

EXPLANATORY STATEMENT

Select Legislative Instruments 2013 No. 91

Issued by the Authority of the Minister for Home Affairs

Customs Tariff (Anti-Dumping) Act 1975

Customs Tariff (Anti-Dumping) Regulation 2013

Section 22 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act), as amended by the *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012*, provides that the Governor-General may make regulations prescribing matters which, by the Dumping Duty Act, are required or permitted to be prescribed.

The purpose of the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation) is to prescribe additional methods of working out interim dumping duty and interim third country dumping duty for sections 8 and 9 of the Dumping Duty Act.

Under Part XVB of the *Customs Act 1901* (the Customs Act), anti-dumping measures may be taken in respect of goods whose exportation to Australia involves a dumping of those goods that injures, or threatens to injure, Australian industry. Dumping occurs where the export price of goods is less than the normal value of goods.

Anti-dumping measures can be imposed by way of a special duty of Customs known as interim dumping duty or interim third country dumping duty which are imposed by the Dumping Duty Act, in particular sections 8 and 9.

The *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012* amends the Dumping Duty Act to replace the current methodology of calculating the amount of interim dumping duty. Previously, only one method of calculation was set out in the Dumping Duty Act: a ‘combined fixed and variable’ form of duty which has both fixed and variable components. New subsections 8(5BB) and 9(5BB) provide that regulations must prescribe the methods for working out the amount of interim dumping duty or interim third country dumping duty payable on goods.

These changes originate from the Government’s *Streamlining Australia’s anti-dumping system – An effective anti-dumping and countervailing system for Australia* report released in June 2011. This report directed that a more flexible approach should be taken to determining the appropriate form of a dumping duty, including allowing the Minister to apply *ad valorem* duty (in the form of a percentage of the export price), fixed duty, combination duty, or a floor price. All of these methods are prescribed in the Regulation.

Details of the Regulation are set out in the [Attachment](#).

The Australian Government’s 2011 ‘*Streamlining the anti-dumping system*’ policy responded to the Productivity Commission’s 2009 review of the anti-dumping system. The Productivity Commission undertook extensive consultation with stakeholders, including by calling for submissions, in formulating its recommendations to Government. In developing its Streamlining reforms the

Government also consulted with state and territory governments and called for further public submissions.

In addition, during the development of the *Streamlining* legislation, further consultation was undertaken on the policy underpinning the reforms contained in legislation tranches 2-4 through the International Trade Remedies Forum. The Forum comprises representatives of manufacturers, producers and importers as well as industry associations, trade unions and relevant Government agencies.

The Regulation commences on the commencement of Schedule 1 to the *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012*. That Act will commence on 11 June 2013.

Details of the Customs Tariff (Anti-Dumping) Regulation 2013

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Customs Tariff (Anti-Dumping) Regulation 2013*.

Section 2 – Commencement

This section provides that the Regulation commences on the commencement of Schedule 1 to the *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012*.

Section 3 – Authority

This section provides the Regulation is made under the *Customs Tariff (Anti-Dumping) Act 1975*.

Section 4 – Definitions

Section 4 inserts a number of definitions for the purposes of the Regulation including:

Act means the *Customs Tariff (Anti-Dumping) Act 1975*.

Export price has the same meaning given by section 269TAB of the *Customs Act 1901* (Customs Act).

Section 269TAB of the Customs Act sets out the criteria for determining the export price for the goods exported to Australia. ‘Export price’, in general terms, is the price of goods that are exported to Australia. The export price can either be the actual export price paid by the importer of particular goods or the export price for goods of that kind as ascertained by the Minister for the purposes of imposing a notice under subsections 269TG(1) or (2), or 269TH(1) or (2) of the Customs Act or otherwise under the Customs Act.

Paragraph 269TAB(1)(a) of the Customs Act provides that where a sale is between the importer and exporter, someone other than the importer has exported the goods and the sale is an arms length transaction, the export price is the price paid (or payable) to the exporter by the importer less any charges incurred after exportation.

Normal value has the same meaning given by section 269TAC of the Customs Act. Section 269TAC of the Customs Act provides various methods for assessing the ‘normal value of goods’ exported to Australia.

The ‘default’ normal value is ‘the price paid or payable 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’.

The purpose of assessing the normal value of goods is to compare it with the ‘export price’ in order to determine whether the goods are being sold in Australia at less than their normal value (that is, ‘dumped’). The normal value and the export price are the

primary variable factors used to calculate the dumping margin, and it is this dumping margin which is used in the different duty methods to determine the amount of duty payable.

The export price referred to in the Regulation can either be the actual export price of the particular goods or that ascertained by a Minister for the purposes of imposing a notice under subsections 269TG(1) or (2) or 269TH(1) or (2) of the Customs Act or reviewing that notice.

Section 5 – Methods of working out interim dumping duty

Subsection 5(1) of the Regulation, in accordance with subsection 8(5BB) of the Act, prescribes the methods for working out the amount of interim dumping duty payable on particular goods the subject of a notice under subsections 269TG(1) or (2) of the Customs Act.

Section 8 of the Act deals with the imposition of dumping duty in circumstances where the Minister has found that dumped exports to Australia have caused, or threatened, material injury to an Australian industry. Such dumping duties are the most common form of anti-dumping measures that are imposed in Australia.

It should be noted that all these methods for working out the amount of interim dumping duty payable on particular goods are subject to the ‘lesser duty rule’.

Under the ‘lesser duty rule’, the Minister must have regard to the desirability of fixing a lesser amount of duty where the non-injurious price is less than the normal value. This rule is contained in the current subsection 8(5BA) of the Act.

Where the Minister decides to impose dumping duty at a level lower than the maximum allowed in subsection 8(4), the non-injurious price applies to the dumping margin and subsequently to the final assessment of dumping duty. The non-injurious price is defined at section 269TACA of the Customs Act.

Combination of fixed and variable duty method

Subsections 5(2) and (3) of the Regulation prescribe the combination of fixed and variable duty method. This method of calculating the interim dumping duty is the method that is currently expressed in subsections 8(4) and (5) of the Act which will be removed with the commencement of Schedule 1 of the *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012*.

Under this method, the amount of interim dumping duty payable on particular goods the subject of a notice under subsections 269TG(1) or (2) of the Customs Act is the sum of:

- (i) the fixed amount of the duty which is the difference between the export price of goods of that kind as ascertained by the Minister and the normal value of the goods of that kind as ascertained by one of the three methods outlined in the paragraphs 5(3)(a), (b) and (c) of the Regulation; and
- (ii) the variable amount of duty that is outlined in paragraph 5(2)(b) of the Regulation.

The three methods in paragraphs 5(3)(a), (b) and (c) express the difference between export price of goods of that kind as ascertained by the Minister and the normal value of the goods as either:

- a proportion of the export prices of the particular goods (eg 20% of the export price);
- by reference to a measure of the quantity of the particular goods (eg \$20 per item); or
- a combination of a proportion and quantity.

Floor price duty method

Subsections 5(4) and (5) of the Regulation provide the floor price duty method. Under this method the amount of interim dumping duty payable on particular goods, the subject of a notice under subsections 269TG(1) or (2) of the Customs Act, is the difference between the export price of the particular goods and the normal value where the export price of the particular goods is less than the normal value. For example, where the export price is \$20 and the normal value is \$30, the interim dumping duty payable under this method would be \$10.

Fixed duty method

Subsections 5(4) and (5) of the Regulation prescribe the fixed duty method. Under the fixed price duty method, the amount of interim dumping duty payable on particular goods the subject of a notice under subsections 269TG(1) or (2) of the Customs Act is the difference between the export price of goods of that kind as ascertained by the Minister and the normal value of goods of that kind expressed as amount per unit of quantity of particular goods. For instance where the ascertained export price of the goods is \$20 per litre and the normal value of the goods is \$30 per litre, the fixed duty method could be applied as being \$10 per litre of the good.

Ad valorem duty method

Subsections 5(4) and (5) of the Regulation prescribe the *ad valorem* duty method. Under the *ad valorem* duty method, the amount of interim dumping duty payable on particular goods, the subject of a notice under subsections 269TG(1) or (2) of the Customs Act, is the difference between the export price of goods of that kind as ascertained by the Minister and the normal value of goods of that kind expressed as a proportion of the actual export price of the particular goods. For instance where the ascertained export price of the goods is \$20 the normal value of the goods is \$30, the *ad valorem* method duty could be applied as being 50% of the export price of the particular goods.

Section 6 – Methods of working out interim third country dumping duty

Subsection 6(1) of the Regulation, in accordance with subsection 9(5AB) of the Act, prescribes the methods for working out the amount of interim third country dumping duty payable on particular goods the subject of a notice under subsections 269TH(1) or (2) of the Customs Act.

Section 9 of the Act deals with the imposition of dumping duty in circumstances where the Minister has found that dumped exports to Australia have caused, or threatened, material injury to an industry in a third country, and the third country has requested that measures be imposed. Such third country dumping duties are rarely imposed internationally, and have never been imposed in Australia.

It should be noted that all these methods for working out the amount of interim third country dumping duty payable on particular goods are subject to the use of the ‘lesser duty rule’ as explained above.

Combination of fixed and variable duty method

Subsections 6(2) to (3) of the Regulation prescribe the combination of fixed and variable duty method for calculating interim third country dumping duty. This method is provided for calculating the interim dumping duties in subsections 5(2) and (3) of the Regulation, and is explained above.

Floor price duty method

Subsections 6(4) to (5) of the Regulation prescribe a floor price duty for calculating interim third country dumping duty. This method is provided for calculating the interim dumping duties in subsections 5(4) and (5) of the Regulation, and is explained above.

Fixed duty method

Subsection 6(6) of the Regulation prescribes a fixed duty method for calculating interim third country dumping duty. This method is provided for calculating the interim dumping duties in subsection 5(6) of the Regulation, and is explained above.

Ad valorem duty method

Subsection 6(7) of the Regulation prescribes an *ad valorem* duty method for calculating interim third country dumping duty. This method is provided for calculating the interim dumping duties in subsection 5(7) of the Regulation, and is explained above.

Statement of Compatibility with Human Rights

(Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*)

Customs Tariff (Anti-Dumping) Regulation 2013

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The purpose of the *Customs Tariff (Anti-Dumping) Regulation 2013* (the Regulation) is to prescribe methods of working out interim dumping duty or interim third country dumping duty for sections 8 and 9 of the Dumping Duty Act.

The *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012* amends the *Customs Tariff (Anti-Dumping) Act 1975* (the Dumping Duty Act) to replace the current methodology for calculating the amount of interim dumping duty. Currently, only one method of calculation is set out in the Dumping Duty Act. New subsections 8(5BB) and 9(5BB) of that Act will provide that regulations must prescribe the methods for working out the amount of interim dumping duty or interim third country dumping duty payable on goods.

The Regulation prescribes these methods.

The Regulation commences on the commencement of Schedule 1 to the *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012*. Schedule 1 commences on 11 June 2013 by Proclamation.

Human Rights implications

This legislative instrument does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This legislative instrument does not raise any human rights issues.

Minister for Home Affairs