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Page: 1/14

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

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

AUSTRALIA

Supplement

The following communication, dated 20 August 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 Tariff (Anti-Dumping) Amendment Act 2013* and the *Customs Amendment (Anti-Dumping Measures) Act 2013*. This legislation received Royal Assent on 28 June 2013.

The legislation implements three further reforms to Australia's anti-dumping system. It removes the mandatory consideration of the lesser duty rule in certain circumstances where the Minister is not required to (but may) consider the desirability of fixing a lesser amount of duty.

The second reform makes a number of amendments to the retrospective duties provisions to align the provisions with the relevant WTO Agreements, restructures the legislation so that it is clearer and introduces consultation provisions to facilitate transparency and due process.

The third reform introduces a new type of circumvention activity to address sales at a loss and other practices that undermine the effect of anti-dumping and countervailing duties already imposed. It also introduces a termination provision that applies to all types of anti-circumvention inquiries.

Customs Tariff (Anti-Dumping) Amendment Act 2013**No. 94, 2013****An Act to amend the *Customs Tariff (Anti-Dumping) Act 1975*, and for related purposes***[Assented to 28 June 2013]*

The Parliament of Australia enacts:

1 Short TitleThis Act may be cited as the *Customs Tariff (Anti-Dumping) Amendment Act 2013*.**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.	28 June 2013
2. Schedule 1	At the same time as the <i>Customs Amendment (Anti-dumping Measures) Act 2013</i> commences.	1 January 2014

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 Tariff (Anti-Dumping) Act 1975***1 After subsection 8(5B)**

Insert:

- (5BAA) However, subsection (5B) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods the subject of the notice under subsection 269TG(1) or (2) of the Customs Act:
- (a) the normal value of the goods was not ascertained under subsection 269TAC(1) of that Act because of the operation of subparagraph 269TAC(2)(a)(ii) of that Act;
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

2 After subsection 8(5BA)

Insert:

- (5BAAA) However, subsection (5BA) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that one or more of the following apply in relation to the goods the subject of the notice under subsection 269TG(1) or (2) of the Customs Act:
- (a) the normal value of the goods was not ascertained under subsection 269TAC(1) of that Act because of the operation of subparagraph 269TAC(2)(a)(ii) of that Act;
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises;
 - (c) if a countervailable subsidy has been received in respect of the goods—the country in relation to which the subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period.

3 After subsection 9(5AA)

Insert:

- (5AAA) However, subsection (5AA) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods the subject of the notice under subsection 269TH(1) or (2) of the Customs Act:
- (a) the normal value of the goods was not ascertained under subsection 269TAC(1) of that Act because of the operation of subparagraph 269TAC(2)(a)(ii) of that Act;
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

4 After subsection 10(3C)

Insert:

- (3CA) However, subsection (3C) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods the subject of the notice under subsection 269TJ(1) or (2) of the Customs Act:
- (a) the country in relation to which the countervailable subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period;
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

5 After subsection 10(3D)

Insert:

- (3DA) However, subsection (3D) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that one or more of the following apply in relation to the goods the subject of the notice under subsection 269TJ(1) or (2) of the Customs Act:
- (a) the country in relation to which the countervailable subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period;
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises;
 - (c) if the normal value of the goods was ascertained under Part XVB of that Act—the normal value of the goods was not ascertained under subsection 269TAC(1) of that Act because of the operation of subparagraph 269TAC(2)(a)(ii) of that Act.

6 After subsection 11(5)

Insert:

- (5A) However, subsection (5) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods the subject of the notice under subsection 269TK(1) or (2) of the Customs Act:
- (a) the country in relation to which the countervailable subsidy has been provided has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period;
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

7 Application provisions

- (1) The amendments made by this Schedule apply in relation to a notice given under subsection 269TG(1) or (2), 269TH(1) or (2), 269TJ(1) or (2) or 269TK(1) or (2) of the *Customs Act 1901* on or after the commencement of this Schedule, where:

- (a) the application for the notice is made on or after that commencement; or
 - (b) the investigation under subsection 269TAG(1) of that Act begins on or after that commencement.
- (2) The amendments made by this Schedule apply in relation to a notice given under subsection 269TG(1) or (2), 269TH(1) or (2), 269TJ(1) or (2) or 269TK(1) or (2) of the *Customs Act 1901* before the commencement of this Schedule, where, on or after that commencement, the Minister publishes a notice under subsection 269ZHG(1) of that Act declaring the continuation of the anti-dumping measures concerned.

