7) An authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of sub-section (4) and, for that purpose, may administer an oath or affirmation to that person.

15 “(8) The oath or affirmation to be made by a person for the purposes of sub-section (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

20 “(9) A person shall not, without reasonable excuse, refuse or fail—
 (a) to attend before an authorized officer;
 (b) to make an oath or an affirmation; or
 (c) to answer a question or produce an account, book, document or other record.
when so required in pursuance of this section.

Penalty: \$1,000.

25 “(10) In this section, ‘authorized officer’ means a Collector or an officer appointed by a Collector to be an authorized officer for the purposes of this section.”.

7. After Part XVA of the Principal Act the following Part is inserted:

**“PART XVB—SPECIAL PROVISIONS RELATING TO
ANTI-DUMPING DUTIES**

Interpretation

30 “269T. In this Part, ‘Anti-Dumping Act’ means the *Customs Tariff (Anti-Dumping) Act 1975*.

Inquiries in relation to undertakings

35 “269U. (1) Where the Minister is considering, in relation to a consignment of goods of a particular kind—
 (a) whether to give a notice, in accordance with paragraph 8 (2A) (a) of the Anti-Dumping Act, to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry; or
 (b) whether to give a notice, in accordance with paragraph 10 (2A) (a) of the Anti-Dumping Act, to the Government of the country of origin, or
40 of the country of export, of the goods in the consignment or to the

*Customs Tariff, Anti-Dumping, Miscellaneous
Amendments No. 2, 1984*

- exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry,
- the Minister may authorize an officer in writing to convene a meeting of representatives of the Australian industry for the purpose of obtaining information and submissions from those representatives in relation to the question what terms of undertaking should be set out in the notice, if it is to be given, as the terms that may be satisfactory to the Minister. 5
- “(2) An officer authorized under sub-section (1) to convene a meeting of representatives of an Australian industry shall give notice in writing to such persons as, in his opinion, represent the Australian industry, setting out— 10
- (a) the day, time and place for the convening of the meeting; and
 - (b) the question to be considered by the meeting.
- “(3) The officer convening a meeting in pursuance of sub-section (2)— 15
- (a) shall preside at the meeting; and
 - (b) may adjourn the meeting from time to time.
- “(4) At a meeting of representatives of an Australian industry convened in pursuance of sub-section (2), the representatives attending the meeting may provide information, or make submissions, to the officer convening the meeting in relation to the question being considered by the meeting.
- “(5) Nothing in sub-section (4) shall be taken to prevent a representative of an Australian industry who attends a meeting convened in pursuance of sub-section (2) from providing information or making a submission, in relation to the question considered or to be considered at the meeting, to the officer convening the meeting otherwise than at the meeting or to the Minister. 20
- “(6) The officer convening a meeting in pursuance of sub-section (2) may, subject to sub-section (7), put before the meeting information in relation to the question being considered by the meeting. 25
- “(7) The officer convening a meeting in pursuance of sub-section (2) shall not put before the meeting any information provided to him by another person that is information of a confidential nature (whether or not confidentiality was claimed in respect of the information by the person who provided the information). 30
- “(8) After the close of a meeting convened in pursuance of sub-section (2), the officer convening the meeting shall furnish to the Minister a report in writing of the information provided and the submissions made at the meeting. 35
- “(9) Nothing in this section shall be taken, for the purposes of sub-section 51 (1) of the *Trade Practices Act 1974*, to authorize any act or thing other than the providing of information or the making of a submission, at a meeting of representatives of an Australian industry convened in pursuance of sub-section (2), by a representative of the Australian industry to the officer convening the meeting in relation to the question being considered by the meeting.”. 40

*Customs Tariff (Anti-Dumping) Miscellaneous
Amendments No. 2, 1984*

Certain information and submissions to be verified

5 "269V. Where a person who is not an officer provides information, or
makes a submission or request, to the Minister (otherwise than in pursuance of
section 15 of the Anti-Dumping Act) in relation to the exercise of his powers
under that Act in relation to goods of a particular kind, the Minister is not
required to have regard to the information, submission or request in exercising
those powers in relation to goods of that kind unless the information,
submission or request is in writing and is verified by statutory declaration or
witnessed by a notary public exercising his function in a place outside the
10 Commonwealth and the Territories."

**PART III—AMENDMENTS OF THE INDUSTRIES ASSISTANCE
COMMISSION ACT 1973**

Principal Act

15 8. The *Industries Assistance Commission Act 1973*¹ is in this Part referred
to as the Principal Act.

Policy guidelines for Commission

9. Section 22 of the Principal Act is amended by inserting after sub-section
(4) the following sub-section:

20 "(4A.) Where a matter of the kind referred to in paragraph 23 (5) (a) is
referred to the Commission for inquiry and report, the preceding provisions of
this section do not apply in relation to the performance by the Commission of
its functions in relation to that matter."

