

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Anti-Dumping Commission
Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015
4 May 2015

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY (ANTI-DUMPING COMMISSION)

Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015

REFERENCE: Questions on Notice – Senator Xenophon, Senator Carr

QUESTIONS

- 1. How many cases has the Anti-Dumping Commission case manager managed before the Tindo Solar matter? (Xenophon)**
- 2. Please provide a response to the interpretation of normal value that was provided at pages 23 to 25 of the Australian Manufacturing Workers Union (AMWU), the Australian Workers Union (AWU) and the Construction, Forestry Mining and Energy Union (CFMEU) submission (Xenophon).**
- 3. Under the amendments, will there be less regular notification as required under Article 25 of the Agreement on Subsidies and Countervailing measures? (Xenophon)**
- 4. According to the AMWU, AMU and CFMEU submission at page 41, at the last meeting of the International Trade Remedies Forum (ITRF), it was agreed action that Customs and Border Protection and the Australian Bureau of Statistics report to the forum on restrictions to accessing import data and the approach taken by other border agencies. Has anything actually happened about that particular matter since the forum last met? (Carr) If there is a draft report or report provided, could we [the Committee] have a copy of the report?**
- 5. Please look at the various submissions and advise the Committee if there is anything in those submissions that you think requires further action.**

ANSWERS

1. Investigations conducted by the Anti-Dumping Commission (Commission) are conducted by case managers who report to case directors. Quality assurance processes within the Commission include a number of peer and direct report reviews as the investigation progresses. If particular expertise is required, for example in relation to economic analysis, or legal or policy advice, the relevant teams are engaged and assist the case team. In addition, during an investigation, interested parties are invited to provide submissions in relation to the investigation. These processes ensure investigations conducted by the case teams are subject to robust and detailed internal and external review before the Commissioner of the Anti-Dumping Commission's recommendation is provided to the Parliamentary Secretary to the Minister for Industry and Science.
2. In Australia's anti-dumping system, the normal value of goods is determined under section 269TAC of the *Customs Act 1901* (the Act). Subsection 269TAC(1) provides that the normal value of goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that

are arms length transactions by the exporter, or if like goods are not so sold by the exporter, by other sellers of like goods.

The Commission's policy preference is to base the normal value on the actual price paid, or payable, for like goods in the country of export by the exporter. However, where the exporter's domestic sales of like goods are confirmed to be not at arms length, or not in the ordinary course of trade, or where the exporter is known to have not made any domestic sales, already available domestic sales information from other domestic sellers in the country of export will be considered before turning to the other methods for establishing normal value.

Subsection 269TAC(2)(a) provides conditions where sales of like goods sold for home consumption in the country of export are relevant and suitable for the purpose of determining a price under subsection 269TAC(1) of the Act. Specifically, normal value cannot be ascertained under subsection 269TAC(1) where:

- there is an absence of relevant sales,
- there is a low volume of relevant sales,
- sales are unsuitable because of a situation in the market of the country of export.

Subsection 269TAC(2)(b) removes the obligation to use other sellers' information where it not practicable to obtain that information in a reasonable time.

Finally, subsection 269TAC(2)(c) and (d) of the Act provides if the conditions for normal value cannot be met under subsection 269TAC(1) then the Minister for Industry and Science (the Minister) or Parliamentary Secretary may determine normal value under these provisions.

Subsection 269TAC(2)(c) provides that where normal value of goods exported to Australia cannot be ascertained under subsection 269TAC(1), the normal value of the goods may be constructed. The key elements in constructing a normal value are:

- the cost of production or manufacture of the exported good,
- the selling, general and administrative costs that would be incurred on the assumption that the exported good is sold in the domestic market, and
- an amount of profit.

The cost to make and sell is worked out in accordance with the relevant Customs Regulations. Sections 269TAC(5A) and (5B) of the Act also refer.

The purpose of the constructed normal value is to obtain a result using costs and profit that approximate as closely as possible the price of the like good sold in the ordinary course of trade in the exporter's domestic market. The cost to make and the selling, general and administrative expenses will normally be based on the information in the exporter's records where they are kept in accordance with the generally accepted accounting principles in the country of export; reasonably reflect the competitive market costs of production; and reasonable reflect the selling, general and administrative expenses associated with the like goods.

The Commission will consider all of the available evidence on the proper allocation of costs including methods that have been historically used by the exporter. Where other information is available about allocation methods for any cost item, the Commission may take account of that information, or compare the methods, as part of being satisfied that the costs reasonably reflect the cost of the goods.

Subsection 269TAC(2)(d) of the Act provides that the Minister may direct that normal value is the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportations to an appropriate third country.

Further information on the determination of normal value can be found in the Anti-Dumping Commission's Dumping and Subsidy Manual at:

<http://www.adcommission.gov.au/accessadsystem/Pages/Dumping-and-Subsidy-Manual.aspx>

3. Part 11 of the Customs Amendment (Anti-Dumping Measures) Bill (No. 1) 2015 amends the Act so that the Minister (or the Parliamentary Secretary) is not required to have regard to the lesser duty rule when considering the imposition of countervailing duties if the relevant country of export has not submitted its notification of its subsidies at least once in the notification period. The compliance period is defined by legislative instrument made for the purposes of subsection 269T(1A) of the Act. Currently, it is defined to be the two most recent biennial periods, ending prior to the date of initiation of a countervailing investigation. Therefore, if a country has submitted one notification in the two most recent biennial periods for which subsidy notifications were due and prior to the initiation of the investigation then the Minister or Parliamentary Secretary must have regard to applying a lesser amount of duty. If no notification was made during that period, then it is at the Minister's or Parliamentary Secretary's discretion as to whether to consider a lesser amount of duty.
4. Since the last meeting of the International Trade Remedies Forum, this information or report has not been disclosed to members and is not publicly available.
5. The Commissioner of the Anti-Dumping Commission is pleased that the Government is delivering on its commitments to strengthen Australia's anti-dumping system, through the legislative package currently being considered by the Senate Economics Legislation Committee. As noted in the evidence before the Committee, the Commission will implement the reforms once passed by the Parliament. The lessons from this will inform the Commission and the Department of Industry and Science about what further reforms may be required in relation to Australia's anti-dumping system.