Customs Amendment (Anti-dumping Measures) Act 2013

No. 95, 2013

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

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment (Anti-dumping Measures) Act 2013*.

2 Commencement

This Act commences on 1 January 2014.

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 Paragraph 45(3)(a)

Repeal the paragraph, substitute:

- (a) in relation to a security in respect of any interim duty that may be payable on goods under section 8 or 9 of the *Customs Tariff (Anti-Dumping) Act 1975*—a period described in subsection (3A) of this section; or

2 After subsection 45(3)

Insert:

- (3A) For the purposes of paragraph (3)(a), the period is:
 - (a) unless paragraph (b) of this subsection applies:
 - (i) a period of 4 months; or
 - (ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period—a period (not exceeding 6 months) that the Commissioner determines to be appropriate; or
 - (b) if the security was taken in connection with an investigation under Part XVB and the non-injurious price of goods the subject of the investigation as ascertained, or last ascertained, for the purposes of the investigation is less than the normal value of such goods as so ascertained, or last so ascertained:
 - (i) a period of 6 months; or
 - (ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period—a period (not exceeding 9 months) that the Commissioner determines to be appropriate.

3 Subsection 269T(1)

Insert:

compliance period means a period prescribed in, or worked out in accordance with, an instrument under subsection (1A).

small-medium enterprise means an enterprise of a kind prescribed in an instrument under subsection (1B).

4 After subsection 269T(1)

Insert:

- (1A) The Minister may make a legislative instrument for the purposes of the definition of ***compliance period*** in subsection (1).
- (1B) The Minister may, by legislative instrument, prescribe kinds of enterprises for the purposes of the definition of ***small-medium enterprise*** in subsection (1).

5 After subparagraph 269T(4E)(b)(i)

Insert:

- (ia) to the export price of the goods; and

6 Paragraph 269TAA(1)(b)

Omit "price is", substitute "price appears to be".

7 After subsection 269TG(5)

Insert:

- (5A) However, subsection (5) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:
- (a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subparagraph 269TAC(2)(a)(ii);
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

8 After subsection 269TJ(3B)

Insert:

- (3BA) However, subsection (3B) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:
- (a) the country of export has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period;
 - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

9 Paragraph 269TLA(4)(b)

After "subsection 269TN(4A)", insert "or (6)".

10 Before subsection 269TN(3)

Insert:

Dumping duties

11 Paragraph 269TN(3)(b)

Before "material", insert "the Minister considers that".

12 Paragraph 269TN(3)(b)

Omit "recurrence of the injury", substitute "serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice".

13 Paragraph 269TN(4)(a)

After "importer who", insert "the Minister considers".

14 After subsection 269TN(4A)

Insert:

(4B) If:

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking under subsection 269TG(4) 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 in respect of any interim duty that might be payable under section 8 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) of this section does not prevent the publication of a notice under subsection 269TG(1) in respect of goods that:

- (c) have been exported by the exporter; and
- (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.

(4C) Despite subsections (3) to (4B), the Minister must not publish a notice under subsection 269TG(1) in respect of goods that have been entered for home consumption before the date of initiation of the investigation concerned.

15 Before subsection 269TN(5)

Insert:

Countervailing duties

16 Paragraph 269TN(5)(b)

Omit "material injury", substitute "the Minister considers that material injury, which is difficult to repair,".

17 At the end of paragraph 269TN(5)(b)

Add ", and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury".

18 Subsection 269TN(6)

Repeal the subsection, substitute:

- (6) Before the Minister decides to publish a countervailing duty notice under subsection 269TJ(1) in circumstances referred to in subsection (5) of this section, in respect of goods that have already been entered for home consumption, the Minister must:

- (a) inform the importer of the goods of the decision he or she proposes to make; and
- (b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and
- (c) give consideration to the comments provided by the importer.

19 After subsection 269ZDBB(5)

Insert:

Avoidance of intended effect of duty(5A) ***Circumvention activity***, in relation to the notice, occurs if the following apply:

- (a) goods (the ***circumvention goods***) are exported to Australia from a foreign country in respect of which the notice applies;
- (b) the exporter is an exporter in respect of which the notice applies;
- (c) either or both of sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
- (d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;
- (e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.

20 After subsection 269ZDBC(1)

Insert:

(1A) If:

- (a) a person lodges an application under subsection (1) with the Commissioner; and
- (b) the person describes, in the application, circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A); and
- (c) the Commissioner publishes a notice (the ***inquiry notice***) under subsection 269ZDBE(4) because of the application;

the person must not lodge another application under subsection (1) of this section describing circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), within 12 months after the day the inquiry notice was published.

21 After subsection 269ZDBD(2)

Insert:

- (2A) An application that describes circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), must not describe any other kind of circumvention activity in relation to that notice.

22 Paragraph 269ZDBE(6)(d)

Repeal the paragraph, substitute:

- (d) indicate that a report will be made to the Minister:
 - (i) unless subparagraph (ii) applies—within 155 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; or
 - (ii) if the inquiry relates to whether circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred—within 100 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; and

23 Paragraph 269ZDBE(6)(f)

Before "state", insert "if subparagraph (d)(i) applies—".

24 Paragraph 269ZDBE(6)(g)

Before "invite", insert "if subparagraph (d)(i) applies—".

25 After section 269ZDBE

Insert:

269ZDBEA Termination of anti-circumvention inquiry*General inquiry*

- (1) If:
 - (a) the Commissioner publishes a notice under subsection 269ZDBE(4); and
 - (b) subparagraph 269ZDBE(6)(d)(i) applies; and
 - (c) before the Commissioner would otherwise be required to place on the public record a statement referred to in subsection 269ZDBF(1), the Commissioner becomes satisfied that no circumvention activity in relation to the original notice has occurred;

the Commissioner may terminate the anti-circumvention inquiry concerned.

Note: For **original notice**, see section 269ZDBC.

Accelerated inquiry

- (2) If:
 - (a) the Commissioner publishes a notice under subsection 269ZDBE(4); and
 - (b) subparagraph 269ZDBE(6)(d)(ii) applies; and
 - (c) the Commissioner is satisfied that no circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred;

the Commissioner may terminate the anti-circumvention inquiry concerned.

Note: For **original notice**, see section 269ZDBC.

Notice of termination decision

- (3) The Commissioner must:
- (a) give public notice of a decision under subsection (1) or (2); and
 - (b) notify the applicant for the conduct of the anti-circumvention inquiry of the decision; and
 - (c) inform the applicant of the applicant's right, within 30 days after the applicant is so notified, to apply for a review of the decision by the Review Panel under Division 9.

26 Subsection 269ZDBF(1)

After "an original notice", insert "and subparagraph 269ZDBE(6)(d)(i) applies".

27 Subsection 269ZDBG(1)

Repeal the subsection, substitute:

Commissioner recommendations

- (1) The Commissioner must, after conducting an anti-circumvention inquiry in relation to an original notice and within:
- (a) if subparagraph 269ZDBE(6)(d)(i) applies—155 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI; or
 - (b) if subparagraph 269ZDBE(6)(d)(ii) applies—100 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI;
- give the Minister a report recommending:
- (c) the original notice remain unaltered; or
 - (d) the following:
 - (i) the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred;
 - (ii) the alterations to be made to the original notice.

Note: For *original notice*, see section 269ZDBC.

28 Paragraph 269ZDBG(2)(a)

Before "must have", insert "if paragraph (1)(a) applies—".

