

CONSTRUCTION FORESTRY MARITIME MINING AND ENERGY UNION

The Customs Amendment (Product Specific Rules Modernisation) Bill 2019 like the *Customs Amendment (Product Specific Rule Modernisation) Act 2018* amends the Customs Act to streamline the way product-specific rules of origin (PSRs) are given effect in domestic legislation.

As per the Department's submission this bill essentially restructures the process of incorporating updated HS Codes by referencing agreed FTA PSR annexes removing the need to replicate them in RoO Regulations.

Whereas the 2018 Act rationalised the way PSRs are given effect for the ASEAN-Australia-New Zealand FTA, and Australia's FTAs with China, Japan, and Singapore this bill will do similarly for Australia's FTAs with Chile, Malaysia, New Zealand, Republic of Korea, Thailand and the United States.

To the extent that the Bill can be seen to be modernising the Customs Act, it also highlights the fact that other reforms are needed to modernise the Act to ensure that it is fit for purpose. Trade remedies is one such area where modernisation is desperately required, especially in the context of a persistent international trade war, ongoing overcapacity and overproduction of certain products and a domestic and global downturn in demand.

The Customs Act was amended in eight separate tranches of legislation between 2011-2017 to improve Australia's anti-dumping and countervailing system and anti-circumvention framework. This is appropriate as refinement to keep up with exporter behaviour is often necessary.

One striking area of remaining discontent, the redress of which does not appear to be part of the Government's future reform plans, is the anomaly of the Productivity Commission being the authority in Australia responsible for the administration of safeguard investigations as opposed to the body responsible for the administration of other trade remedies, the Anti-Dumping Commission.

The Economics References Committee's inquiry into the Future of Australia's Steel Industry looked at the issue in some detail and found that responsibility for safeguards inquiries should be transferred from the Productivity Commission to the Anti-Dumping Commission, in line with international best practice.

“6.100 The committee heard evidence from multiple stakeholders indicating that the current division of Australia's trade remedies system between the Anti-Dumping Commission, which deals with dumping and countervailing, and the Productivity Commission, which deals with safeguards investigations, is ineffective and onerous. So long as the safeguards function rests with the Productivity Commission, it remains inaccessible to industry and removed from Australia's broader trade remedies framework. To facilitate industry's access to future trade remedy actions and reduce administrative constraints, these functions should be incorporated into one agency.

6.101 The committee notes that during Senate Estimates hearings, the Anti-Dumping Commissioner acknowledged that safeguards investigations in other international jurisdictions (such as the European Union, the United States, Canada and South Africa) are often conducted by the same body undertaking the anti-dumping and countervailing investigations.

6.102 The Department of Foreign Affairs and Trade has also confirmed that similar arrangements exist in Korea and China.

6.103 It is the committee's view that Australia should align its anti-dumping processes with international best practice/norms to ensure that Australian industry is afforded the same protection as foreign industries and can access safeguards measures when appropriate. The recent United States investigation into whether steel imports pose a threat to national security could lead to American import tariffs on steel, resulting in excess Chinese steel being dumped in Australia. This possibility points to the need to ensure that all trade remedies are made available to protect Australian industry.”¹

Since this recommendation was made in December 2017 international developments have only reinforced the case for change. These developments have included the above-mentioned investigation resulting in Steel and Aluminium tariffs and/or quotas by the United States and the EU taking safeguard action against steel imports.

The Government’s February 2019 response to the Committee outlining that it does not support the recommendation does not rebut in any detail the positions put by the Committee, simply stating:

“Global safeguard measures are emergency measures to address surges of imports which cause serious material injury and are due to unforeseen developments. World Trade Organization (WTO) rules set down very strict conditions for the application of safeguard measures. The Productivity Commission remains Australia's competent authority to investigate whether safeguard measures are justified under WTO rules.”²

Notwithstanding this glib defence there is no policy rationale, technical impediment or cogent justification provided for not doing as the Committee recommended, namely that responsibility for safeguards inquiries should be transferred from the Productivity Commission to the Anti-Dumping Commission, in line with international best practice.

We contend the reason for this is the recommendation is a good suggestion as it provides for industry accessibility to the system and places this responsibility firmly within Australia's broader trade remedies framework.

Our submission is that Customs Act amendments, including this bill which would have the effect of more efficiently facilitating trade liberalisation provided by Free Trade Agreements should not proceed while Australia’s trade remedies system remains ill equipped and under resourced. Having the Productivity Commission remaining the responsible authority for the Safeguards investigation is very much part of the problem.

A policy response from the Government which includes notification to the World Trade Organisation and a commitment to amend legislation, regulation and resourcing arrangements enabling the transfer of safeguard investigations from the Productivity Commission to the Anti-

¹ The Senate Economics References Committee, Australia’s steel industry: forging ahead December 2017, Commonwealth of Australia 2017

² Australian Government response to the Senate Economics References Committee Report: Australia’s steel industry: forging ahead February 2019

Dumping Commission is well overdue and should coincide with the Parliament's consideration of the bill.

Ends