



AUSTRALIAN CUSTOMS DUMPING NOTICE NO. 2013/43

Streamlining Policy Amendments to *Customs Act 1901* and *Customs Tariff (Anti-Dumping) Act 1975* - Tranche 3

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. 2) 2012* (Customs Improvements Act No. 2) amends the *Customs Act 1901* (the Act); and
- *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012* (Customs Anti-Dumping Amendment Act No 1) amends the *Customs Tariff (Anti-Dumping) Act 1975* (Dumping Duty Act).

This legislation commences on **11 June 2013**.

The amendments implement the third 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 3 amendments implement the Streamlining Policy by:

- a) inserting new provisions which amend the subsidies provisions in the Act to better reflect definitions and operative provisions of the World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM);
- b) amending Division 6A of Part XVB (*Continuation of anti-dumping measures*) to enable anti-dumping measures to be amended, including by altering the level of applicable duties, if the Minister for Home Affairs (Minister) decides to continue the measures. Previously, anti-dumping measures could not be altered following a continuation inquiry;
- c) repealing subsection 269TAC(13) of the Act to remove the limitations to including profit when constructing a normal value because of subsection 269TAAD of the Act; and
- d) allowing the Minister to utilise additional forms of interim dumping duty (IDD) beyond the single form that was currently available in the Act. The new forms of duty are prescribed in new regulations and include:
 - combination of fixed and variable duty method;
 - floor price duty method;
 - fixed duty method (\$X per tonne); or
 - ad valorem duty method (i.e. a percentage of the Free-On-Board (FOB) export price).

The Customs Improvements Act No. 2, the Customs Anti-Dumping Amendment Act No 1 and the associated Explanatory Memoranda are available on ComLaw's website at <http://www.comlaw.gov.au>. An updated version of the Act and the Dumping Duty Act incorporating the amendments will be available on ComLaw's website shortly.

This ACDN should be read in conjunction with ACDN No. 2013/42 and ACDN No. 2013/44 which relate to tranches two and four respectively of Streamlining Policy legislative amendments. ACDNs are available on 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 3 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 3 amendments will be included in the first stage of the Manual amendments, which will be delivered in the second half of 2013.

Tranche 3 amendments

Further details regarding the tranche 3 amendments are provided below.

a) Using all facts available to determine receipt of countervailable subsidy

This amendment clarifies that the Chief Executive Officer (CEO) of the ACBPS or the Minister has the express power to act on the basis of “all the facts available” when determining:

- whether a countervailable subsidy has been received in respect of particular goods; or
- the amount of a countervailing subsidy in respect of those goods where a relevant entity (such as an exporter or foreign Government) has not provided relevant information to the CEO within a reasonable period of time.

This “all facts available” provision will apply to determinations in regard to countervailing duty notices for investigations, reviews and continuation inquiries. This amendment aligns the Act with the ASCM and is similar to “all facts available” provisions when determining normal values.

This amendment enables the amount of a countervailable subsidy in relation to the goods to be determined based on “all facts available” where an exporter, importers or foreign Government, does not permit verification of the information supplied; does not supply the information requested; significantly impedes an investigation; does not supply information within a reasonable period of time. The facts available may include secondary and independent sources (information obtained from other interested parties during the investigation).

This amendment strengthens and clarifies the CEO’s / Minister’s ability to deal with non-cooperative parties and the consequences that may result. This provides increased clarification of existing ACBPS practice. This approach ensures greater transparency and consistency with the ASCM and other international anti-dumping administrations.

Commencement date

These amendments will be effective from the commencement date of the Customs Improvements Act No. 2 (i.e. 11 June 2013). The amendments will apply to an investigation, a review or a continuation inquiry that is initiated on or after the commencement date of the new legislative provisions (i.e. on or after 11 June 2013).

b) Repeal subsection 269TAC(13) of the Act

This amendment repeals subsection 269TAC(13) of the Act to remove the limitations to including profit when constructing a normal value because of subsection 269TAAD of the Act.

Repealing subsection 269TAC(13) will provide more discretion to the CEO and the Minister in including an appropriate amount of profit in the construction of normal value based on relevant

information obtained during the course of each particular investigation. However the Minister will continue to be able to make a determination in regard to the amount of the profit on sale of the goods under Regulation 181A of the *Customs Regulations 1926*.