29 After paragraph 269ZDBG(2)(a)

Insert:

- (aa) if paragraph (1)(b) applies—must have regard to:
- (i) the application or request for the inquiry; and
 - (ii) any submission concerning the inquiry that is received by Customs within 40 days after the publication of the notice under subsection 269ZDBE(4) or (5); and

30 Paragraph 269ZDBG(2)(b)

Before "may", insert "in any case—".

31 After subsection 269ZDBG(3)

Insert:

- (3A) The Commissioner is not obliged to have regard to a submission concerning the inquiry that is received by Customs after the end of the period referred to in subparagraph (2)(aa)(ii) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

32 Paragraph 269ZHI(1)(eb)

Omit "subsection 269ZDBG(1)", substitute "paragraph 269ZDBG(1)(a)".

33 After paragraph 269ZHI(1)(eb)

Insert:

- (ec) an extension of the 100-day period referred to in paragraph 269ZDBG(1)(b);

34 Subsection 269ZZK(6) (paragraph (ca) of the definition of *relevant information*)

After "paragraph 269ZDBG(2)(a)", insert "or (aa)".

35 At the end of section 269ZZN

Add:

- ; (e) a decision by the Commissioner to terminate an anti-circumvention inquiry under subsection 269ZDBEA(1) or (2) (also a ***termination decision***).

36 Section 269ZZO (at the end of the table)

Add:

6	A termination decision under subsection 269ZDBEA(1) or (2)	The applicant under subsection 269ZDBC(1) for the conduct of the anti-circumvention inquiry
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37 Subsections 269ZZT(2) and (3)

Repeal the subsections, substitute:

- (2) If the Review Panel revokes a reviewable decision (other than a decision under subsection 269ZDBEA(2)):
- (a) unless paragraph (b) applies:
- (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential facts under section 269TDAA in relation to the application for a dumping duty notice or countervailing duty notice that is related to the review; and
- (ii) after that publication, the investigation of the application resumes under this Part; or
- (b) if the reviewable decision was a decision under subsection 269ZDBEA(1):

- (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential facts under section 269ZDBF in relation to the anti-circumvention inquiry concerned; and
 - (ii) after that publication, the conduct of the anti-circumvention inquiry concerned resumes under this Part.
- (3) If the Review Panel revokes a reviewable decision under subsection 269ZDBEA(2), the conduct of the anti-circumvention inquiry concerned resumes under this Part.

38 Application provisions

- (1) The amendments made by items 1 and 2 apply in relation to a security taken on or after the commencement of those items.
 - (2) The amendments made by items 7 and 8 apply in relation to a notice given under subsection 269TG(3D) or 269TJ(2A) of the *Customs Act 1901* on or after the commencement of those items, where:
 - (a) the application for the publication of a dumping duty notice or a countervailing duty notice was made on or after that commencement; or
 - (b) the investigation under subsection 269TAG(1) of that Act began on or after that commencement.
 - (3) The amendments made by items 9 to 18 apply in relation to a notice of a kind referred to in subsection 269TN(1) of the *Customs Act 1901* that is published on or after the commencement of those items.
 - (4) Division 5A of Part XVB of the *Customs Act 1901*, so far as it relates to the amendment made by item 19, applies in relation to:
 - (a) conduct constituting circumvention activity occurring wholly after the commencement of that item; and
 - (b) conduct constituting circumvention activity occurring wholly before the commencement of that item; and
 - (c) conduct constituting circumvention activity occurring partly before and partly after the commencement of that item.
 - (5) The amendments made by items 20 and 21 apply in relation to an application under subsection 269ZDBC(1) of the *Customs Act 1901* that is made on or after the commencement of those items.
 - (6) The amendments made by items 22 to 24 and 26 to 33 apply in relation to a notice published under subsection 269ZDBE(4) or (5) of the *Customs Act 1901* on or after the commencement of those items.
 - (7) The amendment made by item 25 applies in relation to a notice published under subsection 269ZDBE(4) of the *Customs Act 1901* on or after the commencement of that item (whether the application under subsection 269ZDBC(1) of that Act was made before, on or after that commencement).
 - (8) The amendment made by item 37 applies in relation to a revocation made on or after the commencement of that item.
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