



# Customs Legislation (World Trade Organization Amendments) Act 1994

No. 150 of 1994

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# Customs Legislation (World Trade Organization Amendments) Act 1994

No. 150 of 1994

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**An Act to amend the *Customs Act 1901* and the *Anti-Dumping Authority Act 1988*, to enable Australia to accept the Agreement Establishing the World Trade Organization, and for related purposes**

[Assented to 13 December 1994]

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Customs Legislation (World Trade Organization Amendments) Act 1994*.

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### **Commencement**

**2.(1)** Sections 1, 2 and 3 commence on the day on which this Act receives the Royal Assent.

**(2)** Parts 2 and 3 of this Act commence on the day on which the World Trade Organization Agreement enters into force for Australia.

**(3)** For the purposes of subsection (2), the day on which the World Trade Organization Agreement enters into force for Australia is to be taken to be the day declared by the Governor-General, by Proclamation under paragraph 2(5)(b) of the *Copyright (World Trade Organization Amendments) Act 1994*, to be the day on which the Agreement enters into force for Australia.

### **Application**

**3.** This Act applies in respect of:

- (a) applications for publication of notices under subsection 269TG(1) or (2), 269TH(1) or (2), 269TJ(1) or (2) or 269TK(1) or (2) of the *Customs Act 1901*; and
- (b) applications for review of interim duty under subsection 269Z(1) of that Act, payable as a result of the publication of notices referred to in paragraph (a), whenever published; and
- (c) applications under subsection 7(3) of the *Anti-Dumping Authority Act 1988*:
  - (i) for revocation of notices under subsection 8(5), 9(5), 10(3B) or 11(4) of the *Customs Tariff (Anti-Dumping) Act 1975*, whenever published; and
  - (ii) for revocation or partial revocation of notices referred to in paragraph (a), whenever published; and
  - (iii) for release or partial release from undertakings accepted by the Minister under section 269TG or 269TJ of the *Customs Act 1901*, whenever accepted; and
- (d) applications under section 8A of the *Anti-Dumping Authority Act 1988* for continuation of notices referred to in paragraph (a), whenever published;

that are made on or after the day on which the Agreement Establishing the World Trade Organization enters into force for Australia.

## **PART 2—AMENDMENTS OF THE CUSTOMS ACT 1901**

### **Principal Act**

**4.** In this Part, “**Principal Act**” means the *Customs Act 1901*<sup>1</sup>.

### **Right to require security**

5. Section 42 of the Principal Act is amended by omitting subsection (1C) and substituting the following subsections:

“(1C) If:

- (a) an undertaking is given and accepted under subsection 269TG(4) or 269TJ(3) in respect of goods; and
- (b) the undertaking is subsequently breached;

the Customs may require and take securities in respect of any interim duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on the goods or on like goods imported into Australia.

“(1D) The right of the Customs under subsection (1) to require and take a security includes the right to require and take a security in respect of any interim duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on goods the subject of an application under subsection 269ZE(1) of this Act.”.

### **Cancellation of bonds**

6. Section 45 of the Principal Act is amended:

- (a) by omitting “of the security” from subsection (2) and substituting “the security is taken”;
- (b) by omitting from paragraph (3)(a) “4 months” and substituting “6 months”;
- (c) by omitting from paragraph (3)(a) “6 months” and substituting “9 months”.

### **Definitions**

7. Section 269T of the Principal Act is amended:

- (a) by omitting paragraph (d) of the definition of “interested party” in subsection (1), and substituting the following paragraphs:

“(d) 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 of like goods that have been, or are likely to be, exported to Australia; and

- (e) 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 of like goods, with their importation or exportation into Australia, or with both of those activities; and

- (f) the Government of the country of export or country of origin:
  - (i) of goods the subject of the application that have been, or are likely to be, exported to Australia; or

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- (ii) of like goods that have been, or are likely to be, exported to Australia;”;
- (b) by inserting in subsection (1) the following definitions:
- “ **‘Agreement on Agriculture’** 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;
- ‘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;
- ‘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;
- ‘application’**, in relation to a dumping duty notice or a countervailing duty notice, means an application for the publication of such a notice;
- ‘countervailable subsidy’** means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy;
- ‘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;
- ‘dumped goods’** means any goods exported to Australia that the Minister has determined, under section 269TACB, have been dumped;
- ‘General Agreement on Tariffs and Trade 1994’** means the Agreement by that name:

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- (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;

**‘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 Comptroller for the purposes of paragraph 269TC(4)(bf) to be the period over which importations of the goods will be examined in order to determine what sort of preliminary finding to make under section 269TD;

**‘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;

**‘new exporter’**, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like goods, means an exporter who did not export such goods to Australia at any time during either:

- (a) the inquiry period within the meaning of the *Anti-Dumping Authority Act 1988*; or
- (b) the investigation period, within the meaning of this part;

that is specified for the purposes of that application;

**‘residual exporter’**, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods other than a selected exporter, and includes a new exporter of such goods;

**‘selected exporter’**, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods whose exportations were investigated for the purpose of deciding whether or not to publish that notice;

**‘subsidy’**, in respect of goods that are exported to Australia, means:

- (a) a financial contribution:
  - (i) by a government of the country of export or country of origin of those goods; or
  - (ii) by a public body of that country or 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 is made in connection with the production, manufacture or export of those goods and that involves:



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- (iv) a direct transfer of funds from that government or body to the enterprise by whom the goods are produced, manufactured or exported; or
  - (v) a direct transfer of funds from that government or body to that enterprise contingent upon particular circumstances occurring; or
  - (vi) the acceptance of liabilities, whether actual or potential, of that enterprise by that government or body; or
  - (vii) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body by that enterprise; or
  - (viii) the provision by that government or body of goods or services to that enterprise otherwise than in the course of providing normal infrastructure; or
  - (ix) the purchase by that government or body of goods provided by that enterprise; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement or 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 in relation to those goods;

**‘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;

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

- (c) by omitting from subsection (2A) “the subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods” and substituting “the subsidy received in respect of goods”;
- (d) by inserting after subsection (2A) the following subsections:
- “(2AA) A reference in this Part to a subsidy or a countervailable subsidy received in respect of goods from a government of the country of export or country of origin of the goods includes a reference to a subsidy or countervailable subsidy received in respect of those goods:
  - (a) from a public body of that government or of which that government is a member; or
  - (b) from a private body entrusted or directed by that government or public body to carry out a governmental function.

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“(2AB) If a subsidy is constituted by a financial contribution provided by a public body of which a country is a member but is delivered, not by the public body but rather by that member country, then, for the purposes of this Part, that subsidy is taken to have been received both from the public body and from the member country.

“(2AC) A subsidy is taken to have been received in respect of particular goods:

- (a) whether the benefit conferred by the subsidy is conferred directly or indirectly in relation to those goods; and
- (b) whether or not the subsidy involves, or will involve, the payment or grant of any form of financial assistance.

“(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.”;

(e) by omitting subparagraph (4D)(b)(i) and substituting the following subparagraph:

“(i) to the amount of countervailable subsidy received in respect of the goods; and”;

(f) by omitting subparagraph (4E)(b)(i) and substituting the following subparagraph:

“(i) to the amount of countervailable subsidy received in respect of the goods; and”;

(g) by inserting after subsection (5) the following subsections:

“(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

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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.”.

**Insertion of new sections**

**8.** After section 269TAAA of the Principal Act, the following sections are inserted:

**Member countries, developing countries and special developing countries**

“269TAAB.(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
- (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.

**Definition—countervailable subsidy**

“269TAAC.(1) For the purposes of this Part, a subsidy is a countervailable subsidy if:

- (a) it is specific; and
- (b) it is not an excluded subsidy.

“(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

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- (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 access to the subsidy:

- (a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
- (b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and
- (c) those criteria or conditions are strictly adhered to in the administration of the subsidy.

“(4) Despite the fact that access to a subsidy is established by objective criteria, 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.

“(6) A subsidy is an excluded subsidy if the Minister is satisfied that:

- (a) it is specific but described in paragraph (a), (b) or (c) of Article 8.2 of the Agreement on Subsidies and Countervailing Measures; or
- (b) it is a domestic support measure that meets the criteria or conditions set out in Annex 2 to the Agreement on Agriculture.

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**Ordinary course of trade**

“269TAAD.(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
- (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.”.

**Export price**

9. Section 269TAB of the Principal Act is amended by omitting from subsection (4) “subsection (3)” and substituting “this section”.

**Normal value of goods**

10. Section 269TAC of the Principal Act is amