



25 February 2013

(13-1015)

Page: 1/6

**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

AUSTRALIA

*Supplement*

The following communication, dated 7 February 2013, is being circulated at the request of the Delegation of Australia.

---

Pursuant to Article 18.5 of the WTO Anti-Dumping Agreement and Article 32.6 of the WTO Agreement on Subsidies and Countervailing Measures, please find attached the *Customs Amendment (Anti-dumping Improvements) Act (No. 2) 2012*.

This legislation received Royal Assent on 13 December 2012 and will commence no later than 13 June 2013. The amendments clarify the existing ability to take into account all the facts available when determining whether a countervailable subsidy has been received or when determining the amount of a countervailable subsidy when relevant parties have failed to provide the relevant information. The amendments also allow for more discretion in determining an appropriate amount of profit in the construction of normal value based on relevant information obtained during the course of an investigation. The amendments remove the need for a separate review of anti-dumping measures and a continuation inquiry occurring in close proximity to one another. It enables the level of duties to be recalculated during a continuation inquiry.

**Contents**

1 Short title .....	3
2 Commencement.....	3
3 Schedule(s).....	3
 <b>Schedule 1—Amendments</b>	 <b>4</b>
Customs Act 1901	4

## Customs Amendment (Anti-dumping Improvements) Act (No. 2) 2012

No. 206, 2012

### An Act to amend the *Customs Act 1901*, and for related purposes

[Assented to 13 December 2012]

The Parliament of Australia enacts:

#### 1 Short title

This Act may be cited as the *Customs Amendment (Anti-dumping Improvements) Act (No. 2) 2012*.

#### 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 December 2012
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

#### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### *Customs Act 1901*

#### **1 Subsection 9(4)**

Omit ", 10(5) or 11(4) of the Anti-Dumping Act", substitute "or 11(4) of the *Customs Tariff (Anti-Dumping) Act 1975*".

#### **2 Subsection 269T(1) (definition of *interim countervailing duty*)**

Repeal the definition, substitute:

*interim countervailing duty* means:

- (a) interim countervailing duty imposed under section 10 of the Dumping Duty Act; or
- (b) interim third country countervailing duty imposed under section 11 of that Act.

#### **3 Subsection 269T(1) (definition of *interim dumping duty*)**

Repeal the definition, substitute:

*interim dumping duty* means:

- (a) interim dumping duty imposed under section 8 of the Dumping Duty Act; or
- (b) interim third country dumping duty imposed under section 9 of that Act.

#### **4 After section 269TAAC**

Insert:

#### **269TAACA Determination of countervailable subsidy if non-cooperation by relevant entities**

- (1) If:
- (a) one of the following applies:
    - (i) there is an investigation under this Part in relation to whether a countervailing duty notice should be published;
    - (ii) there is a review under Division 5 in relation to the publication of a countervailing duty notice;
    - (iii) there is an inquiry under Division 6A in relation to the continuation of a countervailing duty notice; and
  - (b) the CEO is satisfied that an entity covered by subsection (2):
    - (i) has not given the CEO information the CEO considers to be relevant to the investigation, review or inquiry within a period the CEO considers to be reasonable; or
    - (ii) has significantly impeded the investigation, review or inquiry;
 then, in relation to the investigation, review or inquiry, in determining whether a countervailable subsidy has been received in respect of particular goods, or in determining the amount of a countervailable subsidy in respect of particular goods, the CEO or the Minister:
    - (c) may act on the basis of all the facts available to the CEO or the Minister (as the case may be); and
    - (d) may make such assumptions as the CEO or the Minister (as the case may be) considers reasonable.
- (2) For the purposes of paragraph (1)(b), the entities are as follows:
- (a) any person who is or is likely to be directly concerned with the importation or exportation into Australia of goods to which the investigation, review or inquiry relates or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods;
  - (b) the government of the country of export or country of origin:
    - (i) of goods to which the investigation, review or inquiry relates that have been, or are likely to be, exported to Australia; or

- (ii) of like goods that have been, or are likely to be, exported to Australia.

#### **5 Subparagraph 269TAC(2)(c)(ii)**

Omit “, subject to subsection (13),”.

#### **6 Subsection 269TAC(13)**

Repeal the subsection.

#### **7 Paragraphs 269ZHF(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice:
- (i) that the notice remain unaltered; or
  - (ii) that the notice cease to apply to a particular exporter or to a particular kind of goods; or
  - (iii) that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or
  - (iv) that the notice expire on the specified expiry day; and
- (b) to the extent that the measures involved the acceptance by the Minister of an undertaking:
- (i) that the undertaking remain unaltered; or
  - (ii) that the Minister seek a variation of the terms of the undertaking as indicated in the CEO's report; or
  - (iii) that the undertaking expire on the specified expiry day.

#### **8 Subsection 269ZHG(1)**

Repeal the subsection, substitute:

- (1) After considering the report of the CEO and any other information that the Minister considers relevant, the Minister must by notice published in accordance with subsection (2):
- (a) declare that the Minister has decided not to secure the continuation of the anti-dumping measures concerned; or
  - (b) declare that the Minister has decided to secure the continuation of the anti-dumping measures concerned.

Note: Subsection (3) deals with the end of the anti-dumping measures and subsection (4) deals with the continuation of the anti-dumping measures.

#### **9 Paragraphs 269ZHG(4)(a), (b) and (c)**

Repeal the paragraphs, substitute:

- (a) to the extent that the measures comprise the publication of a dumping duty notice or a countervailing duty notice:
- (i) by the Minister determining, in writing, that the notice continues in force after the specified expiry day; or
  - (ii) by the Minister determining, in writing, that the notice continues in force after the specified expiry day but that, after that day, the notice ceases to apply in relation to a particular exporter or to a particular kind of goods; or
  - (iii) by the Minister determining, in writing, that the notice continues in force after the specified expiry day but that, after that day, the notice has effect, in relation to a particular exporter or to exporters generally, as if the Minister had fixed different specified variable factors in relation to that exporter or to exporters generally, relevant to the determination of duty; and
- (b) to the extent that the measures involve the acceptance of an undertaking:
- (i) by the person who gave the undertaking agreeing to extend it beyond the specified expiry day (without any variation) or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect on the day after the specified expiry day in substitution for the undertaking; or

(ii) by the person who gave the undertaking agreeing to extend it beyond the specified expiry day with the variations sought by the Minister or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect on the day after the specified expiry day in substitution for the undertaking.

#### **10 Application provisions**

- (1) The amendment made by item 4 applies in relation to investigations that are initiated, or to reviews or inquiries that begin, on or after the commencement of that item.
  - (2) The amendments made by items 5 and 6 apply in relation to working out the normal value of goods on or after the commencement of those items.
  - (3) The amendments made by items 7 to 9 apply in relation to notices published under subsection 269ZHB(1) of the *Customs Act 1901* on or after the commencement of those items.
-