

## **Customs Amendment (Anti-dumping Commission) Bill 2013**

*Introduced into the House of Representatives on 6 February 2013; passed both Houses on 14 March 2013*

*Portfolio: Home Affairs*

*PJCHR comments: [Report 3/13](#), tabled on 13 March 2013*

*Response received: 23 April 2013*

### **Summary of committee view**

3.1 The committee thanks the Attorney-General for his detailed response and notes that this bill has already been passed by the Parliament.

3.2 In light of this response the committee makes no further comment on this bill, but notes that it would have been useful for this information to have been included in the statement of compatibility.

### **Background**

3.3 This bill amended the *Customs Act 1901* to establish a new Anti-Dumping Commission and Commissioner within the Australian Customs and Border Protection Services. The bill gave the Commissioner of the Anti-Dumping Commission all of the powers currently available under the *Customs Act 1901*, particularly Part XVB which deals with the taking of anti-dumping measures. It set out procedures for the appointment of the Commissioner, the Commissioner's terms and conditions and methods for termination of the appointment of the Commissioner.

3.4 The committee sought clarification as to whether the relevant existing powers in Part XVB of the *Customs Act 1901*, conferred on the new Commissioner of the Anti-Dumping Commission, were compatible with human rights.

3.5 It also sought clarification as to whether provisions giving the Minister the power to terminate the appointment of a part-time Commissioner were compatible with the right to work and the right to a fair hearing.

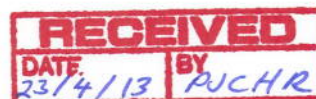
3.6 The Minister's response is attached.

### **Committee's response**

3.7 The committee thanks the Attorney-General for providing an overview of the existing powers of the CEO under Part XVB of the *Customs Act 1901* and the processes undertaken for an investigation. Based on this information the committee makes no further comment in relation to the powers conferred on the new Commissioner of the Anti-Dumping Commission. The committee notes that it would

have been useful for this information to have been included in the statement of compatibility.

3.8 The committee thanks the Attorney-General for informing the committee that, to address its concerns, if a Commissioner is appointed on a part-time basis it will be a term and condition of appointment that the Commissioner seek the Minister's approval of outside employment. This addresses the committee's concerns.



**Attorney-General  
Minister For Emergency Management  
Acting Minister for Home Affairs  
Acting Minister for Justice**

File number: 2013/003261-02  
Ministerial number: 107228

Mr Harry Jenkins MP  
Chair  
Parliamentary Joint Committee on Human Rights  
S1.111  
Parliament House  
CANBERRA ACT 2600

Dear Mr Jenkins 

Thank you for your letter of 13 March 2013 on behalf of the Parliamentary Joint Committee on Human Rights (the Committee) in relation to the Customs Amendment (Anti-dumping Commission) Bill 2013 which was introduced into the Parliament on 6 February 2013. I note that this legislation has now been enacted, following its passage through the Senate on 14 March 2013. Nevertheless I would be pleased to provide clarification to you in relation to the matters identified in the Committee's *Third Report of 2013*.

**Powers of the CEO of Customs / Commissioner of the Anti-Dumping Commission**

The first issue, at paragraph 1.42 of the report, is "to seek clarification as to whether the relevant existing powers in Part XVB of the *Customs Act 1901* are compatible with human rights."

The existing powers of the CEO in Part XVB of the *Customs Act 1901* (Customs Act) relating to the administration of Australia's anti-dumping system can largely be categorised as follows:

1. Consider applications and reject or initiate investigations, inquiries, reviews, duty assessments and accelerated reviews.
2. Terminate investigations.
3. Publish a statement of essential facts during investigations, reviews and inquiries (and to seek an extension of the legislative timeframes for such publication).
4. Make a preliminary affirmative determination that there are grounds for the publication of a dumping duty notice.

5. Report to the Minister with findings and recommendations on the publication, variation or revocation of dumping duty notices and countervailing duty notices.
6. Maintain a public record of specified processes undertaken under Part XVB.
7. Provide statements to affected parties on variable factors established under Part XVB.
8. Undertake a range of technical matters such as specifying the means of establishing an exchange rate and notifying a country of an application.

I believe that the powers established under Part XVB to be exercised by the CEO of Customs and Border Protection (now the Anti-Dumping Commissioner) are compatible with human rights.

The procedures established by Part XVB of the Customs Act enact Australia's obligations under the World Trade Organization Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures. These procedures accommodate the key human rights obligations relevant to Australia's anti-dumping system, including the presumption of innocence, fair trial and fair hearing, and privacy and reputation.

It may assist the Committee's consideration if I set out in brief an overview of the key processes undertaken by the CEO under Part XVB. A decision by the CEO to not reject an application for an investigation (including reviews and inquiries) simply causes a process of inquiry to commence, in which interested parties are afforded an opportunity to present information and evidence in the form of submissions to the CEO on which to base recommendations to the Minister. Conversely, a decision to reject an application, with supporting reasons, is advised to the applicant. A decision to reject such an application can be appealed to the Trade Measures Review Officer (TMRO). Similarly decisions to terminate investigations (as opposed to providing a report and recommendation to the Minister) are advised to interested parties and the applicant may appeal to the TMRO.

The right to a fair hearing is addressed through a range of transparency measures in which all interested parties are advised by public notice of the application, inquiry processes and timeframes for making submissions. Further, the CEO is obliged to publish a statement of essential facts on which the CEO proposes to base a recommendation to the Minister, upon which further submissions are invited before the CEO makes a final report to the Minister.

The transparency of processes undertaken under Part XVB is enhanced by the CEO's establishment and maintenance of a public record which all interested parties are entitled to access. Privacy and reputation issues are accommodated by not requiring publication of information that a person claims is confidential or whose publication would adversely affect a person's business or commercial interests. Further, all existing privacy protections which exist in Australian law are maintained under Part XVB of the Customs Act.

The presumption of innocence is observed in that the CEO must only initiate an investigation into the need for dumping or countervailing measures (and associated processes such as reviews) on the basis of an application which establishes a *prima facie* case to the requisite satisfaction of the CEO.




**Provisions relating to the outside employment if the Commissioner is appointed on a part-time basis**

The second issue, at paragraph 1.48 of the report, is “to seek clarification as to whether proposed new subsection 269SMM(2) and subparagraph 269SMO(2)(e) are compatible with the right to work and the right to a fair hearing as it gives the Minister the power to terminate the appointment of a part-time Commissioner on the basis of the Minister’s opinion, which may, or may not, have been known to the Commissioner prior to termination of the appointment.”

As noted by the Committee, there is no legislative requirement for a part-time Commissioner to seek the Minister’s approval for paid employment outside the duties of his or her office. To address the Committee’s concerns, if the Commissioner is appointed on a part-time basis, it will be a term and condition of appointment that the Commissioner seek the Minister’s approval of outside employment.

The officer responsible for this matter in the Australian Customs and Border Protection Service is Ms Emma Hatcher, Director, International Trade Remedies Branch, who can be contacted on (02) 6229 1108.

Yours sincerely



**MARK DREYFUS QC MP**  
15/4/12

Encl: