



# Customs Act 1901

No. 6, 1901

## Compilation No. 175

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This compilation is in 5 volumes

Volume 1: sections 1–126C

Volume 2: sections 126D–183U

Volume 3: sections 183UA–269SK

**Volume 4: sections 269SM–279  
Schedule**

Volume 5: Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 1 July 2023 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part XVB—Special provisions relating to anti-dumping duties**

### **269SM Overview of Part**

- (1) This Part deals with the taking of anti-dumping measures in respect of goods whose importation into Australia involves a dumping or countervailable subsidisation of those goods that injures, or threatens to injure, Australian industry. Those measures might consist of the publication of a dumping duty notice or a countervailing duty notice or the acceptance of an undertaking on conditions that make it unnecessary to publish such a notice.
- (2) If a notice is published, that notice creates a liability under the Dumping Duty Act, in relation to any goods to which the notice extends, to pay a special duty of customs on their importation into Australia and, pending assessment of that special duty, to pay interim duty.
- (2A) Division 1A deals with the establishment of the Anti-Dumping Commission and the Commissioner.
- (3) Divisions 1, 2 and 3 deal with the preliminary and procedural matters leading to a Ministerial decision to publish or not to publish a dumping duty notice or a countervailing duty notice or to accept an undertaking instead of publishing such a notice.
- (4) Division 4 allows a person who has been required to pay interim duty to seek an assessment of duty payable under the Dumping Duty Act and reconciles interim duty paid by that person with duty as so assessed.
- (5) Division 5 deals with the rights of persons, periodically, on the basis of changed circumstances, to seek review by the Minister of decisions to publish dumping duty notices or countervailing duty notices or to accept undertakings.

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- (5A) Division 5A deals with the rights of persons to ask the Commissioner to conduct an anti-circumvention inquiry in relation to certain dumping duty notices or countervailing duty notices.
- (6) Division 6 deals with the rights of new exporters to seek an early review by the Minister of decisions to publish dumping duty notices or countervailing duty notices.
- (7) Division 6A ensures that interested parties are informed of the impending expiration of anti-dumping measures and allows them to seek continuation of those measures.
- (8) Division 7 deals with procedural and evidentiary matters that are relevant both to applications for the taking of anti-dumping measures and for the various review procedures after such measures are taken.
- (9) Divisions 8 and 9 establish an independent panel, the Review Panel, and provide for the Panel to review a range of Ministerial decisions (including decisions to publish or not to publish dumping duty notices or countervailing duty notices) and also a range of decisions made by the Commissioner.

## **Division 1A—Anti-Dumping Commission and Commissioner**

### **Subdivision A—Preliminary**

#### **269SMA What this Division is about**

- This Division establishes the Anti-Dumping Commission within the Department.
- There is to be a Commissioner of the Anti-Dumping Commission. The Commissioner has functions and powers under this Part.
- The Commissioner is to be assisted by APS employees in the Department.

### **Subdivision B—Anti-Dumping Commission**

#### **269SMB Establishment**

- (1) The Anti-Dumping Commission that was established by this section (as in force before the transfer day) continues in existence, by force of this section, within the Department.
- (2) In this section:

*transfer day* means the day Schedule 1 to the *Customs Amendment (Anti-Dumping Commission Transfer) Act 2013* commenced.

#### **269SMC Constitution of the Anti-Dumping Commission**

The Anti-Dumping Commission consists of:

- (a) the Commissioner; and
- (b) the staff assisting the Commissioner as mentioned in subsection 269SMQ(1).

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**269SMD Function of the Anti-Dumping Commission**

The Anti-Dumping Commission's function is to assist the Commissioner in the performance of his or her functions or the exercise of his or her powers.

**269SME Anti-Dumping Commission has privileges and immunities of the Crown**

The Anti-Dumping Commission has the privileges and immunities of the Crown in right of the Commonwealth.

**Subdivision C—Commissioner**

**269SMF Establishment**

- (1) There is to be a Commissioner of the Anti-Dumping Commission.
- (2) The Commissioner has the powers and functions conferred or imposed on him or her by this Act or any other law.

**269SMG Powers of Commissioner**

The Commissioner has the power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

**269SMH Appointment**

- (1) The Commissioner is to be appointed by the Minister by written instrument.
- (2) The Commissioner may be appointed on a full-time or part-time basis.

**269SMI Term of appointment**

The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

### **269SMJ Acting Commissioner**

The Minister may appoint an individual to act as the Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

### **269SMK Terms and conditions of appointment**

- (1) The Commissioner holds office on such terms and conditions as are determined in writing by the Minister.
- (2) The office of Commissioner is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

### **269SML Disclosure of interests**

- (1) A disclosure by the Commissioner under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Commissioner is taken not to have complied with section 29 of that Act if the Commissioner does not comply with subsection (1) of this section.

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**269SMM Outside employment**

*Full-time Commissioner*

- (1) If the Commissioner is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of his or her office without the Minister's approval.

*Part-time Commissioner*

- (2) If the Commissioner is appointed on a part-time basis, he or she must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

**269SMN Resignation**

- (1) The Commissioner may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**269SMO Termination of appointment**

- (1) The Minister may terminate the appointment of the Commissioner:
  - (a) for misbehaviour; or
  - (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Commissioner if:
  - (a) the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or



- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
- (d) the Commissioner is appointed on a full-time basis and engages, except with the Minister's approval, in paid employment outside the duties of his or her office (see subsection 269SMM(1)); or
- (e) the Commissioner is appointed on a part-time basis and engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of his or her duties (see subsection 269SMM(2)).

### **Subdivision D—Staff assisting the Commissioner**

#### **269SMQ Staff**

- (1) The staff assisting the Commissioner are to be APS employees in the Department and made available for the purpose by the Secretary of the Department.
- (2) When performing services for the Commissioner under this section, a person is subject to the directions of the Commissioner.

### **Subdivision E—Delegation**

#### **269SMR Delegation**

- (1) The Commissioner may, by writing, delegate any of the Commissioner's functions or powers under this Part to a Commission staff member.

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- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any written directions of the Commissioner.

**Subdivision F—Form and manner of applications**

**269SMS Form and manner of applications**

- (1) The Commissioner may, by writing, approve a form for the purposes of a provision of this Part.
- (2) The Commissioner may, by writing, approve the manner of lodging an application under a provision of this Part.
- (3) The Commissioner may, by writing, approve the manner of withdrawing, under subsection 269TB(3), an application lodged under subsection 269TB(1) or (2).

**Subdivision G—Disclosure of information**

**269SMT Disclosure of information**

- (1) The Commissioner, or a Commission staff member, may disclose information (including personal information) obtained under this Part or the Dumping Duty Act, or an instrument under this Part or the Dumping Duty Act, to an officer of Customs for the purposes of a Customs Act.

*Interaction with the Privacy Act 1988*

- (2) For the purposes of the *Privacy Act 1988*, the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

*Definition*

- (3) In this section:

***personal information*** has the same meaning as in the *Privacy Act 1988*.

## Division 1—Definitions and role of Minister

### 269SN What this Division is about

This Division deals with preliminary matters. The Division principally:

- sets out essential definitions and interpretations;
- provides the basis for determining various factors (such as normal value, export price and non-injurious price) necessary to decide whether dumping or countervailable subsidisation has occurred;
- sets out the criteria for the use of those factors in so deciding;
- provides the basis for determining whether dumping or subsidisation is causing material injury to Australian industry;
- identifies circumstances in which the Part does not apply;
- empowers the Minister to direct the Commissioner in relation to the Commissioner's powers and duties.

### 269T Definitions

(1) In this Part, unless the contrary intention appears:

***affected party***, in relation to an application under Division 5 for review of anti-dumping measures imposed on particular goods, means:

- (a) a person who is directly concerned with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or

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- (b) a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who has been directly concerned with the importation into Australia of like goods; or
- (c) a person representing, or representing a portion of, the Australian industry producing like goods; or
- (d) the Government of a country from which like goods have been exported to Australia.

***Agreement on Subsidies and Countervailing Measures*** means the Agreement by that name:

- (a) set out in Annex 1A to the World Trade Organization Agreement; and
- (b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia.

***agricultural operations*** means:

- (a) the cultivation or gathering in of crops; or
- (b) the rearing of live-stock; or
- (c) the conduct of forestry operations;

and includes:

- (d) viticulture, horticulture or apiculture; or
- (e) hunting or trapping carried on for the purpose of a business.

***allowable exemption or remission***, in relation to exported goods, means:

- (a) the exemption of those goods from duties or taxes borne by like goods destined for domestic consumption; or
- (b) the remission of such duties or taxes otherwise payable in respect of those goods;

in accordance with the provisions of Article XVI of the General Agreement on Tariffs and Trade 1994 and the provisions of Annexes I, II and III of the Agreement on Subsidies and Countervailing Measures.

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***anti-dumping measures***, in respect of goods, means:

- (a) the publication of a dumping duty notice or a countervailing duty notice or both; or
- (b) the acceptance of an undertaking under section 269TG or 269TJ or of undertakings under both of these sections;

in relation to such goods.

***application***, in relation to a dumping duty notice or a countervailing duty notice, means an application for the publication of such a notice.

***circumvention activity*** has the meaning given by section 269ZDBB.

***Commissioner*** means the Commissioner of the Anti-Dumping Commission continued in existence under section 269SMB.

***Commission staff member*** means a member of the staff assisting the Commissioner as mentioned in subsection 269SMQ(1).

***compliance period*** means a period prescribed in, or worked out in accordance with, an instrument under subsection (1A).

***cooperative exporter***, in relation to:

- (a) an investigation under this Part in relation to whether a dumping duty notice should be published; or
- (b) a review under Division 5 in relation to the publication of a dumping duty notice; or
- (c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

- (d) the exporter's exports were examined as part of the investigation, review or inquiry; and
- (e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

***countervailable subsidy*** means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy.

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**countervailing duty** means duty, other than interim countervailing duty:

- (a) that is payable on goods under section 10 of the Dumping Duty Act because of a declaration under subsection 269TJ(1) or (2) of this Act; or
- (b) that is payable on goods under section 11 of the Dumping Duty Act.

**countervailing duty notice** means a notice published by the Minister under subsection 269TJ(1) or (2) or 269TK(1) or (2).

**country of export**, in relation to goods exported to Australia, means a country outside Australia from which those goods are exported to Australia, whether or not it is the country where those goods are produced or manufactured.

**country of origin**, in relation to goods exported to Australia, means a country, whether the country of export or not, where those goods are produced or manufactured.

**determination** means a determination in writing.

**direction** means a direction in writing.

**dumped goods** means any goods exported to Australia that the Minister has determined, under section 269TACB, have been dumped.

**dumping duty** means duty, other than interim dumping duty, that is payable on goods under section 8 or 9 of the Dumping Duty Act.

**Dumping Duty Act** means the *Customs Tariff (Anti-Dumping) Act 1975*.

**dumping duty notice** means a notice published by the Minister under subsection 269TG(1) or (2) or 269TH(1) or (2).

**economy in transition** has the meaning given by subsection (5C).

**fish** means freshwater or salt-water fish, and includes turtles, dugong, crustacea, molluscs or any other living resources of the sea or of the sea-bed.

**fishing operations** means:

- (a) the taking, catching or capturing of fish; or
- (b) the farming of fish; or
- (c) pearling operations.

**forestry operations** means the felling, in a forest or plantation, of standing timber.

**General Agreement on Tariffs and Trade 1994** means the Agreement by that name:

- (a) whose parts are described in Annex 1A to the World Trade Organization Agreement; and
- (b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia.

**importation period**, in relation to goods that have been the subject of a dumping duty notice or a countervailing duty notice means:

- (a) in respect of goods covered by a retrospective notice—the period beginning on the day of entry for home consumption of the first consignment of goods to which the retrospective notice applied and ending immediately before the day of publication of the notice; and
- (b) in respect of goods covered by a prospective notice:
  - (i) the period of 6 months beginning on the day of publication of the prospective notice; and
  - (ii) each successive period of 6 months.

**importer**, in relation to goods exported to Australia, means:

- (a) if paragraph (b), (d) or (f) does not apply—the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed; or
- (b) if the goods are taken from parts beyond the seas to an Australian resources installation or if they are goods on board

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an overseas resources installation at the time when it is attached to the Australian seabed—the beneficial owner of the goods at the time when they are imported into Australia; or

- (c) if the goods are an overseas resources installation that becomes attached to the Australian seabed—the beneficial owner of the installation at the time when it is imported into Australia; or
- (d) if the goods are taken from parts beyond the seas to an Australian sea installation or are goods on board an overseas sea installation at the time when it is installed in an adjacent area or a coastal area—the beneficial owner of the goods at the time when they are imported into Australia; or
- (e) if the goods are an overseas sea installation that becomes installed in an adjacent area or in a coastal area—the beneficial owner of the installation at the time when it is imported into Australia; or
- (f) if the goods are taken from parts beyond the seas to an Australian offshore electricity installation or are goods on board an overseas offshore electricity installation at the time when it is installed in the Commonwealth offshore area—the beneficial owner of the goods at the time when they are imported into Australia; or
- (g) if the goods are an overseas offshore electricity installation that becomes installed in the Commonwealth offshore area—the beneficial owner of the installation at the time when it is imported into Australia.

*interested party*, in relation to:

- (a) an application made to the Commissioner under section 269TB requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application; or
- (b) an application under subsection 269ZA(1), or a request under subsection 269ZA(3), for review of anti-dumping measures taken in respect of goods; or



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- (c) an application under subsection 269ZDBC(1), or a request under subsection 269ZDBC(2), for the conduct of an anti-circumvention inquiry in relation to a notice published under subsection 269TG(2) or 269TJ(2) in respect of goods; or
- (d) an application under section 269ZHB for a continuation of anti-dumping measures taken in respect of goods;

means:

- (e) in the case of an application—the applicant; and
- (f) a person or body representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods; and
- (g) any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or request or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and
- (h) any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or request or of like goods that have been, or are likely to be, exported to Australia; and
- (i) a trade organisation a majority of whose members are, or are likely to be, directly concerned with the production or manufacture of the goods the subject of the application or request or of like goods, with their importation or exportation into Australia or with both of those activities; and
- (j) the government of the country of export or country of origin:
  - (i) of goods the subject of the application or request that have been, or are likely to be, exported to Australia; or
  - (ii) of like goods that have been, or are likely to be, exported to Australia; and
- (k) a trade union representing one or more persons employed in the Australian industry producing, or likely to produce, like goods; and

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- (l) a person who uses the goods the subject of the application or request, or like goods, in the production or manufacture of other goods in Australia.

***interim countervailing duty*** means:

- (a) interim countervailing duty imposed under section 10 of the Dumping Duty Act; or  
(b) interim third country countervailing duty imposed under section 11 of that Act.

***interim dumping duty*** means:

- (a) interim dumping duty imposed under section 8 of the Dumping Duty Act; or  
(b) interim third country dumping duty imposed under section 9 of that Act.

***interim duty*** means interim dumping duty or interim countervailing duty.

***investigation period***, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application.

***like goods***, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

***member country*** means a country that is, in its own right, a member of the World Trade Organization established by the World Trade Organization Agreement.

***negative preliminary decision*** means a decision of the kind referred to in paragraph 269X(6)(b) or (c).

***new exporter***, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like

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goods, means an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

**positive preliminary decision** means a decision of the kind referred to in paragraph 269X(6)(a).

**preliminary affirmative determination** means a determination made under section 269TD.

**production cost**, in relation to processed agricultural goods, means the sum of the direct labour costs, the direct material costs and the factory overhead costs incurred in relation to those goods.

**prospective notice** means a notice issued under subsection 269TG(2), 269TH(2), 269TJ(2) or 269TK(2).

**public notice**, in relation to a decision, determination or other matter, means notice of the decision, determination or other matter published in accordance with section 269ZI.

**public record** means the public record maintained under section 269ZJ.

**raw agricultural goods** means goods directly obtained by the undertaking of any agricultural operation or any fishing operation.

**residual exporter**, in relation to:

- (a) an investigation under this Part in relation to whether a dumping duty notice should be published; or
- (b) a review under Division 5 in relation to the publication of a dumping duty notice; or
- (c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

- (d) the exporter's exports were not examined as part of the investigation, review or inquiry; and

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- (e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

**retrospective notice** means a notice issued under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1).

**Review Panel** means the Review Panel established under section 269ZL.

**revocation declaration**, in relation to particular anti-dumping measures, means:

- (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice—a declaration by the Minister that the notice is taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods; or
- (b) to the extent that the measures involved the acceptance by the Minister of an undertaking under section 269TG or 269TJ—a declaration by the Minister that the person who gave the undertaking is released from it and that the investigation giving rise to the undertaking is terminated.

**revocation recommendation**, in relation to particular anti-dumping measures, means any of the following:

- (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice—a recommendation by the Commissioner in a report under section 269ZDA that the notice be taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods;
- (b) to the extent that the measures involved the acceptance by the Minister of an undertaking under section 269TG or 269TJ—a recommendation by the Commissioner in a report under section 269ZDA that the Minister indicate to the person who gave the undertaking that the person is released from it and that the investigation giving rise to the undertaking is terminated.

**revocation review notice**, in relation to a review of anti-dumping measures, means any of the following:

- (a) a notice relating to the review that is published under subsection 269ZC(4), (5) or (6) and includes information under paragraph 269ZC(7)(bb);
- (b) a notice relating to the review that is published under subsection 269ZCC(4) or (7) and includes information under paragraph 269ZCC(8)(c).

**small-medium enterprise** means an enterprise of a kind prescribed in an instrument under subsection (1B).

**subsidy**, in respect of goods exported to Australia, means:

- (a) a financial contribution:
    - (i) by a government of the country of export or country of origin of the goods; or
    - (ii) by a public body of that country or a public body of which that government is a member; or
    - (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;
- that involves:
- (iv) a direct transfer of funds from that government or body; or
  - (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
  - (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
  - (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
  - (viii) the purchase by that government or body of goods or services; or

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- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Note 1: See also subsection (2AA).

Note 2: Section 269TACC deals with whether a financial contribution or income or price support confers a benefit.

**third country**, in relation to goods that have been or may be exported to Australia means a country other than Australia or the country of export, or the country of origin, of those goods.

**uncooperative exporter**, in relation to:

- (a) an investigation under this Part in relation to whether a dumping duty notice should be published; or
- (b) a review under Division 5 in relation to the publication of a dumping duty notice; or
- (c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

- (d) the Commissioner was satisfied that the exporter did not give the Commissioner information the Commissioner considered to be relevant to the investigation, review or inquiry within a period the Commissioner considered to be reasonable; or
- (e) the Commissioner was satisfied that the exporter significantly impeded the investigation, review or inquiry.

**World Trade Organization Agreement** means the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

- (1A) The Minister may make a legislative instrument for the purposes of the definition of **compliance period** in subsection (1).

- (1B) The Minister may, by legislative instrument, prescribe kinds of enterprises for the purposes of the definition of *small-medium enterprise* in subsection (1).
- (2) For the purposes of this Part, goods, other than unmanufactured raw products, are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia.
- (2A) A reference in this Part to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy received in respect of goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.
- (2AA) Without limiting the definition of *subsidy* in subsection (1), a financial contribution or income or price support may confer a benefit in relation to goods exported to Australia if that contribution or support is made in relation to goods or services used in relation to the production, manufacture or export of the goods exported to Australia.
- (2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.
- (2AE) However, subsection (2AD) does not permit any determination under this Part that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.
- Note: Section 269TACB requires a determination of whether dumping has occurred by reference to goods exported to Australia during the investigation period.
- (2B) For the purposes of this Part, where, during the exportation of goods to Australia, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

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- (3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.
- (4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia:
- (a) there is an Australian industry in respect of those like goods; and
  - (b) subject to subsection (4A), the industry consists of that person or those persons.
- (4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.
- (4B) For the purposes of subsection (4A), processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Minister is satisfied that:
- (a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and
  - (b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods; and
  - (c) either:
    - (i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or
    - (ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be, constituted by the cost to the producer of those goods of the raw agricultural goods.



- (4C) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the production cost of processed agricultural goods to be ascertained for the purpose of subsection (4B), the production cost of those goods is such amount as is determined by the Minister having regard to all relevant information.
- (4D) In this Act, a reference to variable factors relevant to the determination of duty payable under the Dumping Duty Act on particular goods the subject of a dumping duty notice or a countervailing duty notice is a reference:
- (a) if the goods are the subject of a dumping duty notice:
    - (i) to the normal value of the goods; and
    - (ii) to the export price of the goods; and
    - (iii) to the non-injurious price of the goods; and
  - (b) if the goods are the subject of a countervailing duty notice:
    - (i) to the amount of countervailable subsidy received in respect of the goods; and
    - (ii) to the export price of the goods; and
    - (iii) to the non-injurious price of the goods.
- (4E) In this Act, a reference to variable factors relevant to the review under Division 5 of anti-dumping measures, or to the conduct of an anti-circumvention inquiry in relation to a notice published under subsection 269TG(2) or 269TJ(2), in respect of goods is a reference:
- (a) if the goods are the subject of a dumping duty notice—to the normal value, export price and non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; and
  - (b) if the goods are the subject of a countervailing duty notice:
    - (i) to the amount of countervailable subsidy received in respect of the goods; and
    - (ia) to the export price of the goods; and

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- (ii) to the non-injurious price of the goods;  
as ascertained, or last ascertained, by the Minister for the purpose of the notice; and
  - (c) if the goods are the subject of an undertaking accepted under section 269TG—to the normal value of the goods, and the non-injurious price of the goods, as indicated by the Minister to the exporter in negotiations relating to the acceptability of the undertaking; and
  - (d) if the goods are the subject of an undertaking accepted under section 269TJ—to the countervailable subsidy received in respect of the goods, and the non-injurious price of the goods, as indicated by the Minister to the exporter or to the country of export in negotiations relating to the acceptability of the undertaking.
- (5) A reference in this Act to goods the subject of an application under section 269TB is a reference to goods referred in the application:
- (a) that have been imported into Australia;
  - (b) that are likely to be so imported; or
  - (c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.

- (5A) For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:

$$\frac{P_1 Q_1 + P_2 Q_2 + \dots + P_n Q_n}{Q_1 + Q_2 + \dots + Q_n}$$

where:

$P_1, P_2 \dots P_n$  means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.

$Q_1, Q_2 \dots Q_n$  means the number of units of the goods involved in each of the respective transactions.

- (5B) In working out the number of units of goods involved in a transaction, any units of goods that are, for the purposes of paragraph 269TAB(1)(b) or (c), subsection 269TAB(3), paragraph 269TAC(2)(c) or (4)(e) or subsection 269TAC(6), treated as being involved in a particular transaction are taken to be actually involved in the transaction.
- (5C) A country has an *economy in transition* at a time if:
- (a) before the time, the Government of the country had a monopoly, or a substantial monopoly, of the trade of that country and determined, or substantially influenced, the domestic price of goods in that country; and
  - (b) at the time, that Government does not:
    - (i) have a monopoly, or a substantial monopoly, of the trade of that country; or
    - (ii) determine, or substantially influence, the domestic price of goods in that country.
- (6) Sundays and public holidays shall, notwithstanding the definition of *days* in section 4 be counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection shall derogate from the operation of section 36 of the *Acts Interpretation Act 1901*.

### **269TAAA Anti-dumping measures not to apply to New Zealand originating goods**

This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Dumping Duty Act, does not apply to goods that are New Zealand originating goods under Division 1E of Part VIII of this Act.

### **269TAAB Member countries, developing countries and special developing countries**

- (1) The Minister may certify that a particular country is, or was, during a specified period or on a specified day:
- (a) a member country of the World Trade Organization; or

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- (b) a developing country, whether a member country or not; or
  - (c) a special developing country within the meaning of subsection (2).
- (2) For the purposes of subsection (1), a country is, or was, during a specified period or on a specified day, a special developing country if:
- (a) it is or was, during that period or on that day, a developing country; and
  - (b) it is or was, during that period or on that day:
    - (i) a least developed country, whether a member country or not; or
    - (ii) a member country that has eliminated and not restored export subsidies; or
    - (iii) a member country referred to in paragraph (b) of Annex VII of the Agreement on Subsidies and Countervailing Measures having a gross national product of less than \$US1,000 per annum per head of population.
- (3) For all purposes of this Part and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.

**269TAAC Definition—countervailable subsidy**

- (1) For the purposes of this Part, a subsidy is a *countervailable subsidy* if it is specific.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
  - (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
  - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

- (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
  - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if:
- (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
  - (b) eligibility for the subsidy is automatic; and
  - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
  - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) The Minister may, having regard to:
- (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
  - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
  - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
  - (d) the manner in which a discretion to grant access to the subsidy has been exercised;
- determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
- (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
  - (b) the length of time during which the subsidy program has been in operation.

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**269TAACA Determination of countervailable subsidy if non-cooperation by relevant entities**

- (1) If:
- (a) one of the following applies:
    - (i) there is an investigation under this Part in relation to whether a countervailing duty notice should be published;
    - (ii) there is a review under Division 5 in relation to the publication of a countervailing duty notice;
    - (iii) there is an inquiry under Division 6A in relation to the continuation of a countervailing duty notice; and
  - (b) the Commissioner is satisfied that an entity covered by subsection (2):
    - (i) has not given the Commissioner information the Commissioner considers to be relevant to the investigation, review or inquiry within a period the Commissioner considers to be reasonable; or
    - (ii) has significantly impeded the investigation, review or inquiry;

then, in relation to the investigation, review or inquiry, in determining whether a countervailable subsidy has been received in respect of particular goods, or in determining the amount of a countervailable subsidy in respect of particular goods, the Commissioner or the Minister:

- (c) may act on the basis of all the facts available to the Commissioner or the Minister (as the case may be); and
  - (d) may make such assumptions as the Commissioner or the Minister (as the case may be) considers reasonable.
- (2) For the purposes of paragraph (1)(b), the entities are as follows:
- (a) any person who is or is likely to be directly concerned with the importation or exportation into Australia of goods to which the investigation, review or inquiry relates or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods;
  - (b) the government of the country of export or country of origin:

- (i) of goods to which the investigation, review or inquiry relates that have been, or are likely to be, exported to Australia; or
- (ii) of like goods that have been, or are likely to be, exported to Australia.

### **269TAAD Ordinary course of trade**

- (1) If the Minister is satisfied, in relation to goods exported to Australia:
  - (a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:
    - (i) for home consumption in the country of export; or
    - (ii) for exportation to a third country;at a price that is less than the cost of such goods; and
  - (b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period; the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.
- (2) For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.
- (3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.
- (4) The cost of goods is worked out by adding:
  - (a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and

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- (b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.
- (5) Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

**269TAA Arms length transactions**

- (1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:
  - (a) there is any consideration payable for or in respect of the goods other than their price; or
  - (b) the price appears to be influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
  - (c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.
- (1A) For the purposes of paragraph (1)(c), the Minister must not hold the opinion referred to in that paragraph because of a reimbursement in respect of the purchase or sale if the Minister is of the opinion that the purchase or sale will remain an arms length transaction in spite of the payment of that reimbursement, having regard to any or all of the following matters:
  - (a) any agreement, or established trading practices, in relation to the seller and the buyer, in respect of the reimbursement;
  - (b) the period for which such an agreement or practice has been in force;
  - (c) whether or not the amount of the reimbursement is quantifiable at the time of the purchase or sale.
- (2) Without limiting the generality of subsection (1), where:



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- (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
  - (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;
- the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.
- (3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:
    - (a) the amount of the price paid or to be paid for the goods by the importer; and
    - (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and
    - (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
    - (d) such other matters as the Minister considers relevant.
  - (4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:
    - (a) both being natural persons:
      - (i) they are members of the same family; or
      - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
    - (b) both being bodies corporate:
      - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
      - (ii) both of them together control, directly or indirectly, a third body corporate; or

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- (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or
- (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or
- (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
- (e) they are members of the same partnership.

Note: In relation to the reference to member of a family in subparagraph (4)(a)(i), see also section 4AAA.

**269TAB Export price**

- (1) For the purposes of this Part, the export price of any goods exported to Australia is:

(a) where:

- (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- (ii) the purchase of the goods by the importer was an arms length transaction;

the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect of the transport of the goods after exportation or in respect of any other matter arising after exportation; or

(b) where:

- (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- (ii) the purchase of the goods by the importer was not an arms length transaction; and

- (iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;  
the price at which the goods were so sold by the importer to that person less the prescribed deductions; or
    - (c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.
- (2) A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:
  - (a) any duties of Customs or sales tax paid or payable on the goods; and
  - (b) any costs, charges or expenses arising in relation to the goods after exportation; and
  - (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.
- (2A) If an export price of goods exported to Australia is being ascertained for the purposes of conducting a review of anti-dumping measures under Division 5, the price may, despite subsection (1), be determined by the Minister in accordance with subsection (2B) if:
  - (a) the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and
  - (b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:
    - (i) previous volumes of exports of those goods to Australia by that exporter;
    - (ii) patterns of trade for like goods;

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- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

Note: If there is an absence of exports of those goods to Australia by that exporter, the Minister may deem such exports to have taken place for the purposes of ascertaining an export price: see subsection (2C).

- (2B) For the purposes of subsection (2A), the export price of those goods is the price determined by the Minister to be the export price, having regard to any of the following:
- (a) the export price for the goods exported to Australia by the exporter established in accordance with subsection (1) of this section for a decision of a kind mentioned in subsection (2D);
  - (b) the price paid or payable for like goods sold by the exporter in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country;
  - (c) the export price for like goods exported to Australia from the country of export by another exporter or exporters established in accordance with subsection (1) of this section for a decision mentioned in subsection (2D).
- (2C) For the purposes of conducting the review of anti-dumping measures under Division 5, if there is an absence of exports of those goods to Australia by the exporter, the Minister may deem such exports to have occurred for the purposes of applying subsections (2A) and (2B) of this section.
- (2D) For the purposes of paragraphs (2B)(a) and (c), the decisions are the following:
- (a) deciding to publish a notice under any of the following provisions:
    - (i) subsection 269TG(1) or (2) (dumping duties);
    - (ii) subsection 269TJ(1) or (2) (countervailing duties);
    - (iii) subsection 269ZDB(1) (reviews of anti-dumping measures);
    - (iv) subsection 269ZDBH(1) (anti-circumvention inquiries);
    - (v) subsection 269ZG(3) (accelerated review);

- (vi) subsection 269ZHG(1) (continuation of anti-dumping measures);
  - (b) any other decision under this Act of a kind prescribed by the regulations.
- (2E) For the purposes of paragraph (2B)(c), the decision must be a decision made during the period:
- (a) beginning 2 years before the day the Commissioner published notice of the review under subsection 269ZC(4), (5) or (6); and
  - (b) ending on the day notice of the review is published under subsection 269ZDB(1).
- (2F) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2B)(b), the Minister may have regard to the following matters:
- (a) whether the volume of trade from the country of export to the third country is similar to the volume of trade from the country of export to Australia;
  - (b) whether the nature of the trade in goods concerned between the country of export and the third country is similar to the nature of trade between the country of export and Australia.
- (2G) If the export price of goods exported to Australia has been ascertained under subsection (2B), the export price may be subject to such adjustments that the Minister determines are necessary to reflect what the export price would have been had there not been an absence or low volume of exports, including:
- (a) adjustments due to exports (on which the export price is based) relating to earlier times; or
  - (b) adjustments due to exports (on which the export price is based) relating to not identical goods.
- (3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export

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price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

- (4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.
- (5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.
- (6) For the purposes of paragraphs (1)(a) and (2B)(b), the reference in those paragraphs to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.

**269TAC Normal value of goods**

- (1) Subject to this section, for the purposes of this Part, the normal value of any 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.
- (1A) For the purposes of subsection (1), the reference in that subsection to the price paid or payable for like goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of the sales.
- (2) Subject to this section, where the Minister:
  - (a) is satisfied that:
    - (i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or

- (ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1); the normal value of goods exported to Australia cannot be ascertained under subsection (1); or
  - (b) is satisfied, in a case where like goods are not 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, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);  
the normal value of the goods for the purposes of this Part is:
    - (c) except where paragraph (d) applies, the sum of:
      - (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
      - (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and the profit on that sale; or
    - (d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.
- (3) The price determined under paragraph (2)(d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2)(d) at that price, is representative of the price paid in such sales.

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- (3A) The Minister is not required to consider working out the normal value of goods under paragraph (2)(d) before working out the normal value of goods under paragraph (2)(c).
- (4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:
- (a) has a monopoly, or substantial monopoly, of the trade of the country; and
  - (b) determines or substantially influences the domestic price of goods in that country;
- the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:
- (c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;
  - (d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;
  - (e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:
    - (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
    - (ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with



the sale of like goods in that country and the profit on that sale;

- (f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.
- (5) The price determined under paragraph (4)(d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4)(d) at that price, is representative of the price paid in such sales.
- (5A) Amounts determined:
- (a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and
  - (b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);
- must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAA(4)(a) and (b).
- (5B) The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.
- (5C) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2)(d) or (4)(d), the Minister may have regard to the following matters:
- (a) whether the volume of trade from the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the volume of trade from the country of export to Australia; and
  - (b) whether the nature of the trade in goods concerned between the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the nature of trade between the country of export and Australia.

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(5D) The normal value of goods (the *exported goods*) is the amount determined by the Minister, having regard to all relevant information, if the exported goods are exported to Australia and the Minister is satisfied that the country of export has an economy in transition and that at least one of the following paragraphs applies:

(a) both of the following conditions exist:

(i) the exporter of the exported goods sells like goods in the country of export;

(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;

(b) both of the following conditions exist:

(i) the exporter of the exported goods does not sell like goods in the country of export but others do;

(ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;

(c) the exporter of the exported goods does not answer questions in a questionnaire given to the exporter by the Commissioner under subsection 269TC(8) within the period described in that subsection or subsection 269TC(9) for answering questions;

(d) the answers given within the period mentioned in subsection 269TC(8), or the further period mentioned in subsection 269TC(9), by the exporter of the exported goods to a questionnaire given to the exporter under subsection 269TC(8) do not provide a reasonable basis for determining that paragraphs (a) and (b) of this subsection do not apply.

Note: Subsection 269TC(8) deals with the Commissioner giving an exporter of goods to Australia a questionnaire about evidence of whether or not paragraphs (a) and (b) of this subsection apply, with a specified period of at least 30 days for the exporter to answer the questions. Under subsection 269TC(9) the Commissioner may allow the exporter a further period for answering the questions.

(5E) To be satisfied that the conditions in paragraph (5D)(a) or (b) exist, the Minister must have regard to the matters (if any) prescribed by the regulations.

- (5F) Without limiting the generality of subsection (5D), for the purpose of working out, under that subsection, the amount that is to be the normal value of goods exported to Australia, the Minister may determine that amount in a manner that would be open to the Minister under paragraph (4)(c), (d), (e) or (f) if subsection (4) were applicable.
- (5J) For the purposes of fulfilling Australia's international obligations under an international agreement, regulations may be made to disapply subsection (5D) to a country.
- (6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.
- (7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.
- (7A) The application of subsection (5D) to goods that are exported to Australia from a particular country does not preclude the application of other provisions of this section (other than subsections (4) and (5)) to other goods that are exported to Australia from that country.
- (8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:
- (a) relate to sales occurring at different times; or
  - (b) are not in respect of identical goods; or
  - (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;
- that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

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- (9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.
- (10) Where:
- (a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
  - (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;
- he or she may direct that the normal value of the goods is to be so ascertained.
- (11) For the purposes of subsection (10), the country of origin of goods is:
- (a) in the case of unmanufactured raw products—the country of which they are products; or
  - (b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.
- (14) If:
- (a) application is made for a dumping duty notice; and
  - (b) goods the subject of the application are exported to Australia; but
  - (c) the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;
- the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2)(a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB.

### **269TACAA Sampling**

- (1) If:
- (a) one of the following applies:
    - (i) there is an investigation under this Part in relation to whether a dumping duty notice or countervailing duty notice should be published;
    - (ii) there is a review under Division 5 in relation to the publication of a dumping duty notice or countervailing duty notice;
    - (iii) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice or countervailing duty notice; and
  - (b) the number of exporters from a particular country of export in relation to the investigation, review or inquiry is so large that it is not practicable to examine the exports of all of those exporters;
- then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters:
- (c) who constitute a statistically valid sample of those exporters;  
or
  - (d) who are responsible for the largest volume of exports to Australia that can reasonably be examined.
- (2) If information is submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, review or inquiry, the investigation, review or inquiry must extend to that exporter unless to so extend it would prevent its timely completion.

### **269TACAB Dumping duty notice—export prices and normal values for different categories of exporters**

#### *Uncooperative exporters*

- (1) If one of the following applies:
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- (a) there is an investigation under this Part in relation to whether a dumping duty notice should be published;
- (b) there is a review under Division 5 in relation to the publication of a dumping duty notice;
- (c) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

then:

- (d) if the export price of goods for an uncooperative exporter is to be worked out in relation to the investigation, review or inquiry—that export price is to be worked out under subsection 269TAB(3); and
- (e) if the normal value of goods for an uncooperative exporter is to be worked out in relation to the investigation, review or inquiry—that normal value is to be worked out under subsection 269TAC(6).

*Residual exporters*

(2) If:

- (a) one of the following applies:
  - (i) there is an investigation under this Part in relation to whether a dumping duty notice should be published;
  - (ii) there is a review under Division 5 in relation to the publication of a dumping duty notice;
  - (iii) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice; and
- (b) the investigation, review or inquiry is carried out on the basis of information obtained from an examination of a selected number of exporters as mentioned in subsection 269TACAA(1);

then:

- (c) if the export price of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that export price must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country of export; and

- (d) if the normal value of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that normal value must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country of export.
- (3) To the extent that subsection (2) applies in relation to an investigation, the weighted average of export prices, and the weighted average of normal values, of the cooperative exporters must not include any export price or normal value if, in a comparison under section 269TACB involving that export price or normal value, the Minister has determined:
  - (a) that there is no dumping; or
  - (b) that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%.

### **269TACA Non-injurious price**

The non-injurious price of goods exported to Australia is the minimum price necessary:

- (a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b); or
- (b) if the goods are the subject of, or of an application for, a third country dumping duty notice under subsection 269TH(1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TH(1)(b) or (2)(b); or
- (c) if the goods are the subject of, or of an application for, a countervailing duty notice under subsection 269TJ(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TJ(1)(b) or (2)(b); or
- (d) if the goods are the subject of, or of an application for, a third country countervailing duty notice under

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subsection 269TK(1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TK(1)(b) or (2)(b).

**269TACB Working out whether dumping has occurred and levels of dumping**

- (1) If:
- (a) application is made for a dumping duty notice; and
  - (b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and
  - (c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;
- the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.
- (2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):
- (a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
  - (aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
  - (b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
  - (c) use:
    - (i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and



- (ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period.
- (2A) If paragraph (2)(aa) or (c) applies:
- (a) each part of the investigation period referred to in the paragraph must not be less than 1 month; and
  - (b) the parts of the investigation period as referred to in paragraph (2)(aa), or as referred to in subparagraphs (2)(c)(i) and (ii), must together comprise the whole of the investigation period.
- (3) If the Minister is satisfied:
- (a) that the export prices differ significantly among different purchasers, regions or periods; and
  - (b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;
- the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.
- (4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:
- (a) the goods exported to Australia during that period are taken to have been dumped; and
  - (b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.
- (4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.

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- (5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:
- (a) the goods exported to Australia in that transaction are taken to have been dumped; and
  - (b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.
- (6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:
- (a) the goods exported to Australia in each such transaction are taken to have been dumped; and
  - (b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.
- (10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

**269TACC Working out whether a financial contribution or income or price support confers a benefit**

- (1) Subject to subsections (2) and (3), the question whether a financial contribution or income or price support confers a benefit is to be determined by the Minister having regard to all relevant information.
- (2) A direct financial payment received from any of the following is taken to confer a benefit:
- (a) a government of a country;

- (b) a public body of a country;
- (c) a public body of which a government of a country is a member;
- (d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

*Guidelines for financial contributions*

- (3) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:
  - (a) the provision of equity capital from a government or body referred to in subsection (2) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;
  - (b) the making of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain;
  - (c) the guarantee of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the enterprise receiving the guarantee is required to repay on the loan a lesser amount than would be required for a comparable commercial loan without that guarantee;
  - (d) the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;
  - (e) the purchase of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the purchase is made for more than adequate remuneration.
- (4) For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or

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services in the country where those goods or services are provided or purchased.

**269TACD Amount of countervailable subsidy**

- (1) If the Minister is satisfied that a countervailable subsidy has been received in respect of goods, the amount of the subsidy is an amount determined by the Minister in writing.
- (2) After the amount of the countervailable subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

**269TAE Material injury to industry**

- (1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:
  - (aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
  - (ab) if the determination is being made for the purposes of section 269TJ—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
  - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
- (c) any change or likely change, during a particular period, in the proportion that:
  - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
  - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
- (e) the difference between:
  - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
  - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
- (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
- (h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given

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or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

- (2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A) to (2C), have regard to:
- (aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
  - (ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
    - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
    - (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
    - (c) any change or likely change, during a particular period, in the proportion that:
      - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
      - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;
- bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
  - (e) the difference between:
    - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
    - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
  - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
  - (g) any effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.
- (2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:
- (a) the volume and prices of imported like goods that are not dumped; or
  - (b) the volume and prices of importations of like goods that are not subsidised; or
  - (c) contractions in demand or changes in patterns of consumption; or
  - (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or
  - (e) developments in technology; or

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- (f) the export performance and productivity of the Australian industry;  
and any such injury or hindrance must not be attributed to the exportation of those goods.
- (2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.
- (2B) In determining:
- (a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or
  - (b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;
- because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances, including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.
- (2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:
- (a) each of those exportations is the subject of an investigation; and
  - (b) either:
    - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
    - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
  - (c) if the determination is being made for the purposes of section 269TG or 269TH—the dumping margin worked out



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- under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
- (d) if the determination is being made for the purposes of section 269TG or 269TH—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
- (da) if the determination is being made for the purposes of section 269TJ or 269TK:
- (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
  - (ii) the volume of each of those exportations is not negligible; and
- (e) it is appropriate to consider the cumulative effect of those exportations, having regard to:
- (i) the conditions of competition between those goods; and
  - (ii) the conditions of competition between those goods and like goods that are domestically produced.
- (3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:
- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and
  - (b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and
  - (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:

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- (i) for which there are sales or forward orders; or
- (ii) which are held as stocks; and
- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and
- (e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and
- (f) the level of return on investment in the industry; and
- (g) cash flow in the industry; and
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (ha) the terms and conditions of employment (including the number of hours worked) of persons employed in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and
- (k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
- (m) investment in the industry.

### **269TAF Currency conversion**

- (1) If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2), is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.
- (2) If, in relation to goods exported to Australia, a forward rate of exchange is used, the Minister may, in a conversion of currencies under subsection (1), make use of that rate of exchange.
- (3) If:
  - (a) the comparison referred to in subsection (1) requires the conversion of currencies; and
  - (b) the rate of exchange between those currencies has undergone a short-term fluctuation;the Minister may, for the purpose of that comparison, disregard that fluctuation.
- (4) If:
  - (a) the comparison referred to in subsection (1) requires the conversion of currencies; and
  - (b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement;the Minister may, by notice published on the Anti-Dumping Commission's website, declare that this subsection applies with effect from a day specified in the notice and, if the Minister does so, the Minister may use the rate of exchange in force on that day for the purposes of that comparison during the period of 60 days starting on that day.
- (5) Nothing in subsection (4) prevents the Minister specifying a day in a notice that is earlier than the day of publication of the notice if the day specified:
  - (a) is a day after the start of the sustained movement; and

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- (b) is not a day occurring within 60 days after the day specified in a prior notice.
- (6) Nothing in subsection (4) prevents the Minister publishing more than one notice if a sustained movement in the rate of exchange continues for more than 60 days.
- (7) The Commissioner may, if he or she considers it desirable so to do for the avoidance of doubt, specify, by notice published on the Anti-Dumping Commission's website, a means of establishing a rate that is taken to be, or to have been, the rate of exchange between the Australian currency and another currency or between other currencies:
  - (a) on a day, or during a period, preceding the day of publication of the notice; or
  - (b) from and including the day of publication of the notice, or an earlier day specified in the notice, until the revocation of the notice.
- (8) The rate of exchange established between currencies in a notice under subsection (7) is, for the purpose of working out the amount of duty or interim duty payable on any goods exported on the day or during the period to which the rate so specified applies, the rate of exchange that applies for the purposes of this section in respect of the currencies specified in the notice.

**269TAG Minister may take anti-dumping measures on own initiative**

- (1) Nothing in this Part implies that the Minister cannot initiate an investigation into the need to take anti-dumping measures in respect of goods although no application has been made under section 269TB for the taking of such measures in respect of such goods.
- (2) An investigation under subsection (1) must be carried out in accordance with the Minister's written requirements instead of the requirements set out in this Part.

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- (3) The Minister may, subject to subsection (4), take anti-dumping measures as a result of the investigation as if the investigation had been carried out under this Part.
- (4) The Minister must not take such anti-dumping measures unless the Minister:
- (a) has determined any matters which the Minister would be required to determine; and
  - (b) is satisfied of any matters of which the Minister would be required to be satisfied;
- in order to take those measures if the investigation had been carried out in accordance with the requirements of the other provisions of this Part.
- (5) The Minister must ensure that:
- (a) his or her instructions under subsection (2) for the conduct of an investigation referred to in subsection (1); and
  - (b) his or her actions in taking any anti-dumping measures as a result of such an investigation;
- are consistent with Australia's international obligations under the World Trade Organization Agreement.
- (6) The anti-dumping measures taken and any matters determined to permit the taking of those measures are to be treated, for all purposes of this Act and the Dumping Duty Act, as measures taken, and matters determined, under the relevant provisions of this Part.

**269TAH Minister may delegate functions and powers to  
Commissioner or Commission staff members**

- (1) The Minister may, by signed instrument, delegate to the following any of the functions and powers of the Minister under this Part or the Dumping Duty Act:
- (a) the Commissioner;
  - (b) a Commission staff member.

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- (2) However, subsection (1) does not apply to a function or power under:
- (a) subsection 269TG(1) or (2), 269TH(1) or (2), 269TJ(1) or (2) or 269TK(1) or (2) of this Act; or
  - (b) subsection 8(5), 9(5), 10(3B) or 11(4) of the Dumping Duty Act.

**269TA Minister may give directions to Commissioner in relation to powers and duties under this Part**

- (1) The Minister may, by legislative instrument, give to the Commissioner such directions in connection with carrying out or giving effect to the Commissioner's powers and duties under this Part as the Minister thinks fit, and the Commissioner shall comply with any directions so given.
- (2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the Commissioner in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Commissioner's powers.

## **Division 2—Consideration of anti-dumping matters by the Commissioner**

### **269TBA What this Division is about**

This Division:

- sets out the requirements for making applications for the publication of dumping duty notices and countervailing duty notices;
- sets out the procedures to be followed, and the matters to be considered, by the Commissioner in conducting investigations in relation to goods covered by such applications, for the purpose of making a report to the Minister;
- empowers the Commonwealth, in certain cases, to take securities in respect of interim duty that may become payable, in order to prevent injury to Australian industry while such investigations continue;
- sets out the circumstances in which the Commissioner must terminate such investigations.

### **269TB Application for action under Dumping Duty Act**

(1) Where:

- (a) a consignment of goods:
  - (i) has been imported into Australia;
  - (ii) is likely to be imported into Australia; or
  - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;
- (b) there is, or may be established, an Australian industry producing like goods; and

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(c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Commissioner, request that the Minister publish that notice in respect of the goods in the consignment.

(2) Where:

(a) a consignment of goods produced or manufactured in a country other than Australia:

(i) has been imported into Australia;

(ii) is likely to be imported into Australia; or

(iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies; and

(b) there is, in a third country, an industry that produces or manufactures like goods for export to Australia; and

(c) the Government of that third country believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

the Government of that third country may, by application in writing lodged with the Commissioner, request that the Minister publish that notice in respect of the goods in the consignment.

(2A) During the period after receiving an application for a dumping duty notice and before giving public notice under subsection 269TC(4) of a decision not to reject the application, the Commissioner must notify the government of the country, or of each country, whose exporters are nominated in the application.

(2B) During the period after receiving an application for a countervailing duty notice and before giving public notice under subsection 269TC(4) of a decision not to reject the application, the Commissioner must notify:

(a) the government of the country, or of each country, whose exporters are nominated in the application; and



- (b) the government of any other country from which countervailable subsidies are alleged to have been received.
- (2C) A notification by the Commissioner under subsection (2B) must include an invitation to consult with the Commissioner in relation to whether:
- (a) any countervailable subsidies exist; and
  - (b) any such subsidies, if found to exist, are causing or are likely to cause material injury of a kind referred to in paragraph 269TJ(1)(b) or 269TK(1)(b);
- with the aim of arriving at a mutually agreed solution.
- (3) An applicant may, at any time before the Minister decides:
- (a) to publish a dumping duty notice or a countervailing duty notice in respect of an exporter to whom the application extends; or
  - (b) to accept an undertaking from an exporter to whom the application extends or from a country to whose exporters the application extends;
- by notice in writing lodged with the Commissioner, withdraw the application so far as it extends to that exporter, or to exporters exporting from that country, as the case requires.
- (4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:
- (a) be in writing; and
  - (b) be in a form approved by the Commissioner for the purposes of this section; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form; and
  - (e) in the case of an application under subsection (1)—be supported by a sufficient part of the Australian industry; and
  - (f) be lodged in the manner approved under section 269SMS.
- (5) The application, or the notice withdrawing an application, is taken to have been received by the Commissioner when the application

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or notice is first received by a Commission staff member doing duty in relation to dumping applications.

- (6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the Australian industry if the Commissioner is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:
- (a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
  - (b) account for not less than 25% of the total production or manufacture of like goods in Australia.

**269TC Consideration of application**

- (1) The Commissioner shall, within 20 days after receiving an application under subsection 269TB(1) in respect of goods, examine the application and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:
- (a) that the application complies with subsection 269TB(4); or
  - (b) that there is, or is likely to be established, an Australian industry in respect of like goods; or
  - (c) that there appear to be reasonable grounds:
    - (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
    - (ii) for the publication of such a notice upon the importation into Australia of such goods;
- he or she shall reject the application and inform the applicant, by notice in writing, accordingly.
- (2) The Commissioner shall, within 20 days after receiving an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application

and, if the Commissioner is not satisfied, having regard to the matters contained in the application and to any other information that the Commissioner considers relevant:

- (a) that the application complies with subsection 269TB(4); or
- (b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or
- (c) that there appear to be reasonable grounds:
  - (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
  - (ii) for the publication of such a notice upon the importation into Australia of such goods;

he or she shall reject the application and inform the applicant, by notice in writing, accordingly.

- (2A) If an applicant, after lodging an application under section 269TB, decides to give the Commissioner further information in support of that application without having been requested to do so:
  - (a) the information must be lodged with the Commissioner, in writing, in the manner in which applications under that section must be lodged; and
  - (b) the information is taken to have been received by the Commissioner when the information is first received by a Commission staff member doing duty in relation to dumping applications; and
  - (c) this Part has effect as if:
    - (i) the application had included that further information; and
    - (ii) the application had only been lodged when that further information was lodged; and
    - (iii) the application had only been received when that further information was received.
- (3) Where, in accordance with subsection (1) or (2), the Commissioner rejects an application, the notice informing the applicant of that rejection:

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- (a) shall state the reasons why the Commissioner was not satisfied of one or more of the matters set out in that subsection; and
  - (b) shall inform the applicant of the applicant's right, within 30 days of the receipt of the notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.
- (4) If the Commissioner decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Commissioner must give public notice of the decision:
- (a) setting out particulars of goods the subject of the application; and
  - (b) setting out the identity of the applicant; and
  - (ba) setting out the countries of export known to be involved; and
  - (bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and
  - (bc) setting a date, which should be the date or estimated date of publication of the notice, as the date of initiation of the investigation; and
  - (bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and
  - (be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and
  - (bf) indicating that a report will be made to the Minister:
    - (i) within 155 days after the date of initiation of the investigation; or
    - (ii) within such longer period as the Minister allows under section 269ZHI;on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period in relation to the application; and
  - (c) inviting interested parties to lodge with the Commissioner, within 37 days after the date of initiation of the investigation,

- submissions concerning the publication of the notice sought in the application; and
- (d) stating that if the Commissioner, in accordance with section 269TD, makes a preliminary affirmative determination in relation to the application, he or she may apply provisional measures, including the taking of securities under section 42, in respect of interim duty that may become payable on the importation of the goods the subject of the application; and
- (e) stating that:
- (i) within 110 days after the date of initiation of the investigation; or
  - (ii) such longer period as the Minister allows under section 269ZHI;
- the Commissioner, in accordance with section 269TDAA, will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation to the Minister; and
- (f) inviting interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
- (g) indicating the address at which, or the manner in which, submissions under paragraph (c) or (f) can be lodged; and
- (h) stating that if the Minister decides to publish or not to publish a dumping duty notice or a countervailing duty notice after considering the report referred to in paragraph (bf), certain persons will have the right to seek review of that decision in accordance with Division 9.
- (5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.
- (5A) The Commissioner cannot vary the length of the investigation period.
- (6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with

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the Commissioner, if the Commissioner is satisfied, by representation in writing by an interested party:

- (a) that a longer period is reasonably required for the party to make a submission; and
- (b) that allowing a longer period will be practicable in the circumstances;

the Commissioner may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.

- (7) As soon as practicable after the Commissioner decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Commissioner must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:
  - (a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or
  - (b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.
- (8) If the Commissioner is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a countervailing duty notice has an economy in transition, the Commissioner must, as soon as practicable after deciding not to reject the application:
  - (a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and
  - (b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and

- (c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:
- (i) the exporter does not give the answers to the Commissioner within the period; or
  - (ii) the exporter gives the answers to the Commissioner within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.

Note: Paragraph 269TAC(5D)(a) or (b) applies if a government of the country of export significantly affects the selling price in that country of like goods to the goods that are the subject of the application.

- (9) Despite the fact that, under subsection (8), the Commissioner has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the Commissioner is satisfied, by representation in writing by the exporter:
- (a) that a longer period is reasonably required for the exporter to answer the questions; and
  - (b) that allowing a longer period will be practicable in the circumstances;
- the Commissioner may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.
- (10) If, during an investigation in respect of goods the subject of an application under section 269TB, the Commissioner becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods, the Commissioner may examine that issue as part of the investigation.

### **269TD Preliminary affirmative determinations**

- (1) At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the

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publication of a dumping duty notice, or a countervailing duty notice, in respect of goods the subject of an application under section 269TB, the Commissioner may, if he or she is satisfied:

- (a) that there appears to be sufficient grounds for the publication of such a notice; or
- (b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a determination (a *preliminary affirmative determination*) to that effect.

- (2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the Commissioner:
  - (a) must have regard to:
    - (i) the application concerned; and
    - (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
  - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to any submission that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely consideration of the question whether or not to make a preliminary affirmative determination.
- (4) If the Commissioner makes a preliminary affirmative determination:
  - (a) the Commissioner must give public notice of that determination; and
  - (b) the Commonwealth may, at the time that determination is made or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the Commissioner is satisfied that it is necessary to do so to prevent material injury to an



Australian industry occurring while the investigation continues.

- (5) If the Commonwealth decides to require and take securities under subsection (4), the Commissioner must give public notice of that decision.

**269TDAA Statement of essential facts in relation to investigation of application under section 269TB**

- (1) The Commissioner must, within 110 days after the date of initiation of an investigation arising from an application under section 269TB or such longer period as the Minister allows under section 269ZHI, place on the public record a statement of the facts (the *statement of essential facts*) on which the Commissioner proposes to base a recommendation to the Minister in relation to that application.
- (2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:
- (a) must have regard to:
    - (i) the application concerned; and
    - (ii) any submissions concerning publication of the notice that are received by the Commissioner within 37 days after the date of initiation of the investigation; and
  - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to a submission received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

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**269TDA Termination of investigations**

*Commissioner must terminate if all dumping margins are negligible*

- (1) If:
- (a) application is made for a dumping duty notice; and
  - (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
    - (i) there has been no dumping by the exporter of any of those goods; or
    - (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%;

the Commissioner must terminate the investigation so far as it relates to the exporter.

*Commissioner must terminate if countervailable subsidisation is negligible*

- (2) If:
- (a) application is made for a countervailing duty notice; and
  - (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the Commissioner is satisfied that:
    - (i) no countervailable subsidy has been received in respect of any of those goods; or
    - (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the Commissioner must terminate the investigation so far as it relates to the exporter.

*Commissioner must terminate if negligible volumes of dumping are found*

- (3) If:
- (a) application is made for a dumping duty notice; and
  - (b) in an investigation for the purposes of the application the Commissioner is satisfied that the total volume of goods the subject of the application:
    - (i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and
    - (ii) that have been, or may be, dumped;is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

*What is a negligible volume of dumped goods?*

- (4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:
- (a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and
  - (b) subsection (5) does not apply in relation to those first-mentioned goods.

*Aggregation of volumes of dumped goods*

- (5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:
- (a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a

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percentage of the total Australian import volume, is less than 3%; and

- (b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and
- (c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

*Negligible dumping margins to count in determining volume*

- (6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%, does not prevent exports by that exporter being taken into account:
  - (a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and
  - (b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.

*Commissioner must terminate if negligible volumes of countervailable subsidisation are found*

- (7) If:
  - (a) application is made for a countervailing duty notice; and
  - (b) in an investigation for the purposes of the application, the Commissioner is satisfied that the total volume of goods the subject of the application:

- (i) that have been, or may be, exported to Australia from a particular country of export during a reasonable examination period; and
  - (ii) in respect of which a countervailable subsidy has been, or may be, received;
- is negligible;

the Commissioner must terminate the investigation so far as it relates to that country.

*What is a negligible volume of subsidised goods?*

- (8) For the purposes of subsection (7), the total volume of goods the subject of the application for a countervailing duty notice that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been received is taken to be a negligible volume if:
- (a) that country of export is not a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 3%; or
  - (b) that country of export is a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 4%;

and subsections (9), (10) and (11) do not apply in relation to those first-mentioned goods.

*Aggregation of volumes of subsidised goods from countries other than developing countries*

- (9) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received, if:
- (a) the country of export is not a developing country; and
  - (b) the volume of such goods:

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- (i) that have been, or may be, exported to Australia over that period from that country; and
  - (ii) in respect of which a countervailable subsidy has been, or may be, received;
- when expressed as a percentage of the total Australian import volume, is less than 3%; and
- (c) the volume of goods the subject of the application:
- (i) that have been, or may be, exported to Australia over that period from another country that is not a developing country; and
  - (ii) in respect of which a countervailable subsidy has been, or may be, received;
- when expressed as a percentage of the total Australian import volume, is also less than 3%; and
- (d) the total volume of goods the subject of the application:
- (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
  - (ii) in respect of which a countervailable subsidy has been, or may be, received;
- when expressed as a percentage of the total Australian import volume, is more than 7%.

*Aggregation of volumes of subsidised goods from developing countries*

- (10) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:
- (a) the country of export is a developing country; and
  - (b) the volume of such goods:
    - (i) that have been, or may be, exported to Australia over that period from that country; and

- (ii) in respect of which a countervailable subsidy has been, or may be, received;  
when expressed as a percentage of the total Australian import volume, is less than 4%; and
- (c) the volume of goods the subject of the application:
  - (i) that have been, or may be, exported to Australia over that period from another country that is a developing country; and
  - (ii) in respect of which a countervailable subsidy has been, or may be, received;  
when expressed as a percentage of the total Australian import volume, is also less than 4%; and
- (d) the total volume of goods the subject of the application:
  - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
  - (ii) in respect of which a countervailable subsidy has been, or may be received;  
when expressed as a percentage of the total Australian import volume, is more than 9%.

*Aggregation of volumes of subsidised goods from member countries that are developing countries*

- (11) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:
  - (a) the country of export is a member country and a developing country; and
  - (b) the volume of such goods;
    - (i) that have been, or may be exported to Australia over that period from that country; and

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- (ii) in respect of which a countervailable subsidy has been, or may be, received;  
when expressed as a percentage of the total Australian import volume, is less than 4%; and
- (c) the volume of goods the subject of the application:
  - (i) that have been, or may be, exported to Australia over that period from another member country that is a developing country; and
  - (ii) in respect of which a countervailable subsidy has been, or may be, received;  
when expressed as a percentage of the total Australian import volume, is less than 4%; and
- (d) the volume of goods the subject of the application:
  - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
  - (ii) in respect of which a countervailable subsidy has been, or may be, received;  
when expressed as a percentage of the total Australian import volume, is more than 9%.

*Negligible countervailable subsidies to count in determining volume*

- (12) The fact that the level of countervailable subsidy that has been, or may be, received in respect of goods that have been, exported, or may be exported, to Australia from a country of export is a negligible level under subsection (16) does not prevent exports from that country being taken into account:
  - (a) in working out the total volume of goods that have been, or may be, exported from a country of export and in respect of which a countervailable subsidy has been, or may be, payable; and
  - (b) in aggregating, for the purposes of subsection (9), (10) or (11), volumes of goods that have been, or may be, exported to Australia from that country and other countries and in



respect of which a countervailing subsidy has been, or may be, received.

*Commissioner must terminate dumping investigation if export causes negligible injury etc.*

- (13) Subject to subsection (13A), if:
- (a) application is made for a dumping duty notice; and
  - (b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that export is negligible;
- the Commissioner must terminate the investigation so far as it relates to that country.
- (13A) If, in relation to the investigation referred to in subsection (13), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:
- (a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by those exports is negligible—subsection (13) does not apply in relation to those countries;
  - (b) if the Commissioner is satisfied that such injury or hindrance that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (13) applies to that country.

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*Commissioner must terminate countervailable subsidy investigation if export causes negligible injury*

- (14) Subject to subsection (14A), if:
- (a) application is made for a countervailing duty notice; and
  - (b) in an investigation, for the purpose of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the Commissioner is satisfied that the injury, if any, to an Australian industry or an industry in a third country that has been, or may be, caused by that export is negligible;
- the Commissioner must terminate the investigation so far as it relates to that country.
- (14A) If, in relation to the investigation referred to in subsection (14), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:
- (a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country that has been, or may be, caused by those exports is negligible—subsection (14) does not apply in relation to those countries;
  - (b) if the Commissioner is satisfied that such injury that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (14) applies to that country.

*Cumulative assessment of injury or hindrance*

- (14B) For the purpose of subsection (13A) or (14A), the Commissioner must consider the cumulative effect of exportations of goods to Australia from 2 or more countries of export if the Commissioner is satisfied that:

- (a) each of those exportations is the subject of an investigation;  
and
- (b) either:
  - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
  - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
- (c) for the purposes of subsection (13A)—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
- (d) for the purposes of subsection (13A)—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
- (e) for the purposes of subsection (14A):
  - (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
  - (ii) the volume of each of those exportations is not negligible; and
- (f) it is appropriate to consider the cumulative effect of those exportations, having regard to:
  - (i) the conditions of competition between those goods; and
  - (ii) the conditions of competition between those goods and like goods that are domestically produced.

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*Commissioner must give public notice of termination decisions*

- (15) If the Commissioner decides to terminate an investigation so far as it relates to a particular exporter or country of export, the Commissioner must:
- (a) give public notice of that decision; and
  - (b) ensure that:
    - (i) in the case of an exporter, a copy of the notice is sent to the applicant, the exporter and the government of the country of export; or
    - (ii) in the case of a country of export, a copy of the notice is sent to the applicant and the government of that country; and
  - (c) inform the applicant of the applicant's right, within 30 days after the first publication of the public notice, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.

*Negligible countervailable subsidisation*

- (16) For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:
- (a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or
  - (b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or
  - (c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

*Definition—reasonable examination period*

- (17) In this section:

***reasonable examination period***, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period comprising:

- (a) the whole or a substantial part of the investigation period; or
- (b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.

***total Australian import volume***, in relation to a volume of goods the subject of an application for a dumping duty notice or a countervailing duty notice that have been, or may be, exported to Australia from a particular country during a period, means the total volume of all goods the subject of the application and like goods that have been, or may be, exported to Australia from all countries during that period.

#### **269TE Commissioner to have regard to same considerations as Minister**

- (1) In this section:

***decision*** means:

- (a) a decision of the Commissioner under section 269TC or 269TD; or
- (b) a decision contained in a report by the Commissioner under section 269ZZL.

***recommendation*** means:

- (a) a recommendation included in a report prepared by the Commissioner under section 269TEA, 269ZDA, 269ZDBG, 269ZG or 269ZHF; or
  - (b) a recommendation by the Commissioner to the Minister under section 269TEB or 269X.
- (2) If the Commissioner is required, in making a recommendation or decision, to determine any matter ordinarily required to be determined by the Minister under this Act or the Dumping Duty Act, the Commissioner must determine the matter:

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- (a) in like manner as if he or she were the Minister; and
  - (b) having regard to the considerations to which the Minister would be required to have regard if the Minister were determining the matter.
- (3) Subsection (2) applies in respect of goods that have not been imported into Australia at the time of the Commissioner's determination of a matter in respect of those goods as if:
- (a) the Commissioner's determination of the matter were being made after an importation of those goods into Australia; and
  - (b) the importation had occurred at the time of the anticipated importation of those goods into Australia.
- (4) Nothing in this section implies that the determination of a matter by the Commissioner affects the power of the Minister to make a final determination in respect of that matter for the purposes of the Dumping Duty Act.

**269TEA Report to Minister concerning publication of notices under this Part**

- (1) If:
- (a) application has been made under section 269TB for publication of a dumping duty notice or a countervailing duty notice; and
  - (b) the Commissioner has initiated an investigation in respect of the application under section 269TC;
- the Commissioner must, after holding such an investigation and within 155 days after the date of initiation of the investigation or such longer period as the Minister allows under section 269ZHI, give the Minister a report in respect of the goods the subject of the application that:
- (c) recommends whether any such notice should be published and the extent of any duties that are, or should be, payable under the Dumping Duty Act because of that notice; and
  - (d) recommends, in particular, whether the Minister ought to be satisfied as to the matters in respect of which the Minister is

- required to be satisfied before such a notice can be published;  
and
- (e) recommends, where applicable, whether the Minister ought to give notice to the exporter under subsection 269TG(3D) or to the government of the country of export or to the exporter under subsection 269TJ(2A).
- (2) The Commissioner's report must, to the extent that it is practicable to do so, also extend to any like goods not covered by the application but imported into Australia during the period starting on the date of initiation of the investigation and ending 20 days after the statement of essential facts in respect of the investigation is placed on the public record.
- (3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the Commissioner's report in relation to an application under section 269TB for publication of a dumping duty notice or a countervailing duty notice, the Commissioner:
- (a) must have regard to:
- (i) the application; and
- (ii) any submission concerning the publication of that notice to which the Commissioner has had regard for the purpose of formulating the statement of essential facts; and
- (iii) the statement of essential facts; and
- (iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and
- (b) may have regard to any other matters that the Commissioner considers to be relevant.
- (4) The Commissioner is not obliged to have regard to any submission made in response to the statement of essential facts that is received by the Commissioner after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

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- (5) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:
- (a) sets out the material findings of fact on which that recommendation is based; and
  - (b) provides particulars of the evidence relied on to support those findings.

**269TEB Commissioner recommendations concerning undertakings offered after preliminary affirmative determination**

- (1) A person who:
- (a) if application has been made for publication of a dumping duty notice in respect of goods—is an exporter of such goods; or
  - (b) if application has been made for publication of a countervailing duty notice in respect of goods—is the government of the country of export, or is an exporter, of such goods;
- may, at any time after the making of a preliminary affirmative determination in respect of the application, indicate in writing to the Commissioner the terms in which the government or exporter would be prepared to give an undertaking to the Minister.
- (2) The Commissioner must consider whether he or she is satisfied that those terms are adequate to remove the injury, or the threat of injury, to which the application is addressed so far as the government or exporter offering the undertaking is concerned and, by notice in writing:
- (a) if the Commissioner is so satisfied—recommend to the Minister that he or she accept the undertaking; or
  - (b) if the Commissioner is not so satisfied—indicate to the government or exporter the reasons why he or she is not so satisfied.
- (3) A government or an exporter may, having regard to those reasons, indicate to the Commissioner that the government or exporter is prepared to give an undertaking to the Minister in revised terms.



- (4) If an undertaking in revised terms is proposed to the Commissioner, the Commissioner must:
- (a) if he or she is not satisfied that the undertaking as so revised is adequate to remove the injury, or the threat of injury, to which the application is addressed—inform the government or exporter to that effect; and
  - (b) if he or she is so satisfied—recommend to the Minister that the Minister accept the undertaking as revised.
- (5) If the Minister accepts the undertaking proposed by a government, investigation of the application is suspended so far as it relates to goods exported from that country.
- (6) If the Minister accepts the undertaking proposed by an exporter, investigation of the application is suspended so far as it relates to goods exported by that exporter.
- (7) If:
- (a) investigation of an application is suspended:
    - (i) so far as it relates to goods exported from a particular country; or
    - (ii) so far as it relates to goods exported by a particular exporter;on the Minister's acceptance of an undertaking proposed by the government of that country or by that exporter; and
  - (b) that government or exporter breaches that undertaking;
- the Minister may take such steps as he or she considers necessary to facilitate the resumption of the investigation in so far as it relates to goods exported from that country or by that exporter.
- (8) Without limiting the generality of subsection (7), the Minister may, in writing, require the Commissioner to resume the investigation so far as it relates to goods exported from the country, or by the exporter, who breached the undertaking subject to such conditions as to the conduct of the investigation as the Minister considers appropriate.

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- (9) In determining the steps to be taken in order to facilitate the resumption of an investigation, and, where the Minister requires that the Commissioner resume the investigation, to determine the conditions on which the resumed investigation is to be conducted, the Minister must have regard to:
- (a) the procedures that had been completed when the undertaking was accepted; and
  - (b) the length of time that has elapsed since the acceptance of the undertaking.
- (10) The Commissioner is not obliged to consider the terms of any proposed undertaking provided by a government or an exporter if to do so would prevent the timely making of a recommendation by the Commissioner to the Minister under section 269TEA.
- (11) If the Commissioner does not recommend the acceptance of an undertaking under this section, the Commissioner may nonetheless recommend to the Minister that he or she seek an undertaking from the government or exporter who proposed the undertaking and set out the terms of the undertaking that he or she recommends the Minister seek.

## **Division 3—Consideration of anti-dumping matters by the Minister**

### **269TF What this Division is about**

This Division sets out the role of the Minister in considering an anti-dumping matter. The Minister will normally be acting after receipt of a report from the Commissioner. In particular, the Division:

- empowers the Minister to publish dumping duty notices or countervailing duty notices;
- empowers the Minister to accept undertakings rather than publish such notices;
- outlines the matters of which the Minister must be satisfied before publishing such notices or accepting such undertakings;
- indicates the period during which such notices or undertakings remain in force;
- sets out the circumstances in which such notices can extend to goods already exported.

### **269TG Dumping duties**

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:
  - (a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and
  - (b) because of that:

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- (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered; or
- (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 8 of the Dumping Duty Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by public notice, declare that section 8 of that Act applies:

- (c) to the goods in respect of which the Minister is so satisfied; and
  - (d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind, that:
- (a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
  - (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

- (3) Where:
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- (a) a notice under subsection (1) declares particular goods to be goods to which section 8 of the Dumping Duty Act applies; or
  - (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;
- the notice must, subject to subsection (3A), include a statement of the respective amounts that the Minister ascertained, at the time of publication of the notice:
- (c) was or would be the normal value of the goods to which the declaration relates; and
  - (d) was or would be the export price of those goods; and
  - (e) was or would be the non-injurious price of those goods.
- (3A) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:
- (a) in accordance with subsection 269ZI(9) the Minister is not required to include in the notice a statement of that value or price; but
  - (b) upon request the Commissioner may notify that value or price to persons who, in the Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.
- (3D) If the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister so as to decide whether or not to publish a dumping duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the exporter stating that:

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- (a) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with subsection (4) to the Minister; and
  - (b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.
- (4) Whether or not a notice has been given to an exporter, the Minister may defer the decision to publish or not to publish a dumping duty notice covering that exporter, for so long as the Minister considers appropriate, if the exporter offers, and the Minister accepts, an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:
  - (a) causing or threatening material injury to an Australian industry producing like goods; or
  - (b) materially hindering the establishment of such an Australian industry.
- (5) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase to which the undertaking relates is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.
- (5A) However, subsection (5) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:
  - (a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subparagraph 269TAC(2)(a)(ii);
  - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.
- (6) The Minister:
  - (a) may give a notice to an exporter under subsection (3D) whether or not the giving of such a notice has been

- recommended by the Commissioner in a report under section 269TEA; and
- (b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the Commissioner in a recommendation under section 269TEB; and
  - (c) must not give a notice to an exporter under subsection (3D), or accept an undertaking from an exporter, before a preliminary affirmative determination, or an equivalent determination in an investigation conducted under section 269TAG, has been made that extends to that exporter; and
  - (d) must give public notice of any undertaking so accepted.
- (7) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:
- (a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and
  - (b) providing the Minister with appropriate access to such information.
- (8) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister would have published a dumping duty notice or would have decided not to publish such a notice.
- (9) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a dumping duty notice or would have decided not to publish such a notice if the undertaking had not been accepted.
- (10) Subsection (9) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report of the Commissioner in relation to the matter.

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- (11) If the Minister determines under subsection (9) that he or she would have decided not to publish a dumping duty notice, the undertaking automatically lapses.

**269TH Third country dumping duties**

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:
- (a) the amount of the export price of the goods is less than the amount of the normal value of the goods; and
  - (b) because of that:
    - (i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened; or
    - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 9 of the Dumping Duty Act—material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;
- the Minister, if requested by the Government of the third country to do so, may, by public notice, declare that section 9 of that Act applies:
- (c) to the goods in respect of which the Minister is so satisfied; and
  - (d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:
- (a) the amount of the export price of like goods so produced or manufactured that have already been exported to Australia is less than the amount of the normal value of those goods, and



the amount of the export price of like goods so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and

- (b) because of that, material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods so manufactured or produced that have been exported to Australia), declare that section 9 of the Dumping Duty Act applies to like goods so produced or manufactured that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

- (3) Where:

- (a) a notice under subsection (1) declares particular goods to be goods to which section 9 of the Dumping Duty Act applies;

or

- (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice must, subject to subsection (4), include a statement of the respective amounts that the Minister ascertained at the time of publication of the notice:

- (c) was or would be the normal value of the goods to which the declaration relates; and

- (d) was or would be the export price of those goods; and

- (e) was or would be the non-injurious price of those goods.

- (4) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:

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- (a) in accordance with subsection 269ZI(9), the Minister is not required to include in the notice a statement of that value or price; but
- (b) upon request the Commissioner may notify that value or price to persons who, in the Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

**269TJ Countervailing duties**

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:
  - (a) a countervailable subsidy has been received in respect of the goods; and
  - (b) because of that:
    - (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened or the establishment of an Australian industry producing like goods has been or may be materially hindered; or
    - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 10 of the Dumping Duty Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;the Minister may, by public notice, declare that section 10 of that Act applies:
  - (c) to the goods in respect of which the Minister is so satisfied; and
  - (d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind that:
  - (a) a countervailable subsidy:

- (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
  - (ii) may be received in respect of like goods that may be exported to Australia in the future; and
- (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is being threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

- (2A) If the export of a consignment of goods to Australia has been under consideration by the Minister so as to decide whether or not to publish a countervailing duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the government of the country of export or to the exporter stating that:
- (a) the Minister is of the opinion that it would be appropriate for the government or the exporter to give an undertaking in accordance with subsection (3) to the Minister; and
  - (b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.
- (3) Whether or not a notice has been given to a government or to an exporter in respect of goods in the consignment or like goods, the Minister may defer the decision to publish or not to publish a countervailing duty notice covering those goods if the Minister is given and accepts an undertaking to which subsection (3A) applies.
- (3A) This subsection applies:
- (a) to an undertaking given by a government—if it is an undertaking that the government will, in relation to any

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export trade to Australia in like goods, review any countervailable subsidy delivered by that government and make any changes found to be necessary to avoid:

- (i) causing or threatening material injury to an Australian industry producing like goods; or
  - (ii) materially hindering the establishment of such an Australian industry; and
- (b) to an undertaking by an exporter—if it is an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:
- (i) causing or threatening material injury to an Australian industry producing like goods; or
  - (ii) materially hindering the establishment of such an Australian industry.
- (3B) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase arising from the undertaking is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.
- (3BA) However, subsection (3B) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:
- (a) the country of export has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period;
  - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.
- (3C) The Minister:
- (a) may give a notice under subsection (2A) whether or not the giving of such a notice has been recommended by the Commissioner in a recommendation under section 269TEA; and

- (b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the Commissioner in a recommendation under section 269TEB; and
  - (c) must not:
    - (i) give a notice to a government or exporter under subsection (2A); or
    - (ii) accept an undertaking from a government or an exporter;  
in respect of particular goods or like goods unless a preliminary affirmative determination, or an equivalent determination in an investigation conducted under section 269TAG, has been made to the effect that there are grounds for publication of a countervailing duty notice in respect of those like goods; and
  - (d) must not accept an undertaking from an exporter unless the government of the country of export consents to the giving of the undertaking; and
  - (e) must give public notice of any undertaking so accepted.
- (3D) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:
- (a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and
  - (b) providing the Minister with appropriate access to such information.
- (3E) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister would have published a countervailing duty notice or would have decided not to publish such a notice.
- (3F) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a countervailing duty notice or would have decided

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not to publish such a notice if the undertaking had not been accepted.

- (3G) Subsection (3F) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report from the Commissioner in relation to the matter.
- (3H) If the Minister determines under subsection (3F) that he or she would have decided not to publish a countervailing duty notice, the undertaking automatically lapses.
- (11) If a notice under subsection (1) or (2) declares particular goods to be goods to which section 10 of the Dumping Duty Act applies, the notice must, subject to subsection (12), include a statement setting out:
- (a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and
  - (b) the amount that the Minister has ascertained, at that time, was or would be the non-injurious price of the goods.
- (12) If any person who has provided information to assist the Minister to ascertain:
- (a) the amount of any countervailable subsidy received in respect of goods to which a declaration under subsection (1) or (2) relates; or
  - (b) the non-injurious price of any goods to which a declaration under subsection (1) or (2) relates;
- claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:
- (c) in accordance with subsection 269ZI(9), the Minister is not required to include a statement of that amount or that price in the notice; but
  - (d) upon request the Commissioner may provide a statement of that amount or that price to persons who, in the

Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

### **269TJA Concurrent dumping and subsidy**

- (1) Where the Minister is satisfied, as to any goods that have been exported to Australia:
  - (a) that the amount of the export price of those goods is less than the amount of the normal value of those goods; and
  - (b) that a countervailable subsidy has been received in respect of the goods; and
  - (c) that, because of the combined effect of the difference between the 2 amounts referred to in paragraph (a) and of the subsidy referred to in paragraph (b):
    - (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened; or
    - (ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may publish a notice under subsection 269TG(1), a notice under subsection 269TJ(1) or notices under both subsections 269TG(1) and 269TJ(1) at the same time in respect of the same goods.
- (2) Where the Minister is satisfied, as to goods of any kind:
  - (a) that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
  - (b) that a countervailable subsidy:
    - (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
    - (ii) may be received in respect of like goods that may be exported to Australia in the future; and

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- (c) that, because of the combined effect of the difference referred to in paragraph (a) and of the subsidy referred to in paragraph (b):
- (i) material injury to an Australian industry producing like goods has been or is being caused or is being threatened; or
  - (ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;
- the Minister may publish a notice under subsection 269TG(2), a notice under subsection 269TJ(2) or notices under both subsections 269TG(2) and 269TJ(2) at the same time in respect of the same goods.
- (3) If the Minister has had under consideration the export of a consignment of goods to Australia with a view to determining whether or not notices should be published in accordance with subsection (1) or (2), under both section 269TG and 269TJ in respect of the same goods, the Minister may defer the decision to publish or not to publish notices under both of those sections covering the exporter concerned if he or she is given and accepts:
- (a) an undertaking by the exporter under section 269TG, and an undertaking by the exporter under section 269TJ, in respect of the same goods; or
  - (b) an undertaking by the exporter under section 269TG and an undertaking by the government of the country of origin, or of the country of export, of the goods in the consignment under section 269TJ.
- (4) If, in respect of the same consignment of goods, the Minister accepts 2 undertakings from the exporter of the goods or an undertaking from the exporter of the goods and an undertaking from the government of the country of origin or country of export of the goods, the Minister must be satisfied that the combined effect of the undertakings is not greater than is necessary to prevent material injury or the recurrence of material injury to an Australian industry producing like goods or to remove the actual or possible hindrance to the establishment of such an Australian industry.



**269TK Third country countervailing duties**

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:
- (a) a countervailable subsidy has been received in respect of the goods; and
  - (b) because of that:
    - (i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is being threatened; or
    - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under this section—material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;
- the Minister, if requested by the Government of the third country to do so, may, by public notice, declare that section 11 of that Act applies:
- (c) to the goods in respect of which the Minister is so satisfied; and
  - (d) to like goods that were exported to Australia after the Commissioner made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:
- (a) a countervailable subsidy:
    - (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
    - (ii) may be received in respect of like goods that may be exported to Australia in the future; and

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- (b) by reason thereof material injury to an industry in a third country engaged in the production of like goods has been or is being caused or is being threatened;
- the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or makes, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 11 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.
- (3) If the Minister is satisfied that adequate information as to the amount of countervailable subsidy in relation to goods cannot be obtained for the purposes of this section, the amount of countervailable subsidy is to be taken to be such amount as is determined, in writing, by the Minister.
- (4) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to the exporter.
- (5) Where a notice under subsection (1) or (2) declares particular goods to be goods to which section 11 of the Dumping Duty Act applies, the notice must, subject to subsection (6), include a statement setting out:
- (a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and
  - (b) the amount that the Minister ascertained, at that time, was or would be the non-injurious price of the goods.
- (6) If any person who has provided information to assist the Minister to ascertain:
- (a) the amount of any countervailable subsidy received in respect of goods to which a notice under subsection (1) or (2) relates; or

- (b) the non-injurious price of such goods;  
claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:
- (c) in accordance with subsection 269ZI(9), the Minister is not required to include a statement of that amount or that price in the notice; but
- (d) upon request the Commissioner may provide a statement of that amount or that price to persons who, in the Commissioner's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

**269TL Minister to give public notice not to impose duty**

- (1) Where the Minister receives a recommendation from the Commissioner concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on particular goods or on goods of a like kind to particular goods and the Minister decides, after having regard to that recommendation, not to declare those goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the Dumping Duty Act applies, the Minister must give public notice to that effect.