Commencement date

These amendments will be effective from the commencement date of the Customs Improvements Act No. 2 (i.e. 11 June 2013). The amendments will apply to working out normal value of goods on or after the commencement date of the new legislative provisions (i.e. on or after 11 June 2013).

c) Continuation inquiries and reviewing level of measures

This amendment ensures the Minister has the same range of options available in securing the continuation of anti-dumping measures as is available to the Minister when determining a review (such as the recalculation of the level of duties or changing the method of calculating the duty). This amendment will enable the following for continuation inquiries:

- that the CEO will now also be able to recommend to the Minister the range of options that the CEO is able to recommend in a review of anti-dumping measures; and
- that the Minister will also be able to exercise the range of options as is currently available to the Minister in a review of anti-dumping measures (including alerting the variable factors (i.e. export price, normal value and non-injurious price) and varying the level of anti-dumping measures).

This amendment increases the efficiency of the anti-dumping system, as it reduces duplication of having to conduct a separate review inquiry simultaneously with a continuation inquiry in order to alter anti-dumping measures. This amendment will ensure that anti-dumping measures that are continued will be more effective by reflecting contemporary market conditions in respect of the goods.

Commencement date

These amendments will be effective from the commencement date of the Customs Improvements Act No. 1 (i.e. 11 June 2013). The amendments will apply to continuation inquiries that result from expiration notices that are published on or after the commencement date of the new legislative provisions (i.e. on or after 11 June 2013).

d) Imposing different forms of interim dumping duty

This amendment will allow the Minister to utilise additional forms of IDD. The form of IDD is the method of working out the amount of IDD payable on goods the subject of dumping duty notices.

Currently, the Dumping Duty Act only provides for the imposition of a combination form of IDD that has a fixed component and a variable component (i.e. total IDD payable is a fixed amount per Kg plus the difference between the Ascertained Export Price and Dumping Export Price).

As provided for by this amendment, the different forms of IDD have been prescribed in new Regulations, the *Customs Tariff (Anti-Dumping) Regulation 2013*. The current combination duty has also been removed from the Dumping Duty Act and is prescribed in the new Regulations. The new Regulations specify the following forms of IDD:

- combination of fixed and variable duty method (the previous form of duty);
- floor price duty method (a new duty method);
- fixed duty method (\$X per tonne); or
- *ad valorem* duty method (i.e. a percentage of the FOB export price).

The floor price duty method is a new form of duty and IDD will be collected for goods that are imported at prices that are below the "floor" price (i.e. this is similar to the previous variable component of IDD).

The Minister will determine which of those prescribed methods will be used for each dumping duty notice by a signed notice, which will be published.

The new Regulations are available on ComLaw's website. The "*Guidelines on the application of forms of dumping duty*" provide an overview (and examples) of the forms of IDD. These Guidelines will be available on the ACBPS website shortly.

IDD is assessed and paid on each entry of goods the subject of a dumping duty notice. Importers may subsequently apply for a dumping duty assessment pursuant to Division 4 of Part XVB of the Act, within six months after of the particular importation period. This amendment does not alter the methods for determining the final duty, or the assessment and refund process. It only allows more options for the Minister in imposing the IDD payable.

This amendment increases the flexibility in setting anti-dumping measures. All forms of IDD are intended to remove the injurious effects of the dumping. However, in achieving this outcome certain forms of duty will be more effective and appropriate for specific goods and investigations. This amendment will therefore increase the effectiveness of anti-dumping measures.

Commencement date

These amendments will be effective from the commencement date of the Customs Improvements Act No. 1 (i.e. 11 June 2013). These amendments do not reflect the validity of notices published under the Dumping Duty Act before the commencement of the amendments. The amendments will apply on and from the commencement date of the new legislative provisions (i.e. on or after 11 June 2013).

Therefore from 11 June 2013, the Minister must determine the prescribed duty method when imposing or altering anti-dumping measures. Interested parties will now be invited to make submissions on the most appropriate form of duty for the goods that is subject to an investigation or inquiry.

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 3 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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