

**Economics Legislation Committee**  
**ANSWERS TO QUESTIONS ON NOTICE**  
Industry Portfolio  
Budget Estimates Hearing 2014-15  
2-3 June 2014

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**AGENCY/DEPARTMENT:** DEPARTMENT OF INDUSTRY

**TOPIC:** Anti-Dumping Duty

**REFERENCE:** Written Question – Senator Carr

**QUESTION No.:** BI-169

Section 6.8.2 (b) of the KAFTA states:

the Party making such a decision to impose an Anti-Dumping duty in accordance with Article 9.1 of the Anti-Dumping Agreement, shall normally apply the ‘lesser duty’ rule, by imposing a duty which is less than the dumping margin where such lesser duty would be adequate to remove the injury to the domestic industry.

- a. Does this limit the Minister’s power to apply the full margin of duty?
- b. Under what conditions are you allowed to apply the full margin of duty?

**ANSWER**

- a. Section 6.8.2(b) of the KAFTA does not limit the Minister’s power to apply the full margin of duty in imposing anti-dumping measures. The text in that section reflects what has been the routine practice in the administration of Australia’s anti-dumping system where, following the Minister’s mandatory consideration of application of the lesser duty rule, a lesser duty has generally been applied. In the view of the Anti-Dumping Commission, reference to a practice that is “normally” applied does not preclude circumstances where the Minister may be satisfied that the full margin of dumping should be applied in a particular case.
- b. Except in specific circumstances, which commenced legislative effect in January 2014, it is mandatory under Australian legislation for the Minister to consider applying the lesser duty rule yet the Minister retains ultimate discretion whether to impose the full margin of duties or a lesser duty. The specific circumstances (set out in the *Customs Tariff (Anti-Dumping) Act 1975*) in which the Minister is not required to consider application of the lesser duty rule include where:
  - i. the Australian industry in respect of like goods consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises;
  - ii. the normal value of goods in an investigation was not determined by reference to the price paid in the country of export because of a “particular market situation”; or
  - iii. the country in relation to which the countervailable subsidy has been provided has not complied with Article 25 of the World Trade Organization Agreement on Subsidies and Countervailing Measures (relating to notification of subsidy programs) for the compliance period.

In these circumstances, the Minister is not obliged to consider application of duty at a lesser amount than the full margin, and the Minister still retains ultimate discretion as to whether to impose the full margin of duties or a lesser duty.