



AUSTRALIAN CUSTOMS DUMPING NOTICE NO. 2013/42

Streamlining Policy Amendments to *Customs Act 1901* - Tranche 2

Purpose

The purpose of this Australian Customs Dumping Notice (ACDN) is to notify the general public that the *Customs Amendment (Anti-dumping Improvements) Act (No. 1) 2012* (Customs Improvements Act No. 1) amends the *Customs Act 1901* (the Act). This legislation commences on **10 June 2013**.

The amendments implement the second tranche of measures from the Australian Government's '*Streamlining Australia's anti-dumping system – An effective anti-dumping and countervailing system for Australia*' June 2011 Policy (the Streamlining Policy).

Key amendments

The tranche 2 amendments implement the Streamlining Policy by:

- a) establishing a new appeals process, including a new Anti-Dumping Review Panel (Review Panel), to replace the existing appeals mechanism (the Trade Measures Review Officer (TMRO));
- b) formally establishing, in legislation, the International Trade Remedies Forum (ITRF) which will be a stakeholder body of representatives from manufacturers, producers and importers, as well as industry associations, trade unions and relevant Government agencies; and
- c) providing for flexible extensions to timeframes for an investigation, review of anti-dumping measures, continuation inquiry or duty assessment to enable:
 - I. robust analysis where investigations involve particularly complex arrangements, or involve large numbers of countries or interested parties; and
 - II. consideration of a response to critical new information that could not reasonably have been provided earlier.

The Customs Improvements Act No. 1 and the associated Explanatory Memorandum are available on ComLaw's website at <http://www.comlaw.gov.au>. An updated version of the Act incorporating the amendments will be available on ComLaw's website shortly.

This ACDN should be read in conjunction with ACDN No. 2013/43 and ACDN No. 2013/44 which relate to tranches three and four respectively of the Streamlining Policy legislative amendments. ACDNs are available on the Australian Customs and Border Protection Service's (ACBPS) website at www.customs.gov.au (following the "anti-dumping" hyperlinks).

Dumping and Subsidy Manual

The Dumping and Subsidy Manual (the Manual) will not be updated to incorporate the tranche 2 amendments by the commencement date of these amendments. This reflects:

- the scope of the Manual changes required;
- the complexity of the Streamlining Policy and linkages to the on-going broader reforms to the anti-dumping system (that either are due to be implemented or are currently being considered by the Parliament);
- the commencement of the Anti-Dumping Commission (Commission) from 1 July 2013; and
- the need to undertake an external stakeholder consultation process regarding Manual changes.

The International Trade Remedies Branch (ITRB) has developed a program for Manual updates to incorporate Streamlining Policy and other broader anti-dumping reform amendments (ACDN No. 2013/45 provides further detail). Tranche 2 amendments will be included in the first stage of the Manual amendments, which will be delivered in the second half of 2013.

Tranche 2 amendments

Further details regarding the tranche 2 amendments are provided below.

a) Establish a new appeals process

This amendment implements a number of changes to the appeals process in relation to decisions of the Minister for Home Affairs (Minister) and the Chief Executive Officer (CEO) of the ACBPS under the anti-dumping system which will:

- replace the single TMRO with a Review Panel of at least three members (including a Senior Member);
- empower the Senior Member of the Review Panel to decide how the Review Panel will be constituted for any particular review;
- permit the Review Panel, before making a recommendation to the Minister, to request that the CEO of the ACBPS reinvestigate a specific finding or findings and report back to the Review Panel. Where a reinvestigation occurs in these circumstances, it will be limited to the findings the Review Panel has requested be reinvestigated;
- permit the Review Panel in circumstances where it finds in favour of an appeal, to make a recommendation to the Minister for final determination;
- expand the categories of decisions that are reviewable to include decisions to continue anti-dumping measures or not, and to vary or revoke measures following review;
- establish a new threshold for the Review Panel to apply in accepting applications for review, consistent with the Government's administrative law policy for merits review; and
- allow trade unions and downstream industry to participate in administrative reviews.

This amendment increases the robustness, timeliness, efficiency and effectiveness of the review process.

Commencement date

These amendments will be effective from the commencement date of the Customs Improvements Act No. 1 (i.e. 10 June 2013). Transitional provisions in relation to completion of reviews that are on-going at the commencement of the amendments also apply, however, these are not detailed in this ACDN. For further information in relation to transitional provisions, please contact the Anti-Dumping Review Panel Support Office on telephone number (02) 6275 5868, fax number (02) 6275 6784 or email at ADRP_support@customs.gov.au.

Establishment of the new Review Panel

On 29 May 2013, the Minister announced the appointments to the Review Panel. ACDN 2013/41 provides details on these appointments.

b) Establishment of an International Trade Remedies Forum

This amendment formally establishes the ITRF. The ITRF will be a stakeholder body of representatives from manufacturers, producers and importers, as well as industry associations, trade unions and relevant Government agencies. The ITRF will provide advice and feedback to the Government on:

- the operation of the anti-dumping system;
- the implementation and monitoring of Government's reforms to the anti-dumping system; and
- other information which may lead to the further improvement of the anti-dumping system.

The ITRF members will be appointed by the Minister and will meet at least twice each calendar year.

This amendment embeds a formal mechanism for stakeholders that are key users of the anti-dumping system to report to the Government on the operation and reforms of the anti-dumping system. This increases the transparency and effectiveness of the anti-dumping system.

Commencement date

These amendments will be effective from the commencement date of the Customs Improvements Act No. 1 (i.e. 10 June 2013). An ACDN will be issued in relation to the appointment by the Minister of the ITRF members.

c) Extensions of time

This amendment will allow for the CEO to seek one or more extensions of the timeframe at any stage during an investigation, review of anti-dumping measures, continuation inquiry or duty assessment. This amendment will also permit the CEO to seek an extension of time *at any time* during the 155 day period for an investigation (and the CEO will not be limited to seeking an extension before the publication of the statement of essential facts at day 110 of an investigation).

To gain an extension the CEO will have to provide reasons for the extension of the timeframe and (where the Minister is satisfied that it is reasonable to do so) the Minister may approve the request. This requirement is intended to ensure that the greater scope to seek extensions is used appropriately.

This amendment increases the flexibility in extension arrangements will allow robust analysis where investigations involve particularly complex arrangements, or involve large numbers of countries or interested parties; and consideration of a response to critical new information that could not reasonably have been provided earlier. This amendment may also increase the timeliness of investigations, as the ACBPS will be able to seek shorter, tailored extensions as required in an investigation.

Commencement date

These amendments will be effective from the commencement date of the Customs Improvements Act No. 1 (i.e. 10 June 2013), however their application varies depending on anti-dumping investigation and inquiry type, as highlighted below.

Case type	Commencement date
Investigations	Amendments will apply to an investigation <u>initiated</u> on or after the commencement of the new legislative provisions (i.e. on or after 10 June 2013).
Review inquiries	Amendments will apply for a review inquiry where <u>a notice advising the initiation of an inquiry is published</u> on or after the commencement of the new legislative provisions (i.e. on or after 10 June 2013).
Continuation inquiries	Amendments will apply for a continuation inquiry <u>where a notice advising the initiation of an inquiry is published</u> on or after the commencement of the new legislative provisions (i.e. on or after 10 June 2013).
Duty assessments	Amendments will apply for duty assessment applications <u>lodged</u> after the commencement of the new legislative provisions (i.e. on or after 10 June 2013).

Anti-Dumping Commission and Anti-Dumping Commissioner

From 1 July 2013, the Commission will commence operations and will be responsible for the administration of Australia's anti-dumping system. This function is currently undertaken by the International Trade Remedies Branch within the ACBPS. The Commission will be a separate Division within the ACBPS.

The Commission will be headed by a statutory Anti-Dumping Commissioner (Commissioner) who will report to the Minister on anti-dumping decisions and to the CEO in relation to financial, recruitment and other administrative matters.

The *Customs Amendment (Anti-Dumping Commission) Act 2013*, which was passed by the Parliament on 14 March 2013, amends the Act to create the Commissioner's role and establishes that the Commissioner will be responsible for the decision-making and anti-dumping related matters that currently reside with the CEO. Any references to the CEO in tranche 2 legislative amendments will be replaced with the Commissioner from 1 July 2013.

ACBPS contact

Enquiries concerning this notice may be directed to the Anti-Dumping Implementation Reform team on telephone number (02) 6275 5965, fax number (02) 6275 6990 or email at itr@customs.gov.au.

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