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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 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 Tariff (Anti-Dumping) Amendment Act (No. 1) 2012*.

This legislation received Royal Assent on 12 December 2012 and will commence no later than 13 June 2013. It allows the use of additional forms of interim dumping duty beyond the single form that is currently used. The amendments provide that these new forms of duty will be contained in new Regulations which are being developed and that the forms of duty will include an *ad valorem* (percentage) duty, a fixed amount of duty, a combination duty, or a floor price. It also sets out the principles to be followed in specifying the method for calculating the level of duty.

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Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 2012

No. 195, 2012

An Act to amend the *Customs Tariff (Anti-Dumping) Act 1975*, and for related purposes

[Assented to 12 December 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Tariff (Anti-Dumping) Amendment Act (No. 1) 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.	12 December 2012
2. Schedule 1	At the same time as Schedule 1 to the <i>Customs Amendment (Anti-dumping Improvements) Act (No. 2) 2012</i> commences.	

Note: This table relates only to the provisions of this Act as originally enacted.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 Subsections 8(4) to (5B)

Repeal the subsections, substitute:

Calculation of interim dumping duty

(5) The Minister must, by signed notice, determine that the interim dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount worked out in accordance with a method specified in that signed notice. That method must be one of the methods referred to in subsection (5BB).

Notice has effect accordingly

(5A) A notice under subsection (5) has effect accordingly.

Principles to be followed in specifying method of calculation

(5B) If:

- (a) the Minister is required to perform the function under subsection (5) in respect of goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act; and
- (b) the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained;

the Minister must, in performing that function, have regard to the desirability of specifying a method such that the sum of the following does not exceed that non-injurious price:

- (c) the export price of goods of that kind as so ascertained or last so ascertained;
- (d) the interim dumping duty payable on the goods the subject of the notice.

(5BA) If:

- (a) the Minister is required to perform the function under subsection (5) in respect of goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act; and
- (b) in respect of the same goods and at the same time as that notice was published, a notice under section 269TJ of that Act was also published;

the Minister must, in performing that function, have regard to the desirability of specifying a method such that the sum of the following does not exceed the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of those notices:

- (c) the export price of goods of that kind as so ascertained or last so ascertained;
- (d) the interim dumping duty payable on the goods the subject of the notice under subsection 269TG(1) or (2) of the Customs Act;
- (e) the interim countervailing duty payable under section 10 on the goods the subject of the notice under section 269TJ of that Act.

Methods available for calculating interim dumping duty

(5BB) The regulations must prescribe the methods for working out the amount of interim dumping duty payable on goods the subject of notices under subsection 269TG(1) or (2) of the Customs Act.

(5BC) Those methods must refer to one or more of the following matters:

- (a) the export price of the goods the subject of the notice under subsection 269TG(1) or (2) of the Customs Act;
- (b) the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice;
- (c) the normal value of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice;

(d) the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(5BD) Those methods may refer to a matter mentioned in paragraph (5BC)(a) as ascertained by the Minister.

(5BE) Subsection (5BC) does not limit the matters that may be referred to in those methods.

2 Before subsection 8(5C)

Insert:

Publication of interim dumping duty notice

3 Before subsection 8(5D)

Insert:

Application of interim dumping duty notice

4 Before subsection 8(6)

Insert:

Calculation of final dumping duty

5 Paragraph 8(6)(b)

Repeal the paragraph, substitute:

(b) if the interim dumping duty payable on those particular goods is ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the difference between:

- (i) the amount that the Minister ascertains to be the export price of those particular goods; and
- (ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.

6 Before subsection 8(7)

Insert:

Exemptions

7 Before subsection 8(9)

Insert:

Interpretation

8 Subsections 9(4) to (5A)

Repeal the subsections, substitute:

Calculation of interim third country dumping duty

(5) The Minister must, by signed notice, determine that the interim third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act is an amount worked out in accordance with a method specified in that signed notice. That method must be one of the methods referred to in subsection (5AB).

Notice has effect accordingly

(5A) A notice under subsection (5) has effect accordingly.

Principle to be followed in specifying method of calculation

(5AA) If:

- (a) the Minister is required to perform the function under subsection (5) in respect of goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act; and
- (b) the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained;

the Minister must, in performing that function, have regard to the desirability of specifying a method such that the sum of the following does not exceed that non-injurious price:

- (c) the export price of goods of that kind as so ascertained or last so ascertained;
- (d) the interim third country dumping duty payable on the goods the subject of the notice.

Methods available for calculating interim third country dumping duty

(5AB) The regulations must prescribe the methods for working out the amount of interim third country dumping duty payable on goods the subject of notices under subsection 269TH(1) or (2) of the Customs Act.

(5AC) Those methods must refer to one or more of the following matters:

- (a) the export price of the goods the subject of the notice under subsection 269TH(1) or (2) of the Customs Act;
- (b) the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice;
- (c) the normal value of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice;
- (d) the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(5AD) Those methods may refer to a matter mentioned in paragraph (5AC)(a) as ascertained by the Minister.

(5AE) Subsection (5AC) does not limit the matters that may be referred to in those methods.

9 Before subsection 9(5B)

Insert:

Publication of interim third country dumping duty notice

10 Before subsection 9(5C)

Insert:

Application of interim third country dumping duty notice

11 Before subsection 9(6)

Insert:

Calculation of final third country dumping duty

12 Paragraph 9(6)(b)

Repeal the paragraph, substitute:

- (b) if the interim third country dumping duty payable on those particular goods is ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the difference between:
 - (i) the amount that the Minister ascertains to be the export price of those particular goods; and

- (ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.

13 Before subsection 9(7)

Insert:

Exemptions

14 Paragraph 10(1)(a)

Omit "subsection 269TJ(1), (2), (4), (5) or (6)", substitute "subsection 269TJ(1) or (2)".

15 Paragraph 10(1)(b)

Omit "if the goods are goods to which this section applies by virtue of a notice under subsection 269TJ(1) or (2)—".

16 Paragraph 10(3C)(b)

Repeal the paragraph, substitute:

- (b) the export price of goods of that kind as so ascertained, or last so ascertained;

17 Subsection 10(3C)

Omit "such that the sum of the export price of those particular goods", substitute "such that the sum of that export price".

18 Paragraph 10(3D)(a)

Repeal the paragraph, substitute:

- (a) the export price of goods of that kind, as ascertained, or last ascertained, by the Minister for the purpose of those notices; and

19 Paragraph 11(5)(b)

Repeal the paragraph, substitute:

- (b) the export price of goods of that kind as so ascertained, or last so ascertained;

20 Subsection 11(5)

Omit "such that the sum of the export price of those particular goods", substitute "such that the sum of that export price".

21 At the end of the Act

Add:

22 Regulations

The Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed.

22 Saving and transitional provisions

(1) The amendments made by this Schedule do not affect the validity of a notice (an **old notice**) given under subsection 8(5) or 9(5) of the *Customs Tariff (Anti-Dumping) Act 1975* before the commencement of this item.

(2) However, subitem (1) does not prevent:

- (a) an old notice being revoked on or after the commencement of this item in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*; and
- (b) either:
- (i) a notice being given under subsection 8(5) of the *Customs Tariff (Anti-Dumping) Act 1975*, as amended by this Act, on or after that commencement in

respect of a notice given under subsection 269TG(1) or (2) of the *Customs Act 1901* before that commencement; or

(ii) a notice being given under subsection 9(5) of the *Customs Tariff (Anti-Dumping) Act 1975*, as amended by this Act, on or after that commencement in respect of a notice given under subsection 269TH(1) or (2) of the *Customs Act 1901* before that commencement.