Reference of matters to Commission

25 10. Section 23 of the Principal Act is amended by omitting paragraph
(5) (a) and substituting the following paragraph:

30 "(a) where the Minister administering the *Customs Tariff
(Anti-Dumping) Act 1975* is empowered or required under that Act
to refer a question as to the existence of any facts to the Commission
for inquiry and report—a question as to the existence of any such
facts;"

NOTES

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 19, 92, 116, 155, 177 and 180, 1979; Nos. 13, 15, 110 and 171, 1980; Nos. 45, 61, 64 (as amended by No. 51, 1982), 67, 152 and 157, 1981; Nos. 48, 51, 80, 81 (as amended by No. 39, 1983), 108, 115 and 137, 1982; and Nos. 19, 39 and 101, 1983.

*Customs (Anti-Dumping) Miscellaneous
Amendments No. 2, 1984*

NOTES—continued

2. No. 169, 1973, as amended. For previous amendments, see No. 91, 1976; No. 1, 1978; No. 74, 1981; No. 80, 1982; and Nos. 21 and 75, 1983.

ATTACHMENT 3

DEPARTMENT OF INDUSTRY AND COMMERCE



Australian Customs Notice

No. 84/63

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT ACT (NO. 2) 1983
CUSTOMS TARIFF (ANTI-DUMPING) MISCELLANEOUS AMENDMENTS ACT 1983

The Customs Tariff (Anti-Dumping) Amendment Act (No. 2) 1983 and the Customs Tariff (Anti-Dumping) Miscellaneous Amendments Act 1983 received Royal Assent on 14 March 1984.

These Acts form a package of legislative changes arising from the Government's review of Australia's anti-dumping and countervailing legislation.

Briefly the major changes included in the Customs Tariff (Anti-Dumping) Act (No. 2) 1983 -

- (i) provide for alignment of the definition of business associate with the definition of related persons in section 154 of the Customs Act (Section 3);
- (ii) provide that the Minister may deal with sales dumping or i.e. "hidden dumping" arrangements irrespective of whether the parties are associates (Section 4);
- (iii) provide that the invoiced export prices between associates may be accepted if the prices are in relation to purchases in arms length transactions (Section 4);
- (iv) provide that it will not be mandatory to assess the normal value of goods using the price of sales "by other sellers of like goods" when the exporter does not sell like goods to those exported, in the domestic market (Section 5);
- (v) provide that in establishing the normal value on the basis of like goods sold to third countries, the Minister may determine a representative price which may be the highest price (Section 5);
- (vi) provide that where the Government of the country of export has a monopoly, or substantial monopoly of the trade of the country and determines or substantially influences the domestic price of goods in that country then the normal value can be established in a third country (Section 5);
- (vii) provide that where normal value is established under (vi) above in a third country, and the normal value is the price paid for like goods sold to another country, the Minister may determine a representative price which may be the highest price (Section 5);

- (viii) provide that where normal values are established on the basis of a constructed price, allowances may be made to ensure that the normal value ascertained is properly comparable with the export price (Section 5);
- (ix) provide that the Minister may disregard sales at a loss, for normal value purposes, as not having been made in the ordinary course of trade if they have been made over an extended period of time and in substantial quantities and are at prices which would not permit recovery of all costs within a reasonable period of time (Section 5);
- (x) provide an indicative but not exhaustive definition of the factors which, when taken together or singly, constitute material injury to an Australian industry, (or to a producer or manufacturer in a third country in the case of third country action) (Section 6);
- (xi) make it clear that the Minister may determine as the dumping duty or countervailing duty a sum sufficient to prevent injury, which does not exceed the margin of dumping or the amount of subsidy (Section 7 to 10); and
- (xii) make it clear that the Minister may determine the amount of subsidy, bounty, reduction or remission of freight or other financial assistance, having regard to all relevant information, if he is satisfied sufficient information has not been furnished (Section 9).

The major changes included in the Customs Tariff (Anti-Dumping) Miscellaneous Amendment Act 1983 are:

- (A) Part II of the Act includes amendments to the Customs Act 1901 to -
 - (i) introduce new powers for the purposes of the Customs Tariff (Anti-Dumping) Act 1975 to enable a Collector of Customs or an officer appointed by him to -
 - (a) enter premises and inspect and take copies of accounts, books, documents or other records relating to goods exported to Australia; and
 - (b) require certain persons to attend to answer questions and produce documents in relation to goods exported to Australia or manufactured or produced, or sold, in Australia;

Attachment to ACN 84/63

- (ii) authorize an officer to convene a meeting of representatives of the Australian industry, who are parties to a complaint of dumping or subsidisation, with a view to ascertaining the basis of undertakings to be sought from exporters to Australia or foreign Governments that their future export trade will be conducted so as to avoid causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry; and
- (iii) give the Minister discretion to disregard any written information submitted in connection with a dumping or subsidisation complaint not verified by statutory declaration or witnessed by a notary public.

(B) Part III of the Act amends the Industries Assistance Commission Act 1973 to require that inquiries conducted by the Industries Assistance Commission in relation to dumping or countervailing issues are to be conducted without reference to the policy guidelines in the Industries Assistance Commission Act. Such inquiries will thus only relate to the question of the existence of facts relating to dumping or countervailing issues.

(M.D. Lightowler)
A/g Comptroller-General
Canberra ACT

29/3/84
(Dumping 84/0019)