**269TLA Time limit for Minister to make certain decisions**

- (1) This section applies if the Minister receives a recommendation from the Commissioner concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on goods.
- (2) The Minister must decide whether or not to publish a dumping duty notice or a countervailing duty notice, or both a dumping duty notice and a countervailing duty notice, in respect of the goods within:
- (a) 30 days after receiving the recommendation; or

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- (b) if the Minister considers there are special circumstances that prevent the decision being made within that period—such longer period as the Minister considers appropriate.
- (3) If paragraph (2)(b) applies, the Minister must give public notice of the longer period.
- (4) Subsection (2) does not apply if:
  - (a) the Minister defers the decision under subsection 269TG(4), 269TJ(3) or 269TJA(3); or
  - (b) subsection 269TN(4A) or (6) applies in relation to the decision; or
  - (c) the application to which the recommendation relates is withdrawn before the Minister makes the decision.

**269TM Periods during which certain notices and undertakings to remain in force**

- (1) Subject to subsection (1A), if a notice is published after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant notification provision in respect of goods of a particular kind, that notice expires 5 years after the day on which it is published unless it is revoked before the end of that period.
- (1A) If:
  - (a) a notice (the **original notice**) is published under a relevant notification provision in respect of goods of a particular kind; and
  - (b) in relation to the investigation that resulted in the publication of the original notice, the Minister accepted an undertaking under subsection 269TEB(5) or (6) that was proposed by a government of a country of export, or by an exporter, of goods of that kind; and
  - (c) before the end of the period of 5 years beginning on the day (the **start day**) that the Minister accepted that undertaking:
    - (i) that government or exporter breaches that undertaking; and

- (ii) the Minister, under subsection 269TEB(7), takes steps to facilitate the resumption of the investigation in so far as it relates to goods of that kind exported from that country or exported by that exporter; and
- (iii) another notice is published under a relevant notification provision in respect of goods of that kind exported from that country or exported by that exporter;

then the other notice expires 5 years after the start day unless it is revoked before the end of that period.

- (2) Where an undertaking is entered into after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant undertaking provision in respect of goods of a particular kind, that undertaking expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

- (3) If:

- (a) a notice was or is published before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and
- (b) the notice is in force immediately before the commencement of that section;

the notice expires 5 years after the day on which it was published unless it is sooner revoked.

- (3A) If:

- (a) an undertaking was or is entered into before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and
- (b) the undertaking is in force immediately before that section commences;

the Minister must, by notice in writing, give the person who gave the undertaking the opportunity, before the undertaking expires, to extend the undertaking so that it expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

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(3B) If a person who gave an undertaking of the kind referred to in subsection (3A) refuses or fails to extend its operation in the manner referred to in subsection (3A) before the undertaking expires, the Minister may, in substitution for the extension of the undertaking, publish a dumping duty notice or a countervailing duty notice that commences on the day after the undertaking expired and ends 2 years after that day unless it is sooner revoked.

(7) In this section:

*relevant notification provision* means subsection 269TG(2), 269TH(2), 269TJ(2), (4), (5) or (6) or 269TK(2).

*relevant undertaking provision* means subsection 269TG(4) or 269TJ(3).

**269TN Retrospective notices**

- (1) Subject to this section, the Minister must not cause a notice to be published under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1) in respect of goods that have been entered for home consumption.
- (2) Subsection (1) does not prevent the publication of a notice under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 in respect of any interim duty that might become payable under section 8, 9, 10 or 11 of the Dumping Duty Act, as the case may be (not being security that has been cancelled), by reason of the publication of such a notice or in relation to which the Commonwealth had the right to require and take such security (not being security that would have been cancelled under this Act if it had been taken).

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- (3) Subsection (1) does not prevent the publication of a notice under subsection 269TG(1) in respect of goods that have been entered for home consumption to which, by virtue of subsection (4) of this section, this subsection applies, if:

- (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 8 of the Dumping Duty Act or, within that period, the Commonwealth had the right to require and take such security; and
  - (b) the Minister considers that material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason of the amount of the export price of the goods exported being less than the amount of the normal value of the goods exported, and the Minister considers that the publication of the notice is necessary to prevent the serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice.
- (4) Subsection (3) applies to goods:
- (a) that have been imported into Australia by an importer who the Minister considers knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry; or
  - (b) that are goods of a kind the exportation of which to Australia on a number of occasions has caused, or, but for the publication of a notice under section 269TG in respect of goods of that kind, would have caused, material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.
- (4A) Before the Minister decides to publish a dumping duty notice under subsection 269TG(1) in circumstances referred to in subsection (3) of this section, in respect of goods that have already been entered for home consumption, the Minister must:
- (a) inform the importer of the goods of the decision he or she proposes to make; and

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- (b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and
  - (c) give consideration to the comment provided by the importer.
- (4B) If:
- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking under subsection 269TG(4) is a violation of that undertaking; and
  - (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 8 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Commonwealth had the right to require and take such security;
- subsection (1) of this section does not prevent the publication of a notice under subsection 269TG(1) in respect of goods that:
- (c) have been exported by the exporter; and
  - (d) are of the kind to which the undertaking relates; and
  - (e) have been entered for home consumption on a day that:
    - (i) was not earlier than the day on which that act or omission occurred; and
    - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.
- (4C) Despite subsections (3) to (4B), the Minister must not publish a notice under subsection 269TG(1) in respect of goods that have been entered for home consumption before the date of initiation of the investigation concerned.

*Countervailing duties*

- (5) Subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that have been entered for home consumption if:
  - (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in



respect of any interim duty that might be payable on goods of the same kind under section 10 of the Dumping Duty Act or, within that period, the Commonwealth had the right to require and take such security; and

- (b) the Minister considers that material injury, which is difficult to repair, has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind because a countervailable subsidy has been received from the country of export or country of origin of those goods, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.
- (6) Before the Minister decides to publish a countervailing duty notice under subsection 269TJ(1) in circumstances referred to in subsection (5) of this section, in respect of goods that have already been entered for home consumption, the Minister must:
- (a) inform the importer of the goods of the decision he or she proposes to make; and
  - (b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and
  - (c) give consideration to the comments provided by the importer.
- (7) Where:
- (a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with subsection 269TJ(3) is a violation of that undertaking; and
  - (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Commonwealth had the right to require and take such security;
- subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that:

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- (c) are the produce or manufacture of that country or have been exported from that country, as the case may be; and
  - (d) are of the kind to which the undertaking relates; and
  - (e) have been entered for home consumption on a day that:
    - (i) was not earlier than the day on which that act or omission occurred; and
    - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.
- (8) Where:
- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TJ(3) is a violation of that undertaking; and
  - (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Commonwealth had the right to require and take such security;
- subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that:
- (c) have been exported by the exporter; and
  - (d) are of the kind to which the undertaking relates; and
  - (e) have been entered for home consumption on a day that:
    - (i) was not earlier than the day on which that act or omission occurred; and
    - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

**269TP Power to specify goods**

A notice under subsection 269TG(2), 269TH(2), 269TJ(2) or 269TK(2) in respect of a kind of goods, may, without limiting the generality of those provisions be expressed to apply to:

- (a) goods of that kind exported from a particular country; or
- (b) goods of that kind exported by a particular exporter.

### **269U Inquiries in relation to undertakings**

- (1) Where the Minister is considering, in relation to goods the subject of an application under section 269TB:

- (a) whether to give a notice, in accordance with subsection 269TG(3D), to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry; or
- (b) whether to give a notice, in accordance with subsection 269TJ(2A), to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry;

the Commissioner may authorise a Commission staff member in writing to convene a meeting of representatives of the Australian industry for the purpose of obtaining information and submissions from those representatives in relation to the question what terms of undertaking should be set out in the notice, if it is to be given, as the terms that may be satisfactory to the Minister.

- (2) A Commission staff member authorised under subsection (1) to convene a meeting of representatives of an Australian industry shall give notice in writing to such persons as, in his or her opinion, represent the Australian industry, setting out:
- (a) the day, time and place for the convening of the meeting; and
  - (b) the question to be considered by the meeting.
- (3) The Commission staff member convening a meeting in pursuance of subsection (2):
- (a) shall preside at the meeting; and
  - (b) may adjourn the meeting from time to time.
- (4) At a meeting of representatives of an Australian industry convened in pursuance of subsection (2), the representatives attending the

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meeting may provide information, or make submissions, to the Commission staff member convening the meeting in relation to the question being considered by the meeting.

- (5) Nothing in subsection (4) shall be taken to prevent a representative of an Australian industry who attends a meeting convened in pursuance of subsection (2) from providing information or making a submission, in relation to the question considered or to be considered at the meeting, to the Commission staff member convening the meeting otherwise than at the meeting or to the Minister.
- (6) The Commission staff member convening a meeting in pursuance of subsection (2) may, subject to subsection (7), put before the meeting information in relation to the question being considered by the meeting.
- (7) The Commission staff member convening a meeting in pursuance of subsection (2) shall not put before the meeting any information provided to him or her by another person that is information of a confidential nature (whether or not confidentiality was claimed in respect of the information by the person who provided the information).
- (8) After the close of a meeting convened in pursuance of subsection (2), the Commission staff member convening the meeting shall furnish to the Commissioner for submission to the Minister a report in writing of the information provided and the submissions made at the meeting.
- (9) Nothing in this section shall be taken, for the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, to authorize any act or thing other than the providing of information or the making of a submission, at a meeting of representatives of an Australian industry convened in pursuance of subsection (2), by a representative of the Australian industry to the Commission staff member convening the meeting in relation to the question being considered by the meeting.

## **Division 4—Dumping duty or countervailing duty assessment**

### **269UA What this Division is about**

This Division enables a reconciliation of interim duty, and final duty, payable under the Dumping Duty Act. The Division permits an importer who has paid interim duty on particular goods to apply, within specified time limits, for an assessment of duty payable on those goods. In particular, the Division provides that:

- if the duty is less than the interim duty, the excess is to be refunded;
- if the duty is more than the interim duty, the interim duty is treated as duty and the balance waived;
- if the importer fails, within the time limits available, to seek an assessment of duty, the interim duty paid on the goods is taken to be duty actually payable.

### **269V Importers may apply for duty assessment in certain circumstances**

- (1) An importer of goods on which, under the Dumping Duty Act, an interim duty has been paid may, subject to subsection (2), by application lodged with the Commissioner, request that the Minister make an assessment of the liability of those goods to duty under that Act.
- (2) An application for an assessment of duty under subsection (1) may only be lodged if:
  - (a) the application is lodged not more than 6 months after the end of the particular importation period in which the goods

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the subject of the application were entered for home consumption; and

- (b) the importer contends that the total amount of duty payable in respect of those goods under the Dumping Duty Act is less, by a specified amount, than the total amount of interim duty that has been paid on those goods under that Act.

**269W Manner of making applications for duty assessment**

- (1) An application for an assessment of duty on goods of a particular kind entered for home consumption during a particular importation period must be in writing and contain:

- (a) a full description of the goods of that kind in each consignment imported during the particular importation period; and
- (b) information concerning the amount of interim duty paid on the goods of that kind in each such consignment; and
- (c) if an interim dumping duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are the normal value and the export price of goods of that kind in each such consignment; and
- (d) if an interim countervailing duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are:
  - (i) the amount of the countervailable subsidy received on goods of that kind in each such consignment; and
  - (ii) the amount of the export price of goods of that kind in each such consignment; and
- (e) a statement of the amount by which the applicant contends that the total interim duty paid on those goods exceeds the total duty payable under the Dumping Duty Act.

- (1A) The application must also contain either:

- (a) sufficient evidence to establish that the applicant's opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct; or
- (b) both of the following:

- (i) the evidence the applicant has to establish that the applicant's opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct;
  - (ii) a commitment that someone else will give the Commissioner further evidence within 30 days after lodgment or such longer period as the Commissioner allows, so that the Commissioner will then have sufficient evidence to establish that the applicant's opinion of those amounts is correct.
- (1B) If the interim duty on the goods covered by the application was calculated using the export price of the goods worked out (under paragraph 269TAB(1)(b) or otherwise) as the difference between:
- (a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and
  - (b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods;
- the requirement in subsection (1A) of this section is met only if the evidence referred to in that subsection includes evidence of the things described in paragraphs (a) and (b) of this subsection.
- (2) An application must be lodged with the Commissioner in the manner approved under section 269SMS.
- (2A) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to final duty assessment applications.
- (3) The day on which an application is taken to have been lodged must be recorded on the application.

### **269X Consideration of duty assessment applications**

- (1) The Commissioner must, as soon as practicable after the lodgment of an application for assessment of duty in respect of goods that were entered for home consumption during a particular importation period and within 155 days after the lodgement of that application or such longer period as the Minister allows under section 269ZHI,

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examine the application and decide what recommendation to make to the Minister under subsection (6).

Note: The Commissioner may be required to reject the application or be able to terminate the examination of it without deciding what recommendation to make to the Minister. See section 269YA.

- (2) If the Commissioner considers that any person (including the applicant) may be able to supply information relevant to the consideration of the application, the Commissioner may, by notice in writing, request the supply of that information, in writing:
  - (a) if the information is sought from a person other than the applicant—within a period specified in the notice ending not later than 120 days after the lodgment of the application; and
  - (b) if the information is sought from the applicant—within a period specified in the notice ending not later than 155 days after the lodgment of the application.
- (3) Where the Commissioner proposes to take into account any relevant information that was not supplied to the Commissioner by the applicant, the Commissioner must:
  - (a) give the applicant a copy of the information that he or she proposes to take into account unless, in the opinion of the Commissioner, the provision of that information would adversely affect the business or commercial interests of a person supplying the information; and
  - (b) invite the applicant, within a specified period ending not later than 155 days after the lodgment of the application, to make any further submission the applicant considers appropriate in relation to that information.
- (3A) However, the Commissioner must not give the applicant information that the exporter of goods covered by the application supplied to the Commissioner (whether as a result of a request under subsection (2) or otherwise) that is relevant to working out:
  - (a) the normal value of the goods; or
  - (b) the countervailable subsidy relating to the goods; or
  - (c) the export price of the goods;



unless the exporter indicates that he or she is willing for the Commissioner to give the information to the applicant under paragraph (3)(a).

- (4) If a person refuses or fails to supply information or to make a submission within the period allowed but subsequently supplies that information or makes that submission, the Commissioner may disregard that information or submission in considering the application.
- (5) On the basis of the information and evidence contained in the application, any other information provided under subsection (2) or (3) that is not disregarded under subsection (4) and any other information the Commissioner considers relevant, the Commissioner must:
- (a) provisionally ascertain, in relation to each consignment of goods to which the application relates, each variable factor relevant to the determination of duty payable on the goods under the Dumping Duty Act; and
  - (b) having regard to those variable factors as so provisionally ascertained and, where appropriate, to the non-injurious price of goods of that kind—provisionally calculate, in respect of each such consignment, the amount of duty payable under the Dumping Duty Act.
- (5A) Subsection (5B) of this section applies if the Commissioner proposes to ascertain provisionally, for the purposes of paragraph (5)(a) of this section, the export price of goods (under paragraph 269TAB(1)(b) or otherwise) as the difference between:
- (a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and
  - (b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods.
- (5B) In provisionally ascertaining the export price of goods as described in subsection (5A), the Commissioner must:
- (a) take account of the following in relation to the goods:

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- (i) any change in normal value;
  - (ii) any change in costs incurred between importation and resale;
  - (iii) any movement in resale price which is duly reflected in subsequent selling prices; and
- (b) despite paragraph 269TAB(1)(b), not deduct the amount of interim duty if the Commissioner has conclusive evidence of the things mentioned in subparagraphs (a)(i), (ii) and (iii) of this subsection.

An expression used in this subsection and subparagraph 3.3 of Article 9 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement has the same meaning in this subsection as it has in that subparagraph.

- (6) On the basis of the provisional calculation of duty referred to in paragraph (5)(b), the Commissioner must decide:
- (a) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Dumping Duty Act by at least the amount contended in the application—to recommend to the Minister:
    - (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and
    - (ii) that the Minister order a repayment of the amount of interim duty overpaid; or
  - (b) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Dumping Duty Act but not to the extent contended in the application—to recommend to the Minister:
    - (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and
    - (ii) that the Minister order a repayment of the amount of interim duty overpaid; or
  - (c) if satisfied that the total amount of duty payable under the Dumping Duty Act on the goods the subject of the

application is equal to or exceeds the total of interim duty that was paid on the goods—to recommend to the Minister:

- (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; but
  - (ii) that the Minister order that any duty in excess of the interim duty paid on those goods be waived.
- (7) As soon as practicable, but not later than 7 days after making a decision under subsection (6), the Commissioner must:
- (a) notify the applicant, in writing, of the decision made; and
  - (b) if the decision is a negative preliminary decision:
    - (i) inform the applicant of the reasons why the Commissioner made the decision; and
    - (ii) inform the applicant of the applicant's right, within 30 days of the receipt of the notification, to apply for a review of the Commissioner's decision by the Review Panel under Division 9.
- (8) The Commissioner must:
- (a) if he or she has made a positive preliminary decision—recommend to the Minister, not later than 7 days after making the decision, that the Minister give effect to that decision; and
  - (b) if he or she has made a negative preliminary decision and the applicant has not exercised the right to seek a review of the decision by the Review Panel—recommend to the Minister, not later than 7 days after the end of the period available for seeking review of the decision, that the Minister give effect to that decision.

## **269Y Duty assessments**

- (1) As soon as practicable, but no later than 30 days, after receiving a recommendation from the Commissioner or from the Review Panel under subsection 269ZZU(2) in relation to goods the subject of an

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application, the Minister must, having regard to the terms of that recommendation, by notice in writing:

- (a) ascertain, for the purposes of this Act and the Dumping Duty Act, the variable factors relevant to the determination of duty payable under the Dumping Duty Act in respect of each consignment; and
  - (b) order that the total interim duty overpaid in respect of all consignments to which the application relates be repaid or that the total unpaid duty in excess of the interim duty already paid be waived, as the case requires.
- (2) As soon as practicable after issuing a notice under subsection (1) the Minister must ensure that a copy of that notice is provided to the applicant.
- (3) If the Minister issues a notice under subsection (1) ordering that an amount of interim duty be repaid to an applicant the Commonwealth is liable to make a repayment to the applicant accordingly.
- (4) If:
- (a) one or more consignments of goods of a particular kind that are the subject of a dumping duty notice or a countervailing duty notice are entered for home consumption during an importation period; and
  - (b) interim duty is paid on those goods under the Dumping Duty Act; and
  - (c) application is not lodged under section 269V of this Act for an assessment of duty payable on those goods under the Dumping Duty Act;
- then:
- (d) the Minister is taken, for the purposes of this Act and the Dumping Duty Act, to have ascertained each variable factor relevant to the determination of duty on each such consignment at the level at which that factor was ascertained or last ascertained by the Minister for the purpose of the dumping duty notice or countervailing duty notice; and

- (e) the interim duty paid on those goods is taken to be the duty payable.

**269YA Rejection etc. of application for duty assessment**

- (1) This section has effect despite sections 269X and 269Y if an application under section 269V is lodged with the Commissioner under section 269W.
- (2) The Commissioner must reject the application if the Commissioner is satisfied within 20 days after it is lodged that it does not contain everything it must contain under subsections 269W(1) and (1A).
- (3) The Commissioner must reject the application if:
  - (a) the application contains a commitment described in paragraph 269W(1A)(b); and
  - (b) within 20 days after the time described in that paragraph, the Commissioner is satisfied that he or she has not received from the applicant and one or more other persons sufficient evidence to establish that the applicant's opinion of the amounts described in whichever of paragraphs 269W(1)(c) and (d) apply is correct.
- (4) The Commissioner may terminate examination of the application if he or she is satisfied after the last of the 20 days mentioned in subsection (2) or (3) of this section that he or she does not have enough information to be able to comply with paragraph 269X(5)(a).
- (5) If the Commissioner rejects the application or terminates examination of it:
  - (a) the Commissioner must notify the applicant in writing of the following:
    - (i) the rejection or termination;
    - (ii) the reasons for the rejection or termination;
    - (iii) the applicant's right, within 30 days of the receipt of the notification, to apply for a review by the Review Panel under Division 9 of the rejection or termination; and

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- (b) the Commissioner must not:
  - (i) provisionally ascertain a variable factor or provisionally calculate an amount under subsection 269X(5) in connection with the application; or
  - (ii) decide what recommendation to make to the Minister under subsection 269X(6) in connection with the application; and
- (c) subsection 269Y(4) has effect as if the application had not been lodged under section 269V.

## **Division 5—Review of anti-dumping measures**

### **269Z What this Division is about**

This Division enables affected parties (exporters, industry etc.) to apply for the review of anti-dumping measures. The Division also empowers the Minister to initiate such a review. The Division:

- sets out the circumstances in which applications can be brought;
- empowers the Commissioner to recommend, through a Minister's request, an extension of the ambit of a review where appropriate;
- sets out the procedure to be followed by the Commissioner in dealing with applications or requests and preparing reports for the Minister;
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate;
- empowers the Minister, if interim duty has been paid under the Dumping Duty Act, to make any necessary adjustment of that interim duty.

### **269ZA Applications and requests for review of anti-dumping measures**

- (1) If:
- (a) anti-dumping measures have been taken in respect of goods;  
and

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- (b) an affected party considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:
  - (i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed; or
  - (ii) the anti-dumping measures are no longer warranted;the affected party may, by application lodged with the Commissioner, request that the Commissioner initiate such a review.
- (2) An application for review of anti-dumping measures must not be made:
  - (a) if the measures involve the publication of a dumping duty notice or a countervailing duty notice—earlier than 12 months after:
    - (i) the publication of the notice; or
    - (ii) the publication of a notice declaring the outcome of the last review of the notice (whether that last review was undertaken at the applicant’s request or not); and
  - (b) if the measures involve the acceptance of an undertaking—earlier than 12 months after:
    - (i) the publication of notice of the acceptance of that undertaking; or
    - (ii) the publication of a notice declaring the outcome of the last review of the undertaking (whether that last review was undertaken at the applicant’s request or not).

Example: If an application under section 269TB resulted in:

- (a) the publication of the acceptance of an undertaking from exporter A on 1 January 1999; and
- (b) the publication of a dumping duty notice covering exporters B and C on 1 March 1999;

an affected party could seek review of the undertaking on 2 January 2000 but could not seek review of both the undertaking and the dumping duty notices until 2 March 2000.



However, the Minister could decide to review the notices before 2 March 2000 either on his or her own initiative or on the recommendation of the Commissioner. See subsection (3).

- (3) If:
- (a) anti-dumping measures have been taken in respect of goods; and
  - (b) the Minister considers (either as a result of a recommendation from the Commissioner under subsection 269ZC(4) or on his or her own initiative) that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:
    - (i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters may have changed; or
    - (ii) the anti-dumping measures are no longer warranted;
- the Minister may, at any time, by notice in writing, request that the Commissioner initiate a review under this Division.
- (4) If, as a result of a person's application under Division 6 for accelerated review of a dumping duty notice or a countervailing duty notice, the Minister has made a declaration under subsection 269ZG(3):
- (a) that person may not make an application, under subsection (1) of this section, for a review of that notice earlier than 12 months after the making of that declaration; but
  - (b) for the purpose of determining whether subsection (2) permits any other person to apply for a review of the notice, the making of that declaration is not to be treated as a review of the notice.
- (5) If:
- (a) a person applies, under Division 9, for a review of the Minister's decision to publish a dumping duty notice or a countervailing duty notice or not to publish such a notice; and

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- (b) as a result of that review:
  - (i) a dumping duty notice or a countervailing duty notice is published by the Minister despite an earlier decision not to publish such a notice; or
  - (ii) a dumping duty notice or countervailing duty notice originally published by the Minister is varied; or
  - (iii) another dumping duty notice or countervailing duty notice is substituted for the notice originally published by the Minister;

then, for the purpose only of determining whether subsection (2) permits a review of the new notice, the notice as varied or the substituted notice, that new notice, notice as varied or substituted notice has effect as if it had been published at the time of the Minister's decision not to publish a notice, or at the time of publication of the original notice, as the case requires.

**269ZB Content and lodgment of applications for review of anti-dumping measures**

- (1) An application under subsection 269ZA(1) for review of anti-dumping measures must:
  - (a) be in writing; and
  - (b) be in a form approved by the Commissioner for the purposes of this section; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated by the form; and
  - (e) be lodged in the manner approved under section 269SMS.
- (2) Without otherwise limiting the matters that can be required by the form to be included, the application must include:
  - (a) a description of the kind of goods to which the measures the subject of the application relate; and
  - (b) a description of the measures the subject of the application; and
  - (c) if the application is based on a change in variable factors—a statement of the opinion of the applicant concerning:

- (i) the variable factors relevant to the taking of the measures taken that have changed; and
  - (ii) the amount by which each such factor has changed; and
  - (iii) the information that establishes that amount; and
  - (d) if the application is based on circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted—evidence, in accordance with the form, of the circumstances.
- (3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for review of anti-dumping measures.
- (4) The day on which the application is taken to have been lodged must be recorded on the application.

### **269ZC Consideration of applications and requests for review**

- (1) If an application under subsection 269ZA(1) for review of anti-dumping measures is lodged with the Commissioner, the Commissioner must, within 20 days after receiving the application:
- (a) examine the application; and
  - (b) if the Commissioner is not satisfied, having regard to the application and to any other information that the Commissioner considers relevant, of one or more of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.
- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
- (a) that the application complies with section 269ZB; and
  - (b) that there appear to be reasonable grounds for asserting either, or both, of the following:
    - (i) that the variable factors relevant to the taking of anti-dumping measures have changed;
    - (ii) that the anti-dumping measures are no longer warranted.

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- (3) The notice informing the applicant of the rejection of the application must set out the reasons why the Commissioner was not satisfied of one or more of the matters set out in subsection (2).
- (4) If the Commissioner decides not to reject an application for review of anti-dumping measures, the Commissioner must either:
  - (a) publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to review the measures covered by the application; or
  - (b) if the Commissioner considers that the review applied for should be extended to include any additional matter— recommend to the Minister that the review be extended accordingly.
- (5) If the Commissioner is requested by the Minister to undertake a review of anti-dumping measures, either as a result of a recommendation made to the Minister under subsection (4) or otherwise, the Commissioner must, on receipt of that request, publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to review the measures covered by the request.
- (6) If:
  - (a) the Commissioner recommends to the Minister under paragraph (4)(b) the extension of a review of anti-dumping measures; but
  - (b) the Commissioner is informed by the Minister, within 20 days after that recommendation is made, that the Minister does not require the review to be so extended;the Commissioner must, on being so informed, publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to review the anti-dumping measures under this Division covered by the original application.
- (7) The notice published by the Commissioner under subsection (4), (5) or (6) must:
  - (a) describe the kind of goods to which the review relates; and
  - (b) describe the measures to which the review relates; and

- (ba) if the review will examine whether the variable factors relevant to the taking of the measures have changed—state that fact; and
- (bb) if the review will examine whether the measures are no longer warranted—state that fact; and
- (c) indicate that a report will be made to the Minister:
  - (i) within 155 days after the date of publication of the notice; or
  - (ii) within such longer period as the Minister allows under section 269ZHI; and
- (d) invite interested parties to lodge with the Commissioner, within 37 days after the date of publication of the notice, submissions concerning the review; and
- (e) state that:
  - (i) within 110 days after the publication of the notice; or
  - (ii) such longer period as the Minister allows under section 269ZHI;the Commissioner will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation concerning the measures under review; and
- (f) invite interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
- (g) indicate the address at which, or the manner in which, submissions under paragraph (d) or (f) can be lodged.

**269ZCA Application to extend a review of anti-dumping measures to include revocation**

If:

- (a) a notice was published by the Commissioner under subsection 269ZC(4), (5) or (6); and
- (b) the notice did not state the review will examine whether the measures are no longer warranted (see paragraph 269ZC(7)(bb)); and

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(c) an affected party considers that it can provide evidence that may satisfy the Commissioner that there are reasonable grounds for determining that the anti-dumping measures described in the notice are no longer warranted;  
the affected party may, by application lodged with the Commissioner, request that the Commissioner consider that evidence.

**269ZCB Content and lodgment of application to extend a review of anti-dumping measures to include revocation**

- (1) An application under section 269ZCA must:
  - (a) be lodged within 37 days of the publication of the relevant notice under subsection 269ZC(4), (5) or (6); and
  - (b) be in writing; and
  - (c) be in a form approved by the Commissioner for the purposes of this section; and
  - (d) contain such information as the form requires; and
  - (e) be signed in the manner indicated by the form; and
  - (f) be lodged in the manner approved under section 269SMS.
- (2) Without otherwise limiting the matters that can be required by the form to be included, the application must include evidence of the circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted.
- (3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for review of anti-dumping measures.
- (4) The day on which the application is taken to have been lodged must be recorded on the application.

**269ZCC Consideration of applications and requests for extensions of reviews**

- (1) If an application under section 269ZCA is lodged with the Commissioner, the Commissioner must, within 20 days after receiving the application:
  - (a) examine the application; and
  - (b) if the Commissioner is not satisfied, having regard to the application and to any other information that the Commissioner considers relevant, of one or more of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.
- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
  - (a) that the application complies with section 269ZCB; and
  - (b) that the Commissioner is satisfied that there appear to be reasonable grounds for recommending that the anti-dumping measures are no longer warranted.
- (3) The notice informing the applicant of the rejection of the application must set out the reasons why the Commissioner was not satisfied of one or more of the matters set out in subsection (2).
- (4) If the Commissioner decides not to reject an application, the Commissioner must publish a notice on the Anti-Dumping Commission's website in accordance with subsection (8).
- (5) If the Commissioner considers (either as a result of an application under section 269ZCA or on the Commissioner's own initiative) that the review applied for should be extended to include any additional matter, the Commissioner may, within 40 days after the publication of the notice under subsection 269ZC(4), (5) or (6) relating to the review, recommend to the Minister that the review be extended accordingly.
- (6) If:
  - (a) anti-dumping measures have been taken in respect of goods; and

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- (b) an application under subsection 269ZA(1) for review of anti-dumping measures has been made; and
- (c) the Minister considers (either as a result of a recommendation from the Commissioner under subsection (5) of this section or on the Minister's own initiative) that there appear to be reasonable grounds to extend the review applied for to include any additional matter;

the Minister may, within 60 days of the publication of the relevant notice under subsection 269ZC(4), (5) or (6), by notice in writing, request that the Commissioner extend the review applied for accordingly.

- (7) If the Commissioner is requested under this section by the Minister to extend a review of anti-dumping measures, the Commissioner must, on receipt of that request, publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to so extend the review.
- (8) The notice published by the Commissioner under subsection (4) or (7) must:
  - (a) describe the kind of goods to which the relevant review of anti-dumping measures relates; and
  - (b) describe the measures to which the review relates; and
  - (c) if the Commissioner is satisfied that there may be reasonable grounds for the Commissioner making a revocation recommendation—state that fact; and
  - (d) invite affected parties to lodge with the Commissioner submissions concerning the extended review.

**269ZD Statement of essential facts in relation to review of anti-dumping measures**

- (1) If the Commissioner publishes a notice under subsection 269ZC(4), (5) or (6) in relation to the review of anti-dumping measures, he or she must, within 110 days after the publication of the notice or such longer period as the Minister allows under section 269ZHI, place on the public record a



statement of the facts (the *statement of essential facts*) on which the Commissioner proposes to base a recommendation to the Minister in relation to the review of those measures.

- (2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:
- (a) must have regard to:
    - (i) the application or request; and
    - (ii) any submissions relating generally to the review that are received by the Commissioner within 37 days after the publication of the notice under subsection 269ZC(4), (5) or (6); and
    - (iii) any other submission received by the Commissioner relating generally to the review if, in the Commissioner's opinion, having regard to the submission would not prevent the timely placement of the statement of essential facts on the public record; and
  - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to any submissions relating generally to the review that are received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

### **269ZDA Report on review of measures**

- (1) The Commissioner must, after conducting a review of anti-dumping measures and within 155 days after the date of publication of the notice under subsection 269ZC(4), (5) or (6) in relation to those measures or such longer period as the Minister allows under section 269ZHI, give the Minister a report recommending:
- (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice:
    - (i) that the notice remain unaltered; or

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- (ii) that the notice be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
    - (iii) that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; and
  - (b) to the extent that the measures involved the acceptance by the Minister of an undertaking:
    - (i) that the undertaking remain unaltered; or
    - (ii) that the Minister seek a variation of the terms of the undertaking as indicated in the Commissioner's report; or
    - (iii) that the Minister indicate to the person who gave the undertaking that the undertaking is no longer acceptable and that the investigation of the need for a dumping duty notice or a countervailing duty notice, as the case requires, covering that person is to be resumed; or
    - (iv) that the Minister indicate to the person who gave the undertaking that the person is released from the undertaking and that the investigation of the need for a dumping duty notice or countervailing duty notice covering that person is terminated.
- (1A) After conducting a review of anti-dumping measures under this Division, the Commissioner:
- (a) must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and
  - (b) otherwise must make a revocation recommendation in relation to the measures, unless the Commissioner is satisfied as a result of the review that revoking the measures would lead, or be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.
- (2) Nothing in this section is to be taken to imply that the Commissioner cannot simultaneously make the same

recommendation in relation to more than one exporter or person giving an undertaking.

- (3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the report, the Commissioner:
- (a) must have regard to:
    - (i) the application or request for review; and
    - (ia) any application to extend the review that was not rejected; and
    - (ib) any request to extend the review; and
    - (ii) any submission relating generally to the review to which the Commissioner has had regard for the purpose of formulating the statement of essential facts in relation to the review; and
    - (iii) that statement of essential facts; and
    - (iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and
  - (b) may have regard to any other matter that the Commissioner considers to be relevant to the review.
- (4) The Commissioner is not obliged to have regard to any submission made in response to the statement of essential facts that is received by the Commissioner after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.
- (5) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:
- (a) sets out the material findings of fact on which that recommendation is based; and
  - (b) provides particulars of the evidence relied on to support those findings.

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**269ZDB Powers of the Minister in relation to review of anti-dumping measures**

- (1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with subsection (7), that for the purposes of this Act and the Dumping Duty Act:
  - (a) to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice or a countervailing duty notice:
    - (i) that the notice is to remain unaltered; or
    - (ii) that, with effect from a date specified in the declaration, the notice is taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods; or
    - (iii) that, with effect from a date specified in the declaration, the notice is to be taken to have effect or to have had effect, either in relation to a particular exporter or to exporters generally, as if the Minister had fixed different variable factors in respect of that exporter or of exporters generally, relevant to the determination of duty; and
  - (b) to the extent that the anti-dumping measures concerned involved the acceptance by the Minister of an undertaking:
    - (i) that the undertaking is to remain unaltered; or
    - (ii) that if, before a date specified in the declaration, the terms of the undertaking are altered in a manner specified in the declaration, the undertaking as so varied will be acceptable to the Minister; or
    - (iii) that the undertaking is no longer acceptable to the Minister and that the investigation of the need for a dumping duty notice or a countervailing duty notice is to be resumed immediately; or
    - (iv) that, with effect from a date specified in the declaration, the person who gave the undertaking is released from the undertaking and that the investigation giving rise to the undertaking is terminated.

- (1AA) The Minister must not make a revocation declaration in relation to anti-dumping measures unless a revocation review notice has been published in relation to the relevant review of those measures.
- (1A) The Minister must make a declaration under subsection (1) within:
- (a) 30 days after receiving the report; or
  - (b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such longer period as the Minister considers appropriate.
- (1B) If paragraph (1A)(b) applies, the Minister must give public notice of the longer period.
- (2) If the Minister makes a declaration under subsection (1), that declaration has effect according to its terms.
- (3) If:
- (a) the Minister makes a declaration under subsection (1); and
  - (b) under that declaration, new variable factors are taken to have been fixed, in relation to goods exported to Australia by a particular exporter, with effect from a date specified in the declaration; and
  - (c) interim duty paid on such goods on the basis of the variable factors as previously fixed exceeds the interim duty that would be payable on the basis of the new variable factors;
- the person who paid the interim duty may apply under Division 3 of Part VIII for a refund of the excess.
- (4) The Minister must, as soon as practicable after the making of a declaration under subsection (1) that affects an exporter or person giving an undertaking, inform that exporter or person of the terms of the declaration.
- (5) Nothing in this section is to be taken to imply that the Minister cannot simultaneously make the same declaration in relation to more than one exporter or person giving an undertaking.
- (6) For the purposes of a declaration under subsection (1), the Minister must not fix a date:

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- (a) in a circumstance to which subparagraph (1)(a)(ii) or (iii) applies—that is earlier than the date of publication under section 269ZC of a notice indicating the proposal to undertake the review concerned; and
  - (b) in a circumstance to which subparagraph (1)(b)(ii) or (iv) applies—that is earlier than the date of the declaration.
- (7) A notice under subsection (1) must be published on the Anti-Dumping Commission’s website.

## Division 5A—Anti-circumvention inquiries

### 269ZDBA What this Division is about

If a notice has been published under subsection 269TG(2) or 269TJ(2) in respect of goods, this Division allows a person representing, or representing a portion of, the Australian industry producing like goods to apply for the conduct of an anti-circumvention inquiry in relation to the notice. This Division also allows the Minister to request such an inquiry. It:

- sets out when applications may be made; and
- sets out the procedure to be followed by the Commissioner in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the notice unaltered or to alter the notice as appropriate.

### 269ZDBB Circumvention activities

- (1) This section sets out when circumvention activity, in relation to a notice published under subsection 269TG(2) or 269TJ(2), occurs.

*Assembly of parts in Australia*

- (2) **Circumvention activity**, in relation to the notice, occurs if the following apply:
- (a) goods in the form of individual parts (the **circumvention goods**) are exported to Australia;
  - (b) those parts are manufactured in a foreign country in respect of which the notice applies;
  - (c) those parts are assembled in Australia, whether or not with other parts, to create goods (the **assembled goods**) that would

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- be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;
- (d) the total value of the parts manufactured in that foreign country is a significant proportion of the value of the assembled goods;
  - (e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

*Assembly of parts in third country*

- (3) **Circumvention activity**, in relation to the notice, occurs if the following apply:
  - (a) goods in the form of individual parts are manufactured in a foreign country (the **original country**) in respect of which the notice applies;
  - (b) those parts are assembled in a foreign country in respect of which the notice does not apply, whether or not with other parts, to create goods (the **circumvention goods**) that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;
  - (c) the circumvention goods are exported to Australia;
  - (d) the total value of the parts manufactured in the original country is a significant proportion of the customs value (within the meaning of section 159) of the circumvention goods;
  - (e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

*Export of goods through one or more third countries*

- (4) **Circumvention activity**, in relation to the notice, occurs if the following apply:
  - (a) goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice does not apply;



- (b) before that export, there were one or more other exports of the goods from a foreign country to another foreign country;
- (c) the first of those other exports was from a foreign country in respect of which the notice applies;
- (d) the circumvention goods would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;
- (e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

*Arrangements between exporters*

- (5) **Circumvention activity**, in relation to the notice, occurs if the following apply:
  - (a) goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice applies;
  - (b) the exporter exported the circumvention goods under an arrangement with another exporter from that foreign country;
  - (c) the other exporter is an exporter in respect of which the notice applies;
  - (d) the circumvention goods would be the subject of the notice if they were exported to Australia by the other exporter;
  - (e) either:
    - (i) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia; or
    - (ii) section 8 or 10 of the Dumping Duty Act, as the case requires, applies to the export of the circumvention goods to Australia, but the interim duty payable in relation to that export is less than the interim duty that would have been payable if the other exporter had exported the goods to Australia.

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*Avoidance of intended effect of duty*

- (5A) **Circumvention activity**, in relation to the notice, occurs if the following apply:
- (a) goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice applies;
  - (b) the exporter is an exporter in respect of which the notice applies;
  - (c) either or both of sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
  - (d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;
  - (e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.

*Regulations*

- (6) **Circumvention activity**, in relation to the notice, occurs in the circumstances prescribed by the regulations for the purposes of this subsection.

**269ZDBC Applications and requests for conduct of an anti-circumvention inquiry**

*Applications by Australian industry*

- (1) If:
- (a) a notice (an **original notice**) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and
  - (b) a person representing, or representing a portion of, the Australian industry producing like goods considers that one or more circumvention activities in relation to the notice have occurred; and

(c) the person considers that it may be appropriate to alter the notice because of the circumvention activities;  
the person may, by application lodged with the Commissioner, request that the Commissioner conduct an anti-circumvention inquiry in relation to the notice.

(1A) If:

- (a) a person lodges an application under subsection (1) with the Commissioner; and
  - (b) the person describes, in the application, circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A); and
  - (c) the Commissioner publishes a notice (the *inquiry notice*) under subsection 269ZDBE(4) because of the application;
- the person must not lodge another application under subsection (1) of this section describing circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), within 12 months after the day the inquiry notice was published.

*Requests by Minister*

(2) If:

- (a) a notice (an *original notice*) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and
- (b) the Minister considers that one or more circumvention activities in relation to the notice have occurred; and
- (c) the Minister considers that it may be appropriate to alter the notice because of the circumvention activities;

the Minister may, by notice in writing, request that the Commissioner conduct an anti-circumvention inquiry in relation to the original notice.

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**269ZDBD Content and lodgement of applications for conduct of an anti-circumvention inquiry**

*Content of application*

- (1) An application under subsection 269ZDBC(1) for the conduct of an anti-circumvention inquiry in relation to an original notice must:
  - (a) be in writing; and
  - (b) be in a form approved by the Commissioner for the purposes of this section; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated by the form; and
  - (e) be lodged in the manner approved under section 269SMS.

Note: For *original notice*, see section 269ZDBC.

- (2) Without limiting subsection (1), the application must include:
  - (a) a description of the kind of goods that are the subject of the original notice; and
  - (b) a description of the original notice the subject of the application; and
  - (c) a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
  - (d) a description of the alterations to the original notice that the applicant considers should be made.
- (2A) An application that describes circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), must not describe any other kind of circumvention activity in relation to that notice.

*Time of lodgement*

- (3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for the conduct of anti-circumvention inquiries.

- (5) The day on which the application is taken to have been lodged must be recorded on the application.

**269ZDBE Consideration of applications and requests for conduct of an anti-circumvention inquiry**

*Applications*

- (1) If an application under subsection 269ZDBC(1) for the conduct of an anti-circumvention inquiry in relation to an original notice is lodged with the Commissioner, the Commissioner must, within 20 days after receiving the application:
- (a) examine the application; and
  - (b) if the Commissioner is not satisfied, having regard to the application and any other information that the Commissioner considers relevant, of either or both of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.

Note: For *original notice*, see section 269ZDBC.

- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
- (a) that the application complies with section 269ZDBD; and
  - (b) that there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred.
- (3) The notice informing the applicant of the rejection of the application must set out the reasons why the Commissioner was not satisfied of either or both of the matters referred to in subsection (2).
- (4) If the Commissioner does not reject an application for the conduct of an anti-circumvention inquiry in relation to the original notice, the Commissioner must publish a notice on the Anti-Dumping Commission's website indicating that such an inquiry is to be conducted.

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*Requests*

- (5) If, under subsection 269ZDBC(2), the Minister requests the Commissioner to conduct an anti-circumvention inquiry in relation to an original notice, the Commissioner must, on receipt of that request, publish a notice on the Anti-Dumping Commission's website indicating that such an inquiry is to be conducted.

Note: For *original notice*, see section 269ZDBC.

*Content of notice*

- (6) A notice (the *inquiry notice*) published by the Commissioner under subsection (4) or (5) must:
- (a) describe the kind of goods to which the inquiry relates; and
  - (b) describe the original notice the subject of the inquiry; and
  - (c) state that the inquiry will examine whether circumvention activities in relation to the original notice have occurred; and
  - (d) indicate that a report will be made to the Minister:
    - (i) unless subparagraph (ii) applies—within 155 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; or
    - (ii) if the inquiry relates to whether circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred—within 100 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; and
  - (e) invite interested parties to lodge with the Commissioner, within 37 days after the day of publication of the inquiry notice, submissions concerning the inquiry; and
  - (f) if subparagraph (d)(i) applies—state that:
    - (i) within 110 days after the publication of the inquiry notice; or
    - (ii) within such longer period as the Minister allows under section 269ZHI;
- the Commissioner will place on the public record a statement of the essential facts on which the Commissioner proposes to

base a recommendation to the Minister in relation to the original notice; and

- (g) if subparagraph (d)(i) applies—invite interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
- (h) indicate the address at which, or the manner in which, submissions under paragraph (e) or (g) may be lodged.

## **269ZDBEA Termination of anti-circumvention inquiry**

### *General inquiry*

- (1) If:
  - (a) the Commissioner publishes a notice under subsection 269ZDBE(4); and
  - (b) subparagraph 269ZDBE(6)(d)(i) applies; and
  - (c) before the Commissioner would otherwise be required to place on the public record a statement referred to in subsection 269ZDBF(1), the Commissioner becomes satisfied that no circumvention activity in relation to the original notice has occurred;the Commissioner may terminate the anti-circumvention inquiry concerned.

Note: For *original notice*, see section 269ZDBC.

### *Accelerated inquiry*

- (2) If:
  - (a) the Commissioner publishes a notice under subsection 269ZDBE(4); and
  - (b) subparagraph 269ZDBE(6)(d)(ii) applies; and
  - (c) the Commissioner is satisfied that no circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred;the Commissioner may terminate the anti-circumvention inquiry concerned.

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Note: For *original notice*, see section 269ZDBC.

*Notice of termination decision*

- (3) The Commissioner must:
- (a) give public notice of a decision under subsection (1) or (2); and
  - (b) notify the applicant for the conduct of the anti-circumvention inquiry of the decision; and
  - (c) inform the applicant of the applicant's right, within 30 days after the applicant is so notified, to apply for a review of the decision by the Review Panel under Division 9.

**269ZDBF Statement of essential facts in relation to conduct of an anti-circumvention inquiry**

- (1) If the Commissioner publishes a notice under subsection 269ZDBE(4) or (5) about the conduct of an anti-circumvention inquiry in relation to an original notice and subparagraph 269ZDBE(6)(d)(i) applies, the Commissioner must:
- (a) within 110 days after the publication of the notice under subsection 269ZDBE(4) or (5); or
  - (b) within such longer period as the Minister allows under section 269ZHI;

place on the public record a statement of the facts (the *statement of essential facts*) on which the Commissioner proposes to base a recommendation to the Minister in relation to the original notice.

Note: For *original notice*, see section 269ZDBC.

- (2) In formulating the statement of essential facts, the Commissioner:
- (a) must have regard to:
    - (i) the application or request; and
    - (ii) any submissions concerning the inquiry that are received by the Commissioner within 37 days after the publication of the notice under subsection 269ZDBE(4) or (5); and



- (b) may have regard to any other matters that the Commissioner considers relevant.

*Late submissions*

- (3) The Commissioner is not obliged to have regard to a submission concerning the inquiry that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

### **269ZDBG Report on anti-circumvention inquiry**

*Commissioner recommendations*

- (1) The Commissioner must, after conducting an anti-circumvention inquiry in relation to an original notice and within:
- (a) if subparagraph 269ZDBE(6)(d)(i) applies—155 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI; or
  - (b) if subparagraph 269ZDBE(6)(d)(ii) applies—100 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI;
- give the Minister a report recommending:
- (c) the original notice remain unaltered; or
  - (d) the following:
    - (i) the original notice be altered because the Commissioner is satisfied that circumvention activities in relation to the original notice have occurred;
    - (ii) the alterations to be made to the original notice.

Note: For **original notice**, see section 269ZDBC.

- (2) In deciding on the recommendations to be made to the Minister in the report, the Commissioner:
- (a) if paragraph (1)(a) applies—must have regard to:

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- (i) the application or request for the inquiry; and
- (ii) any submission concerning the inquiry to which the Commissioner has had regard for the purpose of formulating the statement of essential facts in relation to the inquiry; and
- (iii) that statement of essential facts; and
- (iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and
- (aa) if paragraph (1)(b) applies—must have regard to:
  - (i) the application or request for the inquiry; and
  - (ii) any submission concerning the inquiry that is received by the Commissioner within 37 days after the publication of the notice under subsection 269ZDBE(4) or (5); and
- (b) in any case—may have regard to any other matter that the Commissioner considers to be relevant to the inquiry.

*Late submissions*

- (3) The Commissioner is not obliged to have regard to a submission made in response to the statement of essential facts that is received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.
- (3A) The Commissioner is not obliged to have regard to a submission concerning the inquiry that is received by the Commissioner after the end of the period referred to in subparagraph (2)(aa)(ii) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

*Reasons for Commissioner recommendations*

- (4) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:

- (a) sets out the material findings of fact on which that recommendation is based; and
- (b) provides particulars of the evidence relied on to support those findings.

## **269ZDBH Minister's powers in relation to anti-circumvention inquiry**

### *Minister's decision*

- (1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with subsection (9), that for the purposes of this Act and the Dumping Duty Act:
  - (a) the original notice is to remain unaltered; or
  - (b) the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.

Note: For *original notice*, see section 269ZDBC.

- (2) Without limiting subsection (1), the alterations may be of the following kind:
  - (a) the specification of different goods that are to be the subject of the original notice;
  - (b) the specification of different foreign countries that are to be the subject of the original notice;
  - (c) the specification of different exporters that are to be the subject of the original notice;
  - (d) in relation to existing exporters that are the subject of the original notice—the specification of different variable factors in respect of one or more of those exporters;
  - (e) in relation to exporters that are to be the subject of the original notice—the specification of variable factors in respect of those exporters.

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*Timing of decision*

- (3) The Minister must make a declaration under subsection (1) within:
  - (a) 30 days after receiving the report; or
  - (b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such longer period as the Minister considers appropriate.
- (4) If paragraph (3)(b) applies, the Minister must give public notice of the longer period.

*Declaration has effect according to its terms*

- (5) If the Minister makes a declaration under subsection (1), that declaration has effect according to its terms.

*Notification of declaration*

- (6) The Minister must, as soon as practicable after the making of a declaration under subsection (1) that affects an exporter, inform that exporter of the terms of the declaration.

*Declaration may cover more than one exporter*

- (7) Nothing in this section is taken to imply that the Minister cannot simultaneously make the same declaration in relation to more than one exporter.

*When declaration takes effect*

- (8) A day specified in a declaration as mentioned in paragraph (1)(b) must not be earlier than the day of publication of the notice under subsection 269ZDBE(4) or (5) about the conduct of an anti-circumvention inquiry in relation to the original notice.

*Manner of publication*

- (9) A notice under subsection (1) must be published on the Anti-Dumping Commission's website.

## **Division 6—Certain exporters may seek accelerated review of dumping duty notices or countervailing duty notices**

### **269ZDC What this Division is about**

This Division provides for the early review of a dumping duty notice or a countervailing duty notice on the application of certain exporters of goods covered by the notice. The review can be sought when a review of the notice under Division 5 would not be available and is only open to new exporters.

### **269ZE Circumstances in which accelerated review may be sought**

- (1) If a dumping duty notice or a countervailing duty notice has been published:
  - (a) in respect of goods exported from a particular country of export; or
  - (b) in respect of goods exported by new exporters from a particular country of export;  
a new exporter from that country (other than such an exporter in respect of whom a declaration has already been made under paragraph 269ZG(3)(b) in respect of a previous application) may, by application lodged with the Commissioner, request an accelerated review of that notice in so far as it affects that exporter.
- (2) If the Commissioner is satisfied that:
  - (a) because that exporter refused to co-operate, in relation to the application for publication of that notice, the exportations of that exporter were not investigated; or
  - (b) the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice;the Commissioner may reject the application.

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- (3) If, during the course of an accelerated review, the Commissioner becomes satisfied that:
- (a) the exporter is refusing to co-operate with any aspect of the review; or
  - (b) the exporter is related to an exporter whose exports were examined in relation to the application for publication of that notice;
- the Commissioner may terminate the review.
- (4) For the purposes of this section, an exporter is taken to be related to another exporter if the 2 exporters are associates of each other under subsection 269TAA(4).

**269ZF Application for accelerated review**

- (1) An application for accelerated review must be in writing, be lodged in the manner approved under section 269SMS, and contain:
- (a) a description of the kind of goods to which the dumping duty notice or countervailing duty notice relates; and
  - (b) a statement of the basis on which the exporter considers that the particular notice is inappropriate so far as the exporter is concerned.
- (2) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for accelerated review.
- (3) The day on which an application is taken to be lodged must be recorded on the application.

**269ZG Consideration of application**

- (1) The Commissioner must, after considering the application and making such inquiries as the Commissioner thinks appropriate, give the Minister a report recommending:
- (a) that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or

- (b) that the dumping duty notice or countervailing duty notice the subject of the application be altered so as to apply to the applicant as if different variable factors had been fixed; and set out the Commissioner's reasons for so recommending.
- (2) A report by the Commissioner under subsection (1) must be completed as soon as practicable and in any case not later than 100 days after the day the application is lodged.
- (3) After considering the recommendation of the Commissioner and the reasons for the recommendation, the Minister must, by notice published on the Anti-Dumping Commission's website:
- (a) declare that, for the purposes of this Act and the Dumping Duty Act, the original dumping duty notice or countervailing duty notice is to remain unchanged; or
  - (b) declare that, with effect from the date the application is lodged, this Act and the Dumping Duty Act have effect as if the original dumping duty notice or countervailing duty notice had applied to the applicant but the Minister had fixed specified different variable factors relevant to the determination of duty;
- and, where the Minister does so, the declaration has effect according to its terms.
- (3A) The Minister must make a declaration under subsection (3) within:
- (a) 30 days after receiving the report; or
  - (b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such longer period as the Minister considers appropriate.
- (3B) If paragraph (3A)(b) applies, the Minister must give public notice of the longer period.
- (4) The Minister must, as soon as practicable after the issue of a notice under subsection (3), notify the applicant of the term of the notice.

**Part XVB** Special provisions relating to anti-dumping duties

**Division 6** Certain exporters may seek accelerated review of dumping duty notices or countervailing duty notices

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**269ZH Effect of accelerated review**

If an application for accelerated review of a dumping duty notice or a countervailing duty notice is lodged:

- (a) no interim duty can be collected in respect of consignments of goods, to which the application relates, entered for home consumption after the application is lodged and until the completion of the review; but
- (b) the Commonwealth may, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim duty that may be payable.



## **Division 6A—Continuation of anti-dumping measures**

### **269ZHA What this Division is about**

This Division provides for the Commissioner to alert interested parties to the anticipated termination of anti-dumping measures and provide them with an opportunity, before those measures expire, to apply for a continuation of the measures. The Division:

- sets out the consequences if no application is made;
- outlines the procedure to be followed by the Commissioner in dealing with an application and preparing a report for the Minister;
- empowers the Minister, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of the measures.

### **269ZHB Applications for continuation of anti-dumping measures**

- (1) Not later than 9 months before particular anti-dumping measures expire, the Commissioner must publish on the Anti-Dumping Commission's website a notice:
  - (a) informing persons that the dumping duty notice, countervailing duty notice or undertaking comprising those measures is due to expire on a specified day (the *specified expiry day*); and
  - (b) inviting the following persons to apply within 60 days to the Commissioner, in accordance with section 269ZHC, for a continuation of those measures:
    - (i) the person whose application under section 269TB resulted in those measures;

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- (ii) persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by those measures.
- (2) If the Minister makes a declaration under paragraph 269ZG(3)(b) in relation to an anti-dumping duty notice or countervailing duty notice, the original dumping duty notice or countervailing duty notice and that notice as modified because of that declaration are both to be treated, for the purposes of this Division and despite section 269TM, as if they had been issued at the time of issue of the original notice.
- (3) If no application for the continuation of the anti-dumping measures is received by the Commissioner within the period specified in the notice, then, on the specified expiry day:
  - (a) to the extent that the measures comprise a dumping duty notice—that notice expires; and
  - (b) to the extent that the measures comprise a countervailing duty notice—that notice expires; and
  - (c) to the extent that the measures comprise the giving of an undertaking—the person who gave the undertaking is taken to be released from the undertaking and the investigation giving rise to the undertaking is terminated.

**269ZHC Content and lodgment of application for continuation of anti-dumping measures**

- (1) An application under section 269ZHB must:
  - (a) be in writing; and
  - (b) be in a form approved by the Commissioner for the purposes of this section; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form; and
  - (e) be lodged in the manner approved under section 269SMS.
- (2) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for continuation of anti-dumping measures.

- (3) The day on which the application is taken to have been lodged must be recorded on the application.

**269ZHD Consideration of applications for continuation of anti-dumping measures**

- (1) If an application or applications for continuation of anti-dumping measures are lodged with the Commissioner in accordance with section 269ZHC, the Commissioner must, within 20 days after the end of the 60 days referred to in paragraph 269ZHB(1)(b):
- (a) examine each such application; and
  - (b) if the Commissioner is not satisfied in relation to any of the applications, having regard to the application and to any other information that the Commissioner considers relevant, of one or more of the matters referred to in subsection (2);
- the Commissioner must reject each such application and inform the applicant, by notice in writing, accordingly.
- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
- (a) whether the application complies with section 269ZHC; and
  - (b) whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.
- (3) A notice informing an applicant of the rejection of an application must set out the reasons why the Commissioner was not satisfied of one or more of the matters set out in subsection (2).
- (4) If the Commissioner decides not to reject an application for continuation of anti-dumping measures taken in respect of goods as they affect a particular exporter of those goods, the Commissioner must publish a notice on the Anti-Dumping Commission's website indicating that it is proposed to inquire whether continuation of the measures is justified.

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- (5) The notice published by the Commissioner must:
- (a) describe the kind of goods to which the anti-dumping measures apply; and
  - (b) describe the measures to which the application relates; and
  - (c) indicate that a report as to the continuation of these measures will be made to the Minister:
    - (i) within 155 days after the date of publication of the notice; or
    - (ii) within such longer period as the Minister allows under section 269ZHI; and
  - (d) invite interested parties to lodge with the Commissioner, within 37 days after the date of publication of the notice, submissions concerning the continuation of the measures; and
  - (e) state that:
    - (i) within 110 days after the publication of the notice; or
    - (ii) such longer period as the Minister allows under section 269ZHI;the Commissioner will place on the public record a statement of the essential facts on which the Commissioner proposes to base a recommendation concerning the continuation of the measures; and
  - (f) invite interested parties to lodge with the Commissioner, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
  - (g) indicate the address at which, or the manner in which, submissions under paragraph (d) or (f) can be lodged.

**269ZHE Statement of essential facts in relation to continuation of anti-dumping measures**

- (1) If the Commissioner publishes a notice under subsection 269ZHD(4) concerning the continuation of anti-dumping measures, he or she must, within 110 days after the publication of the notice or such longer period as the Minister allows under section 269ZHI, ensure that there is placed on the

public record a statement of the facts (the *statement of essential facts*) on which the Commissioner proposes to base his or her recommendation to the Minister concerning the continuation of those measures.

- (2) Subject to subsection (3), in formulating the statement of essential facts, the Commissioner:
  - (a) must have regard to:
    - (i) the application concerned; and
    - (ii) any submissions relating generally to the inquiry that are received by the Commissioner within 37 days after the publication of the notice under subsection 269ZHD(4); and
  - (b) may have regard to any other matters that the Commissioner considers relevant.
- (3) The Commissioner is not obliged to have regard to any submissions relating generally to the inquiry that are received by the Commissioner after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the Commissioner's opinion, prevent the timely placement of the statement of essential facts on the public record.

### **269ZHF Report on application for continuation of anti-dumping measures**

- (1) The Commissioner must, after conducting an inquiry into the continuation of anti-dumping measures and within 155 days after the date of publication of the notice under subsection 269ZHD(4) in relation to those measures or such longer period as the Minister allows under section 269ZHI, give the Minister a report recommending:
  - (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice:
    - (i) that the notice remain unaltered; or
    - (ii) that the notice cease to apply to a particular exporter or to a particular kind of goods; or

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- (iii) that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; or
    - (iv) that the notice expire on the specified expiry day; and
  - (b) to the extent that the measures involved the acceptance by the Minister of an undertaking:
    - (i) that the undertaking remain unaltered; or
    - (ii) that the Minister seek a variation of the terms of the undertaking as indicated in the Commissioner's report; or
    - (iii) that the undertaking expire on the specified expiry day.
- (2) The Commissioner must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the Commissioner is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.
- (3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the Commissioner's report, the Commissioner:
  - (a) must have regard to:
    - (i) the application for continuation of the anti-dumping measures; and
    - (ii) any submission relating generally to the continuation of the measures to which the Commissioner has had regard for the purpose of formulating the statement of essential facts in relation to the continuation of those measures; and
    - (iii) that statement of essential facts; and
    - (iv) any submission made in response to that statement that is received by the Commissioner within 20 days after the placing of that statement on the public record; and
  - (b) may have regard to any other matter that the Commissioner considers to be relevant to the inquiry.

- (4) The Commissioner is not obliged to have regard to any submission made in response to the statement of essential facts that is received after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.
- (5) The report to the Minister must include a statement of the Commissioner's reasons for any recommendation contained in the report that:
  - (a) sets out the material findings of fact on which that recommendation is based; and
  - (b) provides particulars of the evidence relied on to support those findings.

**269ZH G Powers of the Minister in relation to continuation of anti-dumping measures**

- (1) After considering the report of the Commissioner and any other information that the Minister considers relevant, the Minister must by notice published in accordance with subsection (2):
  - (a) declare that the Minister has decided not to secure the continuation of the anti-dumping measures concerned; or
  - (b) declare that the Minister has decided to secure the continuation of the anti-dumping measures concerned.

Note: Subsection (3) deals with the end of the anti-dumping measures and subsection (4) deals with the continuation of the anti-dumping measures.

- (1A) If the Minister receives the report less than 30 days before the specified expiry day, the Minister must make the declaration before that day.
- (1B) If subsection (1A) does not apply, the Minister must make the declaration within:
  - (a) 30 days after receiving the report; or
  - (b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such

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longer period, ending before the specified expiry day, as the Minister considers appropriate.

- (1C) If paragraph (1B)(b) applies, the Minister must give public notice of the longer period.
- (2) A notice under subsection (1) must be published:
- (a) before the expiry day specified in the notice; and
  - (b) on the Anti-Dumping Commission's website.
- (3) If the Minister declares that he or she has decided not to secure the continuation of the anti-dumping measures, then, on the specified expiry day:
- (a) to the extent that the measures comprise a dumping duty notice—that notice expires; and
  - (b) to the extent that the measures comprise a countervailing duty notice—that notice expires; or
  - (c) to the extent that the measures comprise the giving of an undertaking—the person who gave the undertaking is taken to be released from the undertaking and the investigation giving rise to the undertaking is terminated;
- as the case requires.
- (4) If the Minister declares that he or she has decided to secure the continuation of the anti-dumping measures, the continuation of those measures is so secured:
- (a) to the extent that the measures comprise the publication of a dumping duty notice or a countervailing duty notice:
    - (i) by the Minister determining, in writing, that the notice continues in force after the specified expiry day; or
    - (ii) by the Minister determining, in writing, that the notice continues in force after the specified expiry day but that, after that day, the notice ceases to apply in relation to a particular exporter or to a particular kind of goods; or
    - (iii) by the Minister determining, in writing, that the notice continues in force after the specified expiry day but that, after that day, the notice has effect, in relation to a particular exporter or to exporters generally, as if the



Minister had fixed different specified variable factors in relation to that exporter or to exporters generally, relevant to the determination of duty; and

- (b) to the extent that the measures involve the acceptance of an undertaking:
  - (i) by the person who gave the undertaking agreeing to extend it beyond the specified expiry day (without any variation) or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect on the day after the specified expiry day in substitution for the undertaking; or
  - (ii) by the person who gave the undertaking agreeing to extend it beyond the specified expiry day with the variations sought by the Minister or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect on the day after the specified expiry day in substitution for the undertaking.
- (5) If the Minister secures the continuation of anti-dumping measures in accordance with this section, the measures continue in force for 5 years after the specified expiry day unless:
  - (a) in the case of a dumping duty notice or a countervailing duty notice—the notice is revoked before the end of that period; or
  - (b) in the case of an undertaking—provision is made for its earlier expiration.

## Division 7—Procedural and evidentiary matters

### 269ZHH What this Division is about

This Division:

- enables extension of various periods for doing things under this Part if the Minister is satisfied it is necessary;
- provides for the giving of public notice of decisions and determinations under this Part;
- provides for the Commissioner to maintain a public record of investigations, reviews and inquiries conducted by the Commissioner under this Part.

### 269ZHI Minister may extend certain periods of time

- (1) The Commissioner may give the Minister a written request for one or more of the following:
  - (a) an extension of the 110-day period referred to in subsection 269TDAA(1);
  - (b) an extension of the 155-day period referred to in subsection 269TEA(1);
  - (c) an extension of the 155-day period referred to in subsection 269X(1);
  - (d) an extension of the 110-day period referred to in subsection 269ZD(1);
  - (e) an extension of the 155-day period referred to in subsection 269ZDA(1);
  - (ea) an extension of the 110-day period referred to in subsection 269ZDBF(1);
  - (eb) an extension of the 155-day period referred to in paragraph 269ZDBG(1)(a);

- (ec) an extension of the 100-day period referred to in paragraph 269ZDBG(1)(b);
  - (f) an extension of the 110-day period referred to in subsection 269ZHE(1);
  - (g) an extension of the 155-day period referred to in subsection 269ZHF(1).
- (2) The Commissioner must give reasons for the request.
  - (3) The Minister may approve a request if the Minister is satisfied that it is reasonable to do so. The Minister must notify the Commissioner of the extension period.
  - (4) If the Minister refuses a request, the Minister must notify the Commissioner of the refusal.
  - (5) The Minister may grant more than one extension of a period referred to in subsection (1).

#### **269ZI Public notice**

- (1) If a person or body is required or empowered to give public notice of a decision or determination but the provision requiring or empowering the giving of that notice does not specify where the notice is to be given, it is to be published on the Anti-Dumping Commission's website.
- (2) If a person or body is required or empowered to give public notice of a decision or determination, whether because of subsection (1) or otherwise, that person or body must:
  - (a) set out in the notice particulars of the decision or determination made; and
  - (b) set out in the notice, or in a separate report to which the notice refers, the reasons for the decision or determination including all material findings of fact or law on which the decision or determination is based; and
  - (c) if a person has a right to have the decision or determination reviewed by another body or referred to another body for

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- review—set out in the notice full particulars of those rights;  
and
- (d) if the material findings of fact or law are contained in a separate report—ensure that copies of the report are freely available and that the manner of obtaining a copy is set out in the notice.
- (3) A person or body required or empowered to give public notice of a decision or determination must:
- (a) ensure that a copy of the notice and, where appropriate, of a report to which the notice refers, is provided to each country whose exporters are affected by the decision or determination; and
- (b) give a copy of the report to each other interested party known to be affected by the decision or determination.
- (4) If the Commissioner gives public notice of a decision under paragraph 269TD(4)(b) to require securities in respect of interim duty that may become payable, the particulars of the decision to require those securities as set out in the notice should include, in particular:
- (a) the names of the exporters of the goods concerned, or, where this is impracticable, the name of the country or countries of export concerned; and
- (b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and
- (c) in the case of an application for the publication of a notice under section 269TG or 269TH:
- (i) particulars of dumping margins established in relation to each of the exporters involved; and
- (ii) an explanation of the methods used to compare export prices and normal values to establish those dumping margins;
- (d) in the case of an application for the publication of a notice under section 269TJ or 269TK—the amount of subsidy established in relation to each of the exporters involved; and

- (e) the considerations relevant to the determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the preliminary affirmative determination.
- (5) If the Minister gives public notice:
- (a) of a decision under section 269TG or 269TH to publish a dumping duty notice; or
  - (b) of a decision under section 269TL not to publish such a notice;
- then, for the purposes of the public notice:
- (c) the particulars of the decision should include:
    - (i) the matters referred to in paragraphs (4)(a), (b) and (c); and
    - (ii) particulars of the export price and normal value of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TG(1) or (2) or 269TH(1) or (2); and
    - (iii) any considerations relevant to a determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the decision; and
  - (d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.
- (6) If the Minister gives public notice:
- (a) of a decision under section 269TJ or 269TK to publish a countervailing duty notice; or
  - (b) of a decision under section 269TL not to publish such a notice;
- then, for the purposes of the public notice:
- (c) the particulars of the decision should include:
    - (i) the matters referred to in paragraphs (4)(a), (b) and (d); and

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- (ii) particulars of the countervailable subsidy received in respect of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TJ(1) or (2) or 269TK(1) or (2); and
  - (iii) any considerations relevant to a determination of material injury, to an industry or of material hindrance to the establishment of an industry, for the purposes of the decision; and
  - (d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.
- (7) If the Minister gives public notice under subsection 269TG(6) of a decision to accept an undertaking by an exporter of goods, the particulars of the decision to accept that undertaking should include, in particular:
  - (a) the name of the exporter of the goods concerned; and
  - (b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and
  - (c) the price below which, in accordance with the terms of the undertaking, the goods will not be sold for export to Australia.
- (8) If the Minister gives public notice under subsection 269TJ(3C) of a decision to accept an undertaking given by a government of a country of export in relation to the export trade to Australia in like goods, the particulars of the decision to accept that undertaking should include, in particular:
  - (a) the name of the government of the country of export; and
  - (b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and
  - (c) details of the changes proposed to be made to the countervailable subsidy provided by that government in respect of those goods.
- (9) If, a person or body is required or empowered to give public notice of a decision or determination:

- (a) the person or body must ensure that the notice given does not contain any information that is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests; but
  - (b) if it is practicable to do so, the person or body should include in the notice a summary of that information in a form that allows a reasonable understanding of the information without breaching that confidentiality or adversely affecting those interests.
- (10) Nothing in this section limits the operation of another provision of this Part that specifies the matters that must be included in a public notice.

**269ZJ Commissioner to maintain public record for certain purposes**

- (1) The Commissioner must, in relation to each application received under section 269TB that leads to an investigation, each application or request under section 269ZA that leads to a review, each application or request under section 269ZDBC that leads to an inquiry and each application under section 269ZHB that leads to an inquiry:
- (a) maintain a public record of the investigation, review or inquiry conducted for the purposes of the application or request, containing, subject to subsection (2), a copy of all submissions from interested parties, the statement of essential facts compiled in respect of that investigation, review or inquiry, and a copy of all relevant correspondence between the Commissioner and other persons; and
  - (b) draw the attention of all interested parties to the existence of the public record, and to their entitlement to inspect that record; and
  - (c) at the request of an interested party, make the record available to that party for inspection.
- (2) To the extent that information given to the Commissioner by a person is claimed to be confidential or to be information whose publication would adversely affect a person's business or

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commercial interests, the person giving that information must ensure that a summary of that information:

- (a) that contains sufficient detail to allow a reasonable understanding of the substance of the information; but
- (b) that does not breach that confidentiality or adversely affect those interests;

is given to the Commissioner for inclusion in the public record.

(3) A person is not required to give the Commissioner a summary of information under subsection (2) for inclusion in the public record if the person satisfies the Commissioner that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.

(4) If oral information is given to the Commissioner by a person, the Commissioner must not take that information into account unless it is subsequently put in writing by the person or by the Commissioner and thereby becomes available, subject to considerations of confidentiality and to the need to protect business and commercial interests, as a part of the public record.

(5) If:

- (a) in relation to an application under subsection 269TB(1) or (2), 269ZA(1) or 269ZDBC(1) or section 269ZHB or to a request under subsection 269ZA(3) or 269ZDBC(2), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and
- (b) the Commissioner indicates to the party that he or she disagrees with the claim;

but, despite the opinion of the Commissioner, the person making the claim will not:

- (c) agree to the inclusion of the information in the public record; or
- (d) prepare a summary of the information for inclusion in that record;

the Commissioner may disregard the information unless it is demonstrated that the information is correct.



(6) If:

- (a) in relation to an application under subsection 269TB(1) or (2), 269ZA(1) or 269ZDBC(1) or section 269ZHB or to a request under subsection 269ZA(3) or 269ZDBC(2), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and
- (b) the Commissioner indicates to the party that he or she agrees with the claim;

but the person making the claim will not prepare a summary of the information for inclusion in that record, the Commissioner may disregard the information unless it is demonstrated that the information is correct.

## **Division 8—Review Panel**

### **269ZK What this Division is about**

This Division establishes the Review Panel. It:

- deals with the appointment of members to the Panel; and
- deals with the terms and conditions for members; and
- provides for the provision of resources to the Panel; and
- regulates the disclosure of information in the Panel's control.

### **269ZL Establishment of Review Panel**

The Review Panel is established by this section.

### **269ZM Membership of the Review Panel**

The Review Panel consists of the following members:

- (a) a Senior Member;
- (b) at least 2 other members.

### **269ZN Review Panel's powers**

The Review Panel has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Part in relation to the review of certain decisions made by the Minister or the Commissioner.

Note: Sections 269ZZA and 269ZZN set out these reviewable decisions.

### **269ZO Protection of members**

A member of the Review Panel has, in the performance of his or her duties as a member, the same protection and immunity as a Justice of the High Court.

### **269ZP Appointment of members**

- (1) Each member of the Review Panel is to be appointed by the Minister by written instrument.
- (2) A member of the Review Panel holds office on a part-time basis.
- (3) The Minister must not appoint an officer of Customs, the Commissioner or a Commission staff member as a member of the Review Panel.
- (4) A person must not be appointed as a member of the Review Panel unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

### **269ZQ Period of appointment for members**

A member of the Review Panel holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

### **269ZR Terms and conditions of appointment**

- (1) A member of the Review Panel holds office on such terms and conditions as are determined in writing by the Minister.
- (2) An office of Review Panel member is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

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**269ZS Disclosure of interests to the Minister**

A member of the Review Panel must give written notice to the Minister of any direct or indirect pecuniary interest that the member has or acquires and that conflicts or could conflict with the proper performance of the member's functions.

**269ZT Outside employment**

A member of the Review Panel must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's duties.

**269ZTA Resignation**

- (1) A member of the Review Panel may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**269ZTB Termination of appointment**

- (1) The Minister may terminate the appointment of a member of the Review Panel for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member of the Review Panel if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

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- (b) the member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's duties (see section 269ZT); or
- (c) the member fails, without reasonable excuse, to comply with section 269ZS; or
- (d) the member is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

**269ZTC Acting appointments**

The Minister may, by written instrument, appoint a person to act as a member of the Review Panel:

- (a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the member:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

**269ZTD Provision of resources to Review Panel**

- (1) The Minister must arrange with the Review Panel for sufficient resources (including personnel) to be made available to the Panel to enable the Panel to perform the Panel's functions effectively.
- (2) If a person is performing services for the Review Panel under such an arrangement, the person must perform those services in accordance with the directions of the Panel.

**269ZU Review Panel may supply information**

- (1) Subject to this section, the Review Panel may supply information (including personal information) received by the Review Panel under this Act to a person.

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- (2) The Review Panel or a person whose services are being made available to the Review Panel under section 269ZTD must not:
- (a) except for the purposes of this Act, supply information (other than personal information) to a person if the supplying of the information would constitute a breach of confidence; and
  - (b) supply personal information to a person unless the information is supplied to the Commissioner, or a Commission staff member designated in writing by the Commissioner, for purposes relating to a reinvestigation conducted under section 269ZZL.
- (3) Paragraph (2)(a) does not apply to the supply of information to:
- (a) the Minister; or
  - (b) the Commissioner; or
  - (c) the Secretary of the Department; or
  - (d) a Commission staff member designated in writing by the Commissioner; or
  - (e) a person who is employed in the Department and who is designated in writing by the Secretary of the Department.

**269ZV False or misleading information**

- (1) A person must not give the Review Panel any written information that the person knows to be false or misleading in a material particular.
- Penalty: 20 penalty units.
- (2) Subsection (1) does not apply to any written information if, at the time when the person gives it to the Review Panel, the person:
- (a) informs the Review Panel that it is false or misleading in a material particular; and
  - (b) specifies in what respect it is, to the person's knowledge, false or misleading in a material particular.

## **Division 9—Review by Review Panel**

### **Subdivision A—Preliminary**

#### **269ZW What this Division is about**

This Division sets out the procedures for review by the Review Panel of certain decisions by the Minister or the Commissioner. It includes:

- provisions dealing with definitions and other preliminary matters (Subdivision A); and
- the mechanism for review of certain Ministerial decisions (Subdivision B); and
- the mechanism for review of certain decisions made by the Commissioner (Subdivision C); and
- the keeping of a public record in relation to certain reviews conducted under this Division (Subdivision D).

This Division does not provide for a right of review of a decision made by the Minister following a review under Division 6 or Subdivision B of this Division.

#### **269ZX Definitions**

In this Division:

***application*** means:

- (a) in Subdivision B—an application for a review of a decision by the Minister referred to in section 269ZZA; and
- (b) in Subdivision C—an application for a review of a decision by the Commissioner referred to in section 269ZZN.

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***finding***, in relation to a reviewable decision under Subdivision B, means a finding on a material question of fact or on a conclusion based on that fact.

***interested party***, in relation to a reviewable decision, means any one of the following persons:

- (a) if there was an application under section 269TB or 269V that led to the making of the reviewable decision—the applicant in relation to that application;
- (aa) if there was an application under subsection 269ZA(1) that led to the making of the reviewable decision—the applicant in relation to that application;
- (aaa) if there was an application under subsection 269ZDBC(1) that led to the making of the reviewable decision—the applicant in relation to that application;
- (ab) if there was an application under section 269ZHB that led to the making of the reviewable decision—the applicant in relation to that application;
- (b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods to the goods the subject of the reviewable decision;
- (c) a person who:
  - (i) is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the reviewable decision; or
  - (ii) has been or is likely to be directly concerned with the importation or exportation into Australia of like goods, to the goods the subject to the reviewable decision;
- (d) a person who is or is likely to be directly concerned with the production or manufacture of:
  - (i) the goods the subject of the reviewable decision; or
  - (ii) like goods to those goods that have been, or are likely to be, exported to Australia;
- (e) a trade organisation a majority of whose members are, or are likely to be, directly concerned with:



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- (i) the production or manufacture of the goods the subject of the reviewable decision or of like goods; or
- (ii) the importation or exportation into Australia of those goods; or
- (iii) both the activities referred to in subparagraphs (i) and (ii);
- (f) the government of the country of export or country of origin:
  - (i) of goods the subject of the reviewable decision that have been, or are likely to be, exported to Australia; or
  - (ii) of like goods to those goods that have been, or are likely to be, exported to Australia.

**reviewable decision** means:

- (a) in Subdivision B—a decision by the Minister referred to in section 269ZZA; and
- (b) in Subdivision C—a decision by the Commissioner referred to in section 269ZZN.

### **269ZY Form and manner of applications**

The Senior Member of the Review Panel must, by writing:

- (a) approve a form for applications for a review under Subdivision B or C; and
- (b) approve the manner of making those applications.

### **269ZYA Constitution of Review Panel for purposes of review**

For the purposes of a particular review under Subdivision B or C, the Review Panel is to be constituted by a single member of the Panel specified in a written direction given by the Senior Member of the Panel.

### **269ZYB Member unavailable to complete review**

- (1) This section applies if:
  - (a) the Review Panel is undertaking a review under Subdivision B or C; and

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- (b) before the review has been completed, the member who constitutes the Panel for the purposes of the review has:
  - (i) ceased to be a member; or
  - (ii) ceased to be available for the purposes of the review.
- (2) The Senior Member of the Review Panel must give a written direction reconstituting the Panel for the purposes of the review.
- (3) The Review Panel, as so reconstituted, must complete the review and may, for that purpose, have regard to any record of the proceedings of the review made by the Panel as previously constituted.

**269ZZ Review Panel to have regard to same considerations as Minister**

- (1) If the Review Panel is required, in conducting a review under Subdivision B or C, to determine any matter ordinarily required to be determined by the Minister under this Act or the Dumping Duty Act, the Review Panel must determine the matter:
  - (a) in like manner as if it were the Minister; and
  - (b) having regard to the consideration to which the Minister would be required to have regard if the Minister were determining the matter.
- (2) Subsection (1) applies in respect of goods that have not been imported into Australia at the time of the Review Panel's determination in a matter in respect of those goods as if:
  - (a) the Review Panel's determination of the matter were being made after an importation of those goods into Australia; and
  - (b) the importation occurred at the time of the anticipated importation of those goods into Australia.

## **Subdivision B—Review of Ministerial decisions**

### **269ZZA Reviewable decisions**

- (1) This Subdivision deals with the review by the Review Panel of the following decisions:
  - (a) a decision by the Minister to publish a dumping duty notice under subsection 269TG(1) or (2) or 269TH(1) or (2), or a countervailing duty notice under subsection 269TJ(1) or (2) or 269TK(1) or (2);
  - (b) a decision by the Minister under subsection 269TL(1) not to publish such a notice;
  - (c) a decision by the Minister under subsection 269ZDB(1);
  - (ca) a decision by the Minister under subsection 269ZDBH(1);
  - (d) a decision by the Minister under subsection 269ZHG(1).
- (2) A reference to a decision by the Minister in subsection (1) does not include a reference to such a decision made by the Minister following a review under Division 6 or this Subdivision.

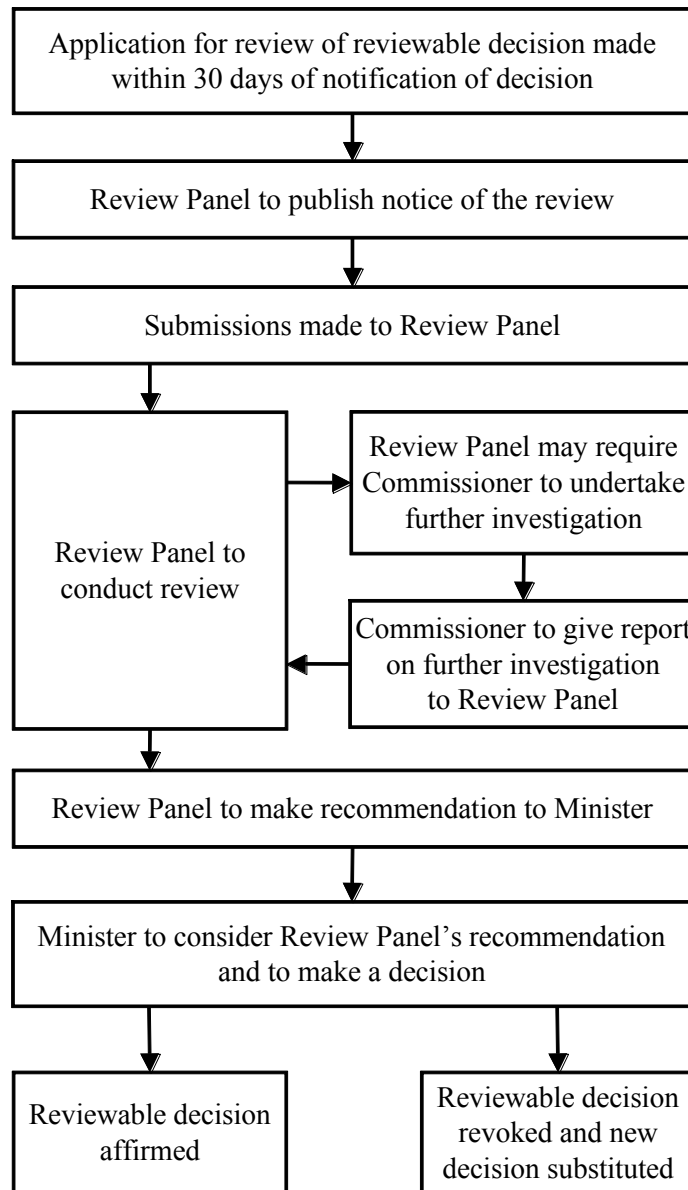
Note: The Review Panel only has the power to make certain recommendations to the Minister following a review of a decision under this Subdivision (see section 269ZZK). The Review Panel may not revoke the Minister's decision or substitute another decision.

### **269ZZB Overview of a review of Minister's decision**

The following diagram gives an overview of a review under this Subdivision of a reviewable decision.

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**269ZZC Who may seek a review?**

A person who is an interested party in relation to a reviewable decision may apply for a review of that decision under this Subdivision.

**269ZZD When must an application be made?**

An application for a review must be made within 30 days after:

- (a) for a decision referred to in paragraph 269ZZA(1)(a) or (b)—a public notice of the decision is first published on the Anti-Dumping Commission’s website under section 269ZI; or
- (b) for a decision referred to in paragraph 269ZZA(1)(c)—a notice of the decision is first published on the Anti-Dumping Commission’s website under subsection 269ZDB(1); or
- (ba) for a decision referred to in paragraph 269ZZA(1)(ca)—a notice of the decision is first published on the Anti-Dumping Commission’s website under subsection 269ZDBH(1); or
- (c) for a decision referred to in paragraph 269ZZA(1)(d)—a notice of the decision is first published on the Anti-Dumping Commission’s website under subsection 269ZHG(1).

**269ZZE How must an application be made?**

- (1) An application must:
  - (a) be in writing; and
  - (b) be in accordance with a form approved under section 269ZY; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form; and
  - (e) be made in the manner approved under section 269ZY; and
  - (f) be accompanied by the fee prescribed in an instrument under subsection (3).
- (2) Without limiting paragraph (1)(c), an application must:

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- (a) contain a full description of the goods to which the application relates; and
- (b) contain a statement setting out the grounds on which the applicant believes the reviewable decision is not the correct or preferable decision; and
- (c) contain a statement setting out the decision (the *proposed decision*) that the applicant considers the Minister should have made; and
- (d) contain a statement setting out how the grounds mentioned in paragraph (b) support the making of the proposed decision; and
- (e) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—contain a statement setting out how the proposed decision is materially different from the reviewable decision.

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in an application, including the need to accompany the application with a summary of such information.

*Fee*

- (3) The Minister may, by legislative instrument, prescribe a fee for the purposes of paragraph (1)(f).
- (4) The instrument may prescribe different fees for different kinds of applications or different kinds of applicants.
- (5) The instrument may make provision for, and in relation to, the refund or waiver of any fee.

**269ZZF Withdrawal of application**

- (1) An applicant may withdraw an application for a review.
- (2) The withdrawal must:
  - (a) be in writing; and
  - (b) be made in the manner approved under section 269ZY for making applications for a review.

**269ZZG Rejection of application—failure to establish decision not the correct or preferable decision etc.**

- (1) If one or more of the following apply:
  - (a) the Review Panel is not satisfied that an application sets out reasonable grounds for the reviewable decision not being the correct or preferable decision;
  - (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZE(2)(b) support the making of the proposed decision (see paragraph 269ZZE(2)(c));
  - (c) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZE(2)(c)) is materially different from the reviewable decision;

the Review Panel may, by notice given to the applicant, request the applicant to give the Review Panel, within the period specified in the notice, further information in relation to those matters.
- (2) The Review Panel may reject an application if at any time after the end of the 30-day period referred to in section 269ZZD:
  - (a) the Review Panel is not satisfied that the applicant has given the Review Panel information setting out reasonable grounds for the reviewable decision not being the correct or preferable decision; or
  - (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZE(2)(b) support the making of the proposed decision (see paragraph 269ZZE(2)(c)); or
  - (c) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZE(2)(c)) is materially different from the reviewable decision.
- (3) Subsection (2) applies whether or not a notice is given under subsection (1).
- (4) Nothing in subsection (1) prevents the Review Panel from seeking further information from an applicant within the period specified in a notice under subsection (1).

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- (5) If:
- (a) the Review Panel does not, under this Subdivision, reject an application; and
  - (b) in relation to information given by the applicant setting out the grounds for the reviewable decision not being the correct or preferable decision:
    - (i) the Review Panel is satisfied that one or more of those grounds (the *reviewable grounds*) are reasonable grounds for the reviewable decision not being the correct or preferable decision; and
    - (ii) the Review Panel is satisfied that one or more of those grounds (the *non-reviewable grounds*) are not reasonable grounds for the reviewable decision not being the correct or preferable decision;
- then:
- (c) the Review Panel must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds; and
  - (d) the Review Panel must reject the non-reviewable grounds.

**269ZZH Rejection of application—failure to provide summary of confidential information**

The Review Panel must reject an application if:

- (a) the applicant in respect of the application claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and
- (b) the applicant fails to give a summary of that information to the Review Panel in accordance with section 269ZZY.

**269ZZHA Review Panel may hold conferences**

- (1) The Review Panel may, at any time after receiving an application for a review, hold a conference of such persons or bodies as it considers appropriate for the purpose of obtaining further information in relation to the application or review.



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- (2) In making a recommendation under subsection 269ZZK(1), the Review Panel may also have regard to:
  - (a) that further information to the extent that it relates to the relevant information (within the meaning of subsection 269ZZK(6)); and
  - (b) any conclusions reached at the conference based on that relevant information.
- (3) If the Review Panel decides to hold a conference at any time after receiving an application for a review and before beginning to conduct the review:
  - (a) the Review Panel must invite the applicant to attend the conference; and
  - (b) if the applicant fails to attend the conference and the Review Panel is not satisfied that the applicant has a reasonable excuse for the failure—the Review Panel may reject the application.

**269ZZI Public notification of review**

- (1) Before the Review Panel begins to conduct a review, the Review Panel must publish a notice on the Review Panel's website indicating that the Review Panel proposes to conduct that review.
- (2) Without limiting the matters that must be dealt with in a notice under subsection (1), it must:
  - (a) describe the goods to which the application relates; and
  - (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted; and
  - (c) invite interested parties to lodge with the Review Panel, within 30 days starting from the date of publication of the notice, submissions concerning the application; and
  - (d) indicate the address at which, or the manner in which, such submissions can be lodged.

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**269ZZJ Submissions in relation to reviewable decision**

Within 30 days after the publication of a notice under section 269ZZI in relation to a review of a reviewable decision, the following may make submissions to the Review Panel in accordance with that notice:

- (a) interested parties in relation to the reviewable decision;
- (aa) the Commissioner;
- (b) a trade union representing one or more persons employed in the Australian industry producing, or likely to produce, like goods to the goods the subject of the reviewable decision;
- (c) a person who uses the goods the subject of the reviewable decision, or like goods, in the production or manufacture of other goods in Australia.

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in a submission, including the need to accompany the submission with a summary of such information.

**269ZZK The review**

- (1) If an application is not rejected under section 269ZZG, 269ZZH or 269ZZHA, the Review Panel must make a report to the Minister on the application by:
  - (a) recommending that the Minister affirm the reviewable decision; or
  - (b) recommending that the Minister revoke the reviewable decision and substitute a specified new decision.
- (1A) For a reviewable decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d), the Review Panel may make a recommendation referred to in paragraph (1)(b) of this section only if the new decision is materially different from the reviewable decision.
- (2) A report under subsection (1) must set out the reasons for the Review Panel's recommendation.
- (3) A report under subsection (1) must be made:

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- (a) at least 30 days after the public notification of the review under section 269ZZI; but
- (b) before the end of:
  - (i) unless subparagraph (ii) applies—the period of 60 days beginning on the day of that notification, or such longer period allowed by the Minister in writing because of special circumstances; or
  - (ii) if the Review Panel gives the Commissioner a notice under subsection 269ZZL(1)—the period of 30 days beginning on the day the Commissioner gives the Panel the report under subsection 269ZZL(2).
- (4) Subject to subsections (4A) and (5) and subsection 269ZZHA(2), in making the recommendation, the Review Panel:
  - (a) must not have regard to any information other than the relevant information; and
  - (b) must only have regard to the relevant information and any conclusions based on the relevant information that are contained in the application for the review or in any submissions received under section 269ZZJ within the period of 30 days referred to in that section.
- (4A) If the Review Panel gives the Commissioner a notice under subsection 269ZZL(1), then, in making the recommendation, the Review Panel must have regard to the report the Commissioner gives the Panel under subsection 269ZZL(2).
- (5) The Review Panel must not have regard to a submission under subsection (4) if:
  - (a) the person giving the submission claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and
  - (b) the person fails to give a summary of that information to the Review Panel in accordance with section 269ZZY.
- (6) In this section:

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*relevant information* means:

- (a) if the reviewable decision was made pursuant to an application under section 269TB—the information to which the Commissioner had had regard or was, under paragraph 269TEA(3)(a), required to have regard, when making the findings set out in the report under section 269TEA to the Minister in relation to the making of the reviewable decision; and
- (b) if the reviewable decision was made pursuant to an investigation initiated by the Minister as mentioned in section 269TAG—the information:
  - (i) that was collected for the purposes of that investigation in accordance with the Minister’s requirements; and
  - (ii) that was before the Minister when the Minister made the reviewable decision; and
- (c) if the reviewable decision was made because of an application under subsection 269ZA(1) or a request under subsection 269ZA(3)—the information the Commissioner had regard to, or was, under paragraph 269ZDA(3)(a), required to have regard to, when making the findings set out in the report under section 269ZDA to the Minister in relation to the making of the reviewable decision; and
- (ca) if the reviewable decision was made because of an application under subsection 269ZDBC(1) or a request under subsection 269ZDBC(2)—the information the Commissioner had regard to, or was, under paragraph 269ZDBG(2)(a) or (aa), required to have regard to, when making the findings set out in the report under section 269ZDBG to the Minister in relation to the making of the reviewable decision; and
- (d) if the reviewable decision was made because of an application under section 269ZHB—the information the Commissioner had regard to, or was, under paragraph 269ZHF(3)(a), required to have regard to, when making the findings set out in the report under section 269ZHF to the Minister in relation to the making of the reviewable decision.

**269ZZL Review Panel may require reinvestigation by  
Commissioner before making recommendation to  
Minister**

- (1) Before making a recommendation under subsection 269ZZK(1) and before the end of the period of 60 days beginning on the day of the public notification of the review under section 269ZZI, the Review Panel may, by written notice, require the Commissioner to:
  - (a) reinvestigate a specific finding or findings that formed the basis of the reviewable decision; and
  - (b) report the result of the reinvestigation to the Panel within a specified period.
- (2) The Commissioner must conduct a reinvestigation in accordance with the Review Panel's requirements under subsection (1) and give the Panel a report of the reinvestigation concerning the finding or findings within the specified period.
- (3) In a report under subsection (2), the Commissioner must:
  - (a) if the Commissioner is of the view that the finding or any of the findings the subject of reinvestigation should be affirmed—affirm the finding or findings; and
  - (b) set out any new finding or findings that the Commissioner made as a result of the reinvestigation; and
  - (c) set out the evidence or other material on which the new finding or findings are based; and
  - (d) set out the reasons for the Commissioner's decision.

**269ZZM Minister's decision**

- (1) After receiving a report by the Review Panel under subsection 269ZZK(1), the Minister must:
  - (a) affirm the reviewable decision concerned; or
  - (b) revoke that decision and substitute a new decision.
- (1A) The Minister must make a decision under subsection (1) within:
  - (a) 30 days after receiving the report; or

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- (b) if the Minister considers there are special circumstances that prevent the decision being made within that period—such longer period as the Minister considers appropriate.
- (1B) If paragraph (1A)(b) applies, the Minister must give notice of the longer period on the Review Panel’s website.
- (2) The Minister’s decision under subsection (1) takes effect from the time specified by the Minister.
- (3) Without limiting subsection (1), the Minister may, under that subsection:
- (a) publish a dumping duty notice or countervailing duty notice; or
  - (b) vary or revoke a dumping duty notice or countervailing duty notice; or
  - (c) revoke a dumping duty notice or countervailing duty notice and substitute another dumping duty notice or countervailing duty notice (as the case requires); or
  - (d) if the following apply:
    - (i) the reviewable decision is a decision by the Minister under subsection 269ZHG(1) not to secure the continuation of anti-dumping measures;
    - (ii) those measures comprised a dumping duty notice or a countervailing duty notice;
    - (iii) the notice expired under subsection 269ZHG(3) on a day;  
declare that the notice, as in force immediately before its expiry, is reinstated; or
  - (e) if the following apply:
    - (i) the reviewable decision is a decision by the Minister under subsection 269ZHG(1) not to secure the continuation of anti-dumping measures;
    - (ii) those measures comprised the giving of an undertaking by a person;
    - (iii) the person was released from the undertaking under subsection 269ZHG(3);

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- (iv) the person, by notice in writing given to the Minister, agrees to the undertaking being reinstated;  
declare that the undertaking, as in force immediately before the person was released from the undertaking, is reinstated.
- (4) The Minister must give notice of his or her decision on the Review Panel's website.
- (5) In spite of section 269TM, any new dumping duty notice or countervailing duty notice published in the exercise of a power conferred on the Minister under subsection (3) or any such notice as varied or substituted in the exercise of that power, expires:
- (a) in the case of a notice published after a review of a decision not to publish such a notice—5 years after the publication of the decision not to publish such a notice; or
- (aa) in the case of a notice published where the following applies:
- (i) the reviewable decision is a decision by the Minister under subsection 269ZHG(1) not to secure the continuation of anti-dumping measures;
- (ii) those measures comprised the giving of an undertaking by a person;
- (iii) the person was released from the undertaking under subsection 269ZHG(3);
- (iv) the person does not agree to the undertaking being reinstated;
- 5 years after the day the decision to publish the notice takes effect; or
- (b) in the case of a varied or substituted notice—5 years after the publication of the original notice.

**Example:** If the reviewable decision relates to a dumping duty notice that was published on 1 July 1998, and if the Minister, following a review under this Division, revokes that notice and substitutes a new dumping duty notice on 1 January 1999, the substituted notice will expire on 1 July 2003.

- (5A) A notice that is reinstated under subsection (1), as mentioned in paragraph (3)(d), expires 5 years after the day the decision to

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reinstate the notice takes effect, unless the reinstated notice is revoked before the end of that period.

(5B) An undertaking that is reinstated under subsection (1), as mentioned in paragraph (3)(e), expires 5 years after the day the decision to reinstate the undertaking takes effect, unless provision is made for its earlier expiration.

(6) If:

(a) the Minister makes a decision under subsection (1) to revoke or vary a dumping duty notice or countervailing duty notice (the *original notice*), or to revoke the original notice and substitute another notice, with effect from a date before the Minister's decision; and

(b) an amount of interim duty has been paid on goods the subject of the original notice in excess of the amount of interim duty that would have been payable on those goods as a result of the Minister's decision;

the person who paid the interim duty may apply for a refund of the excess under Division 3 of Part VIII.

## Subdivision C—Review of Commissioner's decisions

### 269ZZN Reviewable decisions

This Subdivision deals with the review of the following decisions:

(a) a decision by the Commissioner under subsection 269TC(1) or (2) to reject an application under subsection 269TB(1) or (2), as the case requires (a *negative prima facie decision*);

(b) a decision by the Commissioner to terminate an investigation under subsection 269TDA(1), (2), (3), (7), (13), (13A), (14) or (14A) (a *termination decision*);

(c) a decision by the Commissioner to make recommendations to the Minister under paragraph 269X(6)(b) or (c) (a *negative preliminary decision*);

(d) a decision (a *rejection decision*):



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- (i) by the Commissioner that the Commissioner is satisfied as described in subsection 269YA(2) or (3); or
- (ii) by the Commissioner to terminate under subsection 269YA(4) examination of an application;
- (e) a decision by the Commissioner to terminate an anti-circumvention inquiry under subsection 269ZDBEA(1) or (2) (also a *termination decision*).

**269ZZO Who may seek a review**

The following table sets out who may make an application for a review under this Subdivision.

<b>Persons who may apply for review</b>		
<b>Item</b>	<b>Reviewable decision</b>	<b>Applicant</b>
1	A negative prima facie decision under subsection 269TC(1) rejecting an application made under subsection 269TB(1)	The person who made the application under subsection 269TB(1)
2	A negative prima facie decision under subsection 269TC(2) rejecting an application under subsection 269TB(2)	The person who made the application under subsection 269TB(2)
3	A termination decision under subsection 269TDA(1), (2), (3), (7), (13), (13A), (14) or (14A)	The person who made the application for the dumping duty notice or countervailing duty notice
4	A negative preliminary decision under paragraph 269X(6)(b) or (c)	The person who made the application for an assessment of duty under section 269V that relates to the decision

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<b>Persons who may apply for review</b>		
<b>Item</b>	<b>Reviewable decision</b>	<b>Applicant</b>
5	A rejection decision	The applicant under section 269V for an assessment of duty whose application was affected by the decision
6	A termination decision under subsection 269ZDBEA(1) or (2)	The applicant under subsection 269ZDBC(1) for the conduct of the anti-circumvention inquiry

**269ZZP When must an application be made?**

An application for a review must be made within 30 days after the applicant was notified of the reviewable decision concerned by the Commissioner.

**269ZZQ How must an application be made?**

- (1) An application must:
- (a) be in writing; and
  - (b) be in accordance with a form approved under section 269ZY; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form; and
  - (e) be made in the manner approved under section 269ZY; and
  - (f) be accompanied by the fee prescribed in an instrument under subsection (2).

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in an application for a review of a termination decision, including the need to accompany the application with a summary of such information.

(1A) Without limiting paragraph (1)(c), an application must:

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- (a) contain a statement setting out the grounds on which the applicant believes the reviewable decision is not the correct or preferable decision; and
- (b) contain a statement setting out the decision (the *proposed decision*) that the applicant considers the Commissioner should have made; and
- (c) contain a statement setting out how the grounds mentioned in paragraph (a) support the making of the proposed decision; and
- (d) for a decision referred to in paragraph 269ZZN(c)—contain a statement setting out how the proposed decision is materially different from the reviewable decision.

*Fee*

- (2) The Minister may, by legislative instrument, prescribe a fee for the purposes of paragraph (1)(f).
- (3) The instrument may prescribe different fees for different kinds of applications or different kinds of applicants.
- (4) The instrument may make provision for, and in relation to, the refund or waiver of any fee.

**269ZZQAA Withdrawal of application**

- (1) An applicant may withdraw an application for a review.
- (2) The withdrawal must:
  - (a) be in writing; and
  - (b) be made in the manner approved under section 269ZY for making applications for a review.

**269ZZQA Rejection of application—failure to establish decision not the correct or preferable decision etc.**

- (1) If one or more of the following apply:

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- (a) the Review Panel is not satisfied that an application sets out reasonable grounds for the reviewable decision not being the correct or preferable decision;
  - (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZQ(1A)(a) support the making of the proposed decision (see paragraph 269ZZQ(1A)(b));
  - (c) for a decision referred to in paragraph 269ZZN(c)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZQ(1A)(b)) is materially different from the reviewable decision;
- the Review Panel may, by notice given to the applicant, request the applicant to give the Review Panel, within the period specified in the notice, further information in relation to those matters.
- (2) The Review Panel may reject an application if at any time after the end of the 30-day period referred to in section 269ZZP:
    - (a) the Review Panel is not satisfied that the applicant has given the Review Panel information setting out reasonable grounds for the reviewable decision not being the correct or preferable decision; or
    - (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZQ(1A)(a) support the making of the proposed decision (see paragraph 269ZZQ(1A)(b)); or
    - (c) for a decision referred to in paragraph 269ZZN(c)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZQ(1A)(b)) is materially different from the reviewable decision.
  - (3) Subsection (2) applies whether or not a notice is given under subsection (1).
  - (4) Nothing in subsection (1) prevents the Review Panel from seeking further information from an applicant within the period specified in a notice under subsection (1).
  - (5) If:
    - (a) the Review Panel does not, under this Subdivision, reject an application; and

- (b) in relation to information given by the applicant setting out the grounds for the reviewable decision not being the correct or preferable decision:
  - (i) the Review Panel is satisfied that one or more of those grounds (the **reviewable grounds**) are reasonable grounds for the reviewable decision not being the correct or preferable decision; and
  - (ii) the Review Panel is satisfied that one or more of those grounds (the **non-reviewable grounds**) are not reasonable grounds for the reviewable decision not being the correct or preferable decision;

then:

- (c) the Review Panel must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds; and
- (d) the Review Panel must reject the non-reviewable grounds.

### **269ZZR Rejection of application for review of termination decision**

The Review Panel must reject an application for a review of a termination decision if:

- (a) the applicant in respect of the application claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and
- (b) the applicant fails to give a summary of that information to the Review Panel in accordance with section 269ZZY.

### **269ZZRA Review Panel may hold conferences**

- (1) The Review Panel may, at any time after receiving an application for a review, hold a conference of such persons or bodies as it considers appropriate for the purpose of obtaining further information in relation to the application or review.
- (2) In making a decision on the review, the Review Panel may also have regard to:

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- (a) that further information to the extent that it relates to the information that was before the Commissioner when the Commissioner made the reviewable decision; and
  - (b) any conclusions reached at the conference based on the information that was before the Commissioner when the Commissioner made the reviewable decision.
- (3) If the Review Panel decides to hold a conference at any time after receiving an application for a review and before beginning to conduct the review:
- (a) the Review Panel must invite the applicant to attend the conference; and
  - (b) if the applicant fails to attend the conference and the Review Panel is not satisfied that the applicant has a reasonable excuse for the failure—the Review Panel may reject the application.

**269ZZRB Review Panel may seek further information from the Commissioner**

- (1) In reviewing a reviewable decision under this Subdivision, the Review Panel may seek further information from the Commissioner in relation to information that was before the Commissioner when the Commissioner made the reviewable decision.
- (2) In making a decision on the review, the Review Panel may also have regard to that further information.

**269ZZRC Notification of review**

*Negative prima facie decisions, negative preliminary decisions and rejection decisions*

- (1) Before the Review Panel begins to conduct a review of a negative prima facie decision, a negative preliminary decision or a rejection decision, the Review Panel must give a notice to the applicant and

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the Commissioner indicating that the Review Panel proposes to conduct that review.

- (2) A notice under subsection (1) must:
- (a) describe the goods to which the application relates; and
  - (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted.

*Termination decision*

- (3) Before the Review Panel begins to conduct a review of a termination decision, the Review Panel must publish a notice on the Review Panel's website indicating that the Review Panel proposes to conduct that review.
- (4) A notice under subsection (3) must:
- (a) describe the goods to which the application relates; and
  - (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted.

**269ZZS The review of a negative prima facie decision**

- (1) If an application for the review of a negative prima facie decision is not rejected under section 269ZZQA or 269ZZRA, the Review Panel must make a decision on the application by:
- (a) affirming the reviewable decision; or
  - (b) revoking the reviewable decision and substituting a new decision accepting the application under subsection 269TB(1) or (2) (as the case requires).
- (2) As soon as practicable after a new decision is substituted under subsection (1), the Commissioner must publish a notice under subsection 269TC(4) in respect of the application referred to in paragraph (1)(b).
- (3) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information that was before the Commissioner when the Commissioner made the reviewable decision.

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- (4) The Review Panel's decision must be made within 60 days after the giving of the notice under subsection 269ZZRC(1) to the applicant or such longer period allowed by the Minister in writing because of special circumstances.

**269ZZT The review of a termination decision**

- (1) If an application for the review of a termination decision is not rejected under section 269ZZQA, 269ZZR or 269ZZRA, the Review Panel must make a decision on the application by:
- (a) affirming the reviewable decision; or
  - (b) revoking the reviewable decision.
- (2) If the Review Panel revokes a reviewable decision (other than a decision under subsection 269ZDBEA(2)):
- (a) unless paragraph (b) applies:
    - (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential facts under section 269TDAA in relation to the application for a dumping duty notice or countervailing duty notice that is related to the review; and
    - (ii) after that publication, the investigation of the application resumes under this Part; or
  - (b) if the reviewable decision was a decision under subsection 269ZDBEA(1):
    - (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential facts under section 269ZDBF in relation to the anti-circumvention inquiry concerned; and
    - (ii) after that publication, the conduct of the anti-circumvention inquiry concerned resumes under this Part.
- (3) If the Review Panel revokes a reviewable decision under subsection 269ZDBEA(2), the conduct of the anti-circumvention inquiry concerned resumes under this Part.



- (4) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information that was before the Commissioner when the Commissioner made the reviewable decision.
- (5) The Review Panel's decision must be made within 60 days after the publication of the notice under subsection 269ZZRC(3) or such longer period allowed by the Minister in writing because of special circumstances.
- (6) The Review Panel must publish its decision under this section on its website.

### **269ZZU The review of a negative preliminary decision**

- (1) If an application for the review of a negative preliminary decision is not rejected under section 269ZZQA or 269ZZRA, the Review Panel must make a decision on the application by:
  - (a) affirming the reviewable decision; or
  - (b) revoking the reviewable decision and substituting a new decision under subsection 269X(6).
- (1A) The Review Panel may revoke a reviewable decision and substitute a new decision under subsection 269X(6) only if the new decision is materially different from the reviewable decision.
- (2) If the Review Panel revokes a reviewable decision and substitutes a new decision under subsection 269X(6), the Review Panel must, within 7 days after making the new decision, recommend that the Minister give effect to that decision.
- (3) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information of the kinds referred to in subsection 269X(5) that was before the Commissioner when the Commissioner made the reviewable decision.
- (4) The Review Panel's decision must be made within 60 days after the giving of the notice under subsection 269ZZRC(1) to the

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applicant or such longer period allowed by the Minister in writing because of special circumstances.

**269ZZUA The review of a rejection decision**

- (1) If an application for the review of a rejection decision is not rejected under section 269ZZQA or 269ZZRA, the Review Panel must make a decision on the application by:
  - (a) affirming the rejection decision; or
  - (b) revoking the rejection decision.
- (2) If the Review Panel revokes a rejection decision relating to an application under section 269V, subsection 269YA(5) ceases to apply in relation to the application.
- (3) If the Review Panel revokes a rejection decision relating to rejection under subsection 269YA(2) or (3) of an application under section 269V:
  - (a) the Commissioner must resume the examination of the application with a view to complying with subsections 269X(5) and (6) within 110 days after being informed of the revocation; and
  - (b) the revocation does not prevent the Commissioner from terminating the examination under subsection 269YA(4).
- (4) If the Review Panel revokes a rejection decision relating to termination under subsection 269YA(4) of the examination of an application under section 269V, the Commissioner must comply with subsections 269X(5) and (6) within 110 days after being informed of the revocation.
- (5) Subject to subsections 269ZZRA(2) and 269ZZRB(2), in making a decision under this section, the Review Panel must have regard only to information that was before the Commissioner when the Commissioner made the rejection decision.
- (6) The Review Panel's decision must be made within 60 days after the giving of the notice under subsection 269ZZRC(1) to the

applicant or such longer period allowed by the Minister in writing because of special circumstances.

### **269ZZV Effect of Review Panel's decision**

The Review Panel's decision on a review:

- (a) has effect as if it were a decision made by the Commissioner; and
- (b) takes effect from the time the Review Panel makes the decision.

### **Subdivision D—Public record in relation to reviews**

#### **269ZZW Application**

This Subdivision applies only to:

- (a) an application for a review of a reviewable decision under Subdivision B; and
- (b) an application for a review of a termination decision under Subdivision C.

#### **269ZZX Public record maintained by Review Panel**

- (1) The Review Panel must, in relation to each application for a review:
  - (a) maintain a public record containing:
    - (i) a copy of the application; and
    - (ii) if the Review Panel seeks further information from the applicant—any such information given to the Review Panel by the applicant; and
    - (iii) if the application is an application for a review under Subdivision B—any submissions received under section 269ZZJ within the period of 30 days referred to in that section; and
    - (iv) a summary of further information obtained at a conference mentioned in section 269ZZHA or 269ZZRA; and

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- (b) at the request of an interested party in respect of the reviewable decision concerned, make that record available to that party for inspection.
- (2) The public record must not contain any information in respect of which a summary is given to the Review Panel under subsection 269ZZY(1).

**269ZZY Confidential and sensitive commercial information**

- (1) To the extent that information provided to the Review Panel by a person is claimed by the person to be:
  - (a) confidential; or
  - (b) information whose publication would adversely affect a person's business or commercial interest;the person giving that information must, at the time the information is given to the Review Panel, also give a summary of that information to the Review Panel for inclusion in the public record maintained under section 269ZZX.
- (2) The summary must:
  - (a) contain sufficient detail to allow a reasonable understanding of the substance of the information; but
  - (b) does not breach the confidentiality or adversely affect the interests concerned.

Note: For the consequences of failing to comply with subsection (1), see sections 269ZZH and 269ZZR and subsection 269ZZK(5).

## **Part XVC—International Trade Remedies Forum**

### **269ZZYA Simplified outline**

The following is a simplified outline of this Part:

- This Part establishes the International Trade Remedies Forum.
- The Forum is to advise the Minister on the anti-dumping provisions in Part XVB and in the *Customs Tariff (Anti-Dumping) Act 1975*.

### **269ZZYB Establishment of International Trade Remedies Forum**

The International Trade Remedies Forum is established by this section.

### **269ZZYC Functions of the Forum**

The Forum has the following functions:

- (a) to advise the Minister on the operation of Part XVB and of the *Customs Tariff (Anti-Dumping) Act 1975*;
- (b) to advise the Minister on improvements that could be made to that Part or Act.

### **269ZZYD Membership of the Forum**

- (1) The Forum consists of the following members:
  - (a) the Commissioner (within the meaning of Part XVB);
  - (b) 11 members, each of whom represents one or more of the following groups:
    - (i) Australian producers;
    - (ii) Australian manufacturers;
    - (iii) Australian industry bodies;

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- (iv) Australian importers;
  - (c) 4 members who represent Australian trade unions;
  - (d) such number of members to represent the Commonwealth as the Minister thinks fit;
  - (e) such other members (if any) as the Minister thinks fit.
- (2) Each of the groups mentioned in paragraph (1)(b) must be represented by at least one of the 11 members referred to in that paragraph.

**269ZZYE Appointment of Forum members**

- (1) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) is to be appointed by the Minister by written instrument.
- (2) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) holds office on a part-time basis.
- (3) Each member of the Forum (except the Commissioner (within the meaning of Part XVB)) holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

- (4) An appointment under this section is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

**269ZZYF Resignation**

- (1) A member of the Forum (except the Commissioner (within the meaning of Part XVB)) may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**269ZZYG Forum meetings***Number of meetings*

- (1) The Forum must meet at least twice each calendar year.

*Commissioner to convene meetings*

- (2) The Commissioner (within the meaning of Part XVB) may convene a meeting at any time.

*Presiding member*

- (3) The Commissioner (within the meaning of Part XVB) presides at all meetings at which he or she is present. The Commissioner may nominate a person to attend a meeting in his or her place and, if the Commissioner does so, that person presides.

*Conduct of meetings*

- (4) The Minister may, by writing, determine the procedures to be followed at meetings of the Forum, including the number of members who are to constitute a quorum.
- (5) A determination made under subsection (4) is not a legislative instrument.
- (6) The Minister may, by signed instrument, delegate to the following the power of the Minister under subsection (4):
  - (a) the Commissioner (within the meaning of Part XVB);
  - (b) a Commission staff member (within the meaning of that Part).

**269ZZYH Disclosure of information**

- (1) The Commissioner (within the meaning of Part XVB), or a Commission staff member (within the meaning of that Part), may disclose information (including personal information) obtained under this Part to an officer of Customs for the purposes of a Customs Act.

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*Interaction with the Privacy Act 1988*

- (2) For the purposes of the *Privacy Act 1988*, the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

*Definition*

- (3) In this section:

***personal information*** has the same meaning as in the *Privacy Act 1988*.



**Part XVI—Regulations and by-laws****270 Regulations**

(1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act, and in particular for prescribing:

- (a) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;
- (b) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;
- (d) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and
- (e) the conditions of carriage of goods subject to customs control, and the obligations of persons accepting such goods for carriage.

(1A) The regulations may make provision for and in relation to the following:

- (a) the charging and recovery of fees in respect of any matter under this Act or the regulations;
- (b) the way, including the currency, in which fees are to be paid;
- (c) the persons who may be paid fees on behalf of the Commonwealth;
- (d) the remission, refund or waiver of fees of a kind referred to in paragraph (a) or the exempting of persons from the payment of such fees.

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- (2) The regulations may prescribe penalties not exceeding \$1,000 in respect of any contravention of any of the regulations.
- (3) The power to make regulations for the purposes of the definition of **airport shop goods** in subsection 4(1) extends to making regulations that:
  - (a) declare local use goods to be airport shop goods for the purposes of section 96B; or
  - (b) declare a class of local use goods, or a class of goods that includes local use goods, to be a class of airport shop goods for the purposes of that section.
- (3A) Where, in any regulations made for the purposes of this Act, reference is made to the document known as the Australian Harmonized Export Commodity Classification published by the Australian Bureau of Statistics, that reference shall, unless the contrary intention appears in those regulations, be read as a reference to that document as so published and as in force from time to time.
- (4) The power to make regulations for the purposes of paragraph 96B(3)(b) or (c) extends to making regulations that prescribe quantities in relation to airport shop goods that are local use goods.
- (5) In subsections (3) and (4), **local use goods** means goods:
  - (a) that have not been, and are not proposed to be, imported into Australia; and
  - (b) that have not been, and are not proposed to be, exported from Australia.
- (6) Regulations for the purposes of Subdivision B of Division 1 of Part XII must not prescribe an Act unless the Act deals with a subject matter in relation to which UNCLOS gives Australia jurisdiction.

**271 Comptroller-General of Customs may make by-laws**

Where:

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- (a) an item of a Customs Tariff, or a proposed item of a Customs Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; or
  - (b) under an item of a Customs Tariff, or a proposed item of a Customs Tariff, any matter or thing is expressed to be, or is to be determined, as prescribed or defined by by-law;
- the Comptroller-General of Customs may, subject to the succeeding sections of this Part, make by-laws for the purposes of that item or proposed item.

### **272 By-laws specifying goods**

The Comptroller-General of Customs may specify in a by-law made for the purposes of an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law:

- (a) the goods, or the class or kind of goods, to which that item or proposed item applies;
- (b) the conditions, if any, subject to which that item or proposed item applies to those goods or to goods included in that class or kind of goods; and
- (c) such other matters as are necessary to determine the goods to which that item or proposed item applies.

### **273 Determinations**

- (1) The Comptroller-General of Customs may determine, by instrument in writing, that, subject to the conditions, if any, specified in the determination, an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-laws shall apply, or shall be deemed to have applied, to the particular goods specified in the determination.
- (2) The Comptroller-General of Customs may make a determination under the last preceding subsection for the purposes of an item, or a proposed item, of a Customs Tariff whether or not he or she has made a by-law for the purposes of that item or proposed item.

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- (3) Where, under this section, the Comptroller-General of Customs determines that an item, or a proposed item, of a Customs Tariff shall apply, or shall be deemed to have applied, to goods, that item or proposed item shall, subject to this Part and to the conditions, if any, specified in the determination, apply, or be deemed to have applied, to those goods as if those goods were specified in a by-law made for the purposes of that item or proposed item and in force on the day on which those goods are or were entered for home consumption.

**273A By-laws and determinations for purposes of repealed items**

The Comptroller-General of Customs may make a by-law or determination for the purposes of an item of a Customs Tariff notwithstanding that the item has been repealed before the making of the by-law or determination, but the by-law shall not apply to, and the determination shall not be made in respect of, goods entered for home consumption after the repeal of that item.

**273B Publication of by-laws and notification of determinations**

- (1) A by-law made under this Part:
- (a) shall be published in the *Gazette*, and has no force until so published;
  - (b) shall, subject to this Part:
    - (i) take effect, or be deemed to have taken effect, from the date of publication, or from a date (whether before or after the date of publication) specified by or under the by-law; or
    - (ii) have effect or be deemed to have had effect, for such period (whether before or after the date of publication) as is specified by or under the by-law.
- (2) Notice of the making of a determination under this Part shall be published in the *Gazette* as soon as practicable after the making of the determination and the notice shall specify:
- (a) the kind of goods to which the determination applies;
  - (b) the conditions, if any, specified in the determination; and

- (c) the item or proposed item for the purposes of which the determination was made.

**273C Retrospective by-laws and determinations not to increase duty**

This Part does not authorize the making of a by-law or determination which has the effect of imposing duty, in relation to goods entered for home consumption before the date on which the by-law is published in the *Gazette* or the determination is made, as the case may be, at a rate higher than the rate of duty payable in respect of those goods on the day on which those goods were entered for home consumption.

**273D By-laws and determinations for purposes of proposals**

Where:

- (a) a by-law or determination is made for the purposes of a Customs Tariff proposed in the Parliament or of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament; and
- (b) the proposed Customs Tariff becomes a Customs Tariff or the proposed alteration is made, as the case may be;

the by-law or determination shall have effect for the purposes of that Customs Tariff or of that Customs Tariff as so altered, as the case may be, as if the by-law or determination had been made for those purposes and the proposed Customs Tariff or the Customs Tariff as proposed to be altered, as the case may be, had been in force on the day on which the by-law or the determination was made.

**273EA Notification of proposals when House of Representatives is not sitting**

- (1) The Minister may, at any time when the Parliament is prorogued or the House of Representatives has expired by effluxion of time, has been dissolved or is adjourned otherwise than for a period not exceeding 7 days, publish in the *Gazette* a notice that it is intended, within 7 sitting days of the House of Representatives after the date

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of the publication of the notice, to propose in the Parliament a Customs Tariff or Customs Tariff alteration in accordance with particulars specified in the notice and operating as from such time as is specified in the notice, not being:

- (a) in the case of a Customs Tariff or Customs Tariff alteration that could have the effect of making the duty payable by any person importing goods greater than the duty that would, but for that Customs Tariff or Customs Tariff alteration, be payable—a time earlier than the time of publication of the notice; or
  - (b) in any other case—a time earlier than 6 months before the time of publication of the notice.
- (2) Where notice of intention to propose a Customs Tariff or a Customs Tariff alteration has been published in accordance with this section, the Customs Tariff or Customs Tariff alteration shall, for the purposes of this Act (other than section 226) and any other Act, be deemed to be a Customs Tariff or Customs Tariff alteration, as the case may be, proposed in the Parliament.

**273F Interpretation**

- (1) In this Part:

*proposed item of a Customs Tariff* means:

- (a) an item of a Customs Tariff proposed in the Parliament; or
  - (b) an item of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament.
- (2) Unless the contrary intention appears, a reference in this Part to an item of a Customs Tariff includes a reference to a heading and a subheading in Schedule 3 to the *Customs Tariff Act 1995*.

**Part XVII—Miscellaneous****273G Briefing of Leader of Opposition on certain matters**

The Minister shall, from time to time, and not less frequently than once each year, arrange for the Leader of the Opposition in the House of Representatives to be briefed on matters relating to contraventions of this Act in respect of narcotic substances.

**273GAA Notices**

- (1) Where a person makes a decision to which subsection (2) applies in relation to a warehouse licence or a broker's licence, the person shall cause to be served, either personally or by post, on the applicant or the holder of the licence, as the case requires, a notice in writing setting out the decision.
- (2) For the purposes of subsection (1), the following decisions are decisions to which this subsection applies:
  - (a) a decision under Part V refusing to grant a warehouse licence;
  - (b) a decision under subsection 82(5) refusing to vary the conditions specified in a warehouse licence;
  - (c) a decision under subsection 84(3) refusing to renew a warehouse licence;
  - (d) a decision under Division 3 of Part XI refusing to grant a broker's licence;
  - (e) a decision under subsection 183CF(1) or (2) refusing to vary the endorsements on a broker's licence;
  - (f) a decision under subsection 183CG(7) refusing to vary the conditions specified in a broker's licence.
- (3) Where a Collector makes:
  - (a) a decision under section 95 refusing to cancel a valuation of warehoused goods and to revalue the goods; or

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- (b) a decision under subsection 97(1) refusing to grant permission to the owner of warehoused goods; the Collector shall cause to be served, either personally or by post, on the owner of the goods, a notice in writing setting out the decision.
- (4) Where the Comptroller-General of Customs makes a decision under section 118 not to grant a Certificate of Clearance, he or she shall cause to be served, either personally or by post, on the applicant for the Certificate, a notice in writing setting out the decision.
- (5) Where a Collector makes a decision under section 126 refusing to allow the export of goods by a person, he or she shall cause to be served, either personally or by post, a notice in writing setting out the decision on the person.
- (7) A notice in accordance with section 86 to the holder of a warehouse licence shall state the ground or grounds on which the notice is given.
- (8) A notice under subsection 87(2) of the cancellation by the Comptroller-General of Customs of a warehouse licence shall set out the findings of the Comptroller-General of Customs on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for the cancellation.
- (9) A notice under subsection 183CS(1) shall set out the ground or grounds of the decision of the Comptroller-General of Customs to which the notice relates.
- (10) A reference in this section to a notice in writing setting out the decision of a person is a reference to a notice in writing setting out the decision and the person's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.



**273GAB Authorisation to disclose information to an officer**

- (1) A person may disclose to an officer information about any matter relating to actual or proposed travel:
- (a) of any person or goods on the way (directly or indirectly) to Australia; or
  - (b) involving the departure from Australia of any person or goods;
- even if the information is personal information (as defined in the *Privacy Act 1988*).

Note: An officer is obliged to handle personal information in accordance with the *Privacy Act 1988*. Part 6 of the *Australian Border Force Act 2015* also limits the recording and disclosure of information disclosed to the officer under this section.

- (2) To avoid doubt, this section does not:
- (a) require anyone to disclose information to an officer; or
  - (b) affect a requirement of or under another provision of this Act for a person to disclose information to an officer (whether by answering a question, by providing a document or by other means).

**273GA Review of decisions**

- (1) Subject to this section, applications may be made to the Administrative Appeals Tribunal for review of the following:
- (aa) a determination by the Comptroller-General of Customs for the purposes of subsection 28(2);
  - (ab) a determination by the Comptroller-General of Customs for the purposes of subsection 28(3);
    - (a) a decision of a Collector under section 35A making a demand;
  - (aaa) a decision by the Comptroller-General of Customs for the purposes of paragraph 58A(6)(c) refusing to authorise a journey;

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- (aaac) a decision by the Comptroller-General of Customs under section 67ED to refuse to register a person as a special reporter;
- (aaad) a decision by the Comptroller-General of Customs under section 67EK to refuse to renew a person's registration as a special reporter;
- (aaae) a decision by the Comptroller-General of Customs under section 67EM to cancel the registration of a special reporter generally or in relation to low value cargo of a particular kind;
- (aaaf) a decision by the Comptroller-General of Customs under section 67G to refuse to register a person or a partnership as a re-mail reporter;
- (aaag) a decision by the Comptroller-General of Customs under section 67G or 67J to impose a condition on a re-mail reporter's registration;
- (aaah) a decision by the Comptroller-General of Customs under section 67J to vary a condition of a re-mail reporter's registration;
- (aaai) a decision by the Comptroller-General of Customs under section 67K to cancel a re-mail reporter's registration;
- (aab) a decision by an officer under section 69 to refuse to grant a permission under that section;
- (aaba) a decision by an officer under section 69 to impose a condition on a permission given under that section;
- (aac) a decision by an officer under section 69 to revoke a permission granted under that section;
- (aad) a decision by an officer under section 70 to refuse to grant a permission under that section;
- (aae) a decision by an officer under section 70 to revoke a permission granted under that section;
- (aaf) a decision by an officer under section 71 to refuse to authorise the delivery of goods into home consumption;
- (aafa) a decision by an officer under section 71AAAC or 71AAAM to suspend an authority to deliver goods into home consumption;

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- (aafb) a decision by an officer under section 71AAAN to cancel an authority to deliver goods into home consumption;
- (aag) a decision by an officer under section 71C or 71DJ to cancel or suspend an authority to deal with goods;
- (aah) a decision by an officer under section 71E to refuse an application of a permission to move goods;
- (aaq) a decision by the Comptroller-General of Customs under section 77G not to grant a depot licence;
- (aar) a decision by the Comptroller-General of Customs under section 77J not to extend the period within which further information concerning a depot licence application is to be supplied;
- (aara) a decision by the Comptroller-General of Customs under subsection 77LA(1) not to vary a depot licence;
- (aarb) a decision by the Comptroller-General of Customs under subsection 77LA(3) not to allow a further period;
- (aas) a decision by the Comptroller-General of Customs under section 77P not to grant an extension of time;
- (aat) a decision by the Comptroller-General of Customs under section 77Q to impose conditions on a depot licence or to vary the conditions of a depot licence;
- (aau) a decision by the Comptroller-General of Customs under section 77V to suspend a depot licence;
- (aav) a decision by the Comptroller-General of Customs under section 77VC to cancel a depot licence;
- (b) a decision of the Comptroller-General of Customs or a Collector for the purposes of Part V;
- (baaa) a decision of the Comptroller-General of Customs under section 102F to give a direction;
- (baa) a decision of the Comptroller-General of Customs giving an approval, or refusing to give an approval, under paragraph 105(2)(a);
- (ba) a decision by the Comptroller-General of Customs under section 114B to refuse to grant a person confirming exporter status;

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- (bb) a decision by the Comptroller-General of Customs under section 114B to cancel or modify a person's status as a confirming exporter;
- (bc) a decision by an officer under section 114C to cancel or suspend an authority to deal with goods;
- (c) a decision by the Comptroller-General of Customs under section 118 not to grant a Certificate of Clearance;
- (d) a decision by a Collector under section 126 refusing to allow the export of goods;
- (e) a decision of the Comptroller-General of Customs under section 132B making a quota order;
- (f) a decision of the Comptroller-General of Customs under section 132C varying a quota order;
- (h) a decision of the Comptroller-General of Customs under subsection 161J(2) specifying a rate of exchange;
- (haaa) a decision of a Collector under section 163 in relation to an application for a refund, rebate or remission of duty;
- (j) a decision of the Comptroller-General of Customs under section 164B;
- (ja) a decision of the Comptroller-General of Customs under subsection 165(3) to make a demand for payment of an amount of drawback, refund or rebate of duty that was overpaid or for payment of an amount that is a debt due to the Commonwealth under subsection 278(2);
- (jb) a decision of a Collector under section 168 in relation to an application for a drawback of duty;
- (jc) a decision of the Comptroller-General of Customs to refuse to enter into a trusted trader agreement under subsection 176A(1);
- (je) a decision of the Comptroller-General of Customs to vary, suspend or terminate a trusted trader agreement under subsection 178A(1);
- (k) a decision of the Minister, the Comptroller-General of Customs, or a Collector for the purposes of Part XI;
- (m) a decision under subsection 269H(1) to reject an application for a TCO;

- (maa) a decision under subsection 269L(4) to the effect that the Comptroller-General of Customs is not satisfied that a proposed amendment of a description of goods to be covered by a TCO does not contravene subsection 269L(3):
  - (ma) a decision of the Comptroller-General of Customs under section 269HA rejecting a TCO application;
  - (n) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269P(1);
  - (o) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269Q(1);
  - (p) a decision of the Comptroller-General of Customs under subsection 269SA(1) or (2);
  - (q) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269SC(1);
  - (r) a decision of the Comptroller-General of Customs under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269SC(4);
  - (s) a decision by the Comptroller-General of Customs under subsection 269SD(1AB), (1), (1A), (2), (2A) or (5).
- (2) Where a dispute referred to in subsection 167(1) has arisen and the owner of the goods has, in accordance with that subsection, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the decision to make that demand and of any other decision forming part of the process of making, or leading up to the making of, that first-mentioned decision.
- (3) Subsection 119(3) does not apply where a Certificate of Clearance is granted to the ship or aircraft referred to in that subsection as a result of a review by the Tribunal.
- (5) An application may not be made to the Tribunal under subsection (2) unless the application is made within the time specified in paragraph 167(4)(a) or (b), whichever is appropriate.

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- (6) Where the owner of goods has made an application to the Tribunal under subsection (2), he or she is not entitled to bring an action under subsection 167(2).
- (6A) An application may not be made to the Tribunal in respect of a decision under section 269SH on a reconsideration of a decision of the Comptroller-General of Customs under subsection 269P(1), 269Q(1) or 269SC(1) or (4) unless the person who makes the application to the Tribunal is:
- (a) an affected person within the meaning of section 269SH; and
  - (b) is adversely affected by the decision on the reconsideration.
- (7) Where, on an application made under subsection (2), the Tribunal has made a decision reviewing a demand made by the Collector, the proper duty payable in respect of the goods concerned shall be deemed to be:
- (a) the sum determined to be the proper duty by, or ascertained to be the proper duty in accordance with:
    - (i) the decision of the Tribunal; or
    - (ii) an order of a court on appeal from that decision; or
  - (b) the sum paid under protest;
- whichever is the less.
- (8) In this section, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**273H Review of decisions under Customs Tariff Act**

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Comptroller-General of Customs under section 9 of the *Customs Tariff Act 1995*.
- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**273K Statement to accompany notification of decisions**

- (1) Where notice in writing of the making of a decision of a kind referred to in subsection 273GA(1) or (2) or section 273H is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.
- (2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

**273L Entry and transmission of information by computer**

If this Act requires or permits information (including information in the form of particular words) to be entered or transmitted by computer, the information may be entered or transmitted by computer in an encoded form chosen by the Comptroller-General of Customs.

**274 Commissioned ships and aircraft to be reported**

The person in command of any ship or aircraft holding commission from His Majesty or from any foreign State having on board any goods other than ship's or aircraft's stores laden in a place outside Australia or in Australia shall when called upon by the Comptroller-General of Customs or an authorised officer so to do:

- (a) deliver an account in writing of the quantity of such goods, the marks and numbers thereof, and names of the shippers and consignees, and declare to the truth thereof;
- (b) answer questions relating to such goods.

**275 Commissioned ships and aircraft may be searched**

Ships or aircraft under commission from His Majesty or any foreign State having on board any goods other than ship's or

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aircraft's stores laden in a place outside Australia or in Australia may be boarded and searched by the Comptroller-General of Customs or an authorised officer in the same manner as other ships or aircraft, and the Comptroller-General of Customs or the authorised officer may secure any such goods and for that purpose bring them ashore.

**275A Direction not to move a ship or aircraft from a boarding station**

- (1) Where a Collector considers that it is desirable, for the purposes of this Act, to hold a ship or aircraft at a boarding station, the Collector may, by notice in writing delivered to the master of the ship or the pilot of the aircraft before it leaves the boarding station, direct the master or pilot not to move the ship or aircraft from the boarding station until the master or pilot receives permission, in writing, from a Collector to do so.
- (2) A person shall not disobey a direction given to him or her, and in force, under this section.

Penalty: 100 penalty units.

- (2A) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Where a direction not to move a ship or aircraft from a boarding station has been given under subsection (1):
  - (a) the direction ceases to have any force or effect at the expiration of a period of 3 days after the day on which the direction is given; and
  - (b) no further direction in respect of the ship or aircraft shall be given while the ship or aircraft remains at the boarding station.
- (4) If a Collector (not being the Comptroller-General of Customs) gives a direction under subsection (1) not to move a ship or aircraft from a boarding station, the Collector must as soon as practicable



notify the Comptroller-General of Customs of the giving of the direction.

(5) Where:

- (a) a ship or aircraft is held at a boarding station by virtue of a direction given under subsection (1); and
- (b) the Comptroller-General of Customs is satisfied that no purpose of this Act is served by holding the ship or aircraft at the boarding station;

he or she shall forthwith revoke the direction.

(6) In proceedings for an offence under this section with respect to a direction, a certificate by a person referred to in the last preceding subsection that he or she is satisfied that, up to the time the offence is alleged to have been committed:

- (a) the permission referred to in the direction had not been given; and
- (b) the direction had not been revoked;

is prima facie evidence of the matters as to which the person has certified that he or she is satisfied.

## **276 Collector's sales**

As to sales by the Collector:

- (a) The goods shall be sold by auction or by tender and after such public notice as may be prescribed, and where not prescribed after reasonable public notice.
- (b) The goods may be sold either subject to duty and charges or at a price that includes duty and charges and the price shall be paid in cash on the acceptance of the bidding or tender.
- (c) No bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

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**277 Proceeds of sales**

- (1) The proceeds of any goods sold by the Collector shall be applied as follows:  
Firstly, in the payment of the expenses of the sale.  
Secondly, where the price for the goods includes duty, in payment of the duty.  
Thirdly, in payment of the warehouse rent and charges.  
Fourthly, in payment of the harbour and wharfage dues and freight if any due upon the goods if written notice of such harbour and wharfage dues and freight shall have been given to the Collector.  
And the balance if any shall be paid to the Finance Minister on account of the person entitled thereto.
- (2) For the purposes of section 132, goods to which subsection (1) of this section applies on which duty has not been paid shall be taken to have been entered for home consumption on the day on which the goods are sold by the Collector.

**277A Jurisdiction of courts**

- (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with federal jurisdiction has effect, in relation to matters arising under this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.
- (2) Subject to the Constitution, jurisdiction is conferred on the several courts of the Territories, within the limits of their several jurisdictions, other than limits as to locality, with respect to matters arising under this Act.
- (3) The trial of an offence against a provision of this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

**278 Recoverable payments**

- (1) If, apart from this subsection, the Commonwealth does not have power under this Act or the regulations to pay an amount (the *relevant amount*) to a person purportedly as:
- (a) a refund or rebate of duty to which the person is entitled to in accordance with section 163; or
  - (b) a drawback of duty to which the person is entitled to in accordance with regulations made for the purposes of section 168;

then the Commonwealth may pay the relevant amount to the person.

*Debt*

- (2) If a payment is made under subsection (1) to the person, the relevant amount is a debt due to the Commonwealth by the person.

Note: For recovery of the debt, see section 165.

*Appropriation*

- (3) The Consolidated Revenue Fund is appropriated for the purposes of making payments under subsection (1).

**279 Reports about recoverable payments**

- (1) The Secretary of the Department must cause the following information to be included in the Department's annual report for a financial year:
- (a) the number of payments under subsection 278(1) that APS employees in the Department are aware of that were made during that financial year;
  - (b) the total amount of the payments referred to in paragraph (a);
  - (c) the number of payments under subsection 278(1) that APS employees in the Department became aware of during that financial year that were made during an earlier financial year;
  - (d) the total amount of the payments referred to in paragraph (c);

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- (e) for each payment referred to in paragraph (c)—the financial year in which the payment was made.
- (2) Information is not required in the Department's annual report if no APS employee in the Department is aware of any payments referred to in paragraph (1)(a) or (c).

## Schedule I—The Commonwealth of Australia

*Security to the Commonwealth*

By this Security the subscribers are, pursuant to the *Customs Act 1901*, bound to the Commonwealth of Australia in the sum of—[*here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition*—subject only to this condition that if—[*here insert the condition of the security*—then this security shall be thereby discharged.\*

Dated the *[insert date]*.

Names and descriptions of subscribers	Signatures of subscribers	Signatures of witnesses

\*NOTE—If liability is not intended to be joint and several and for the full amount, here state what is intended as, for example, thus—“The liability of the subscribers is joint only,” or “the liability of (mentioning subscriber) is limited to (here state amount of limit of liability or mode of ascertaining limit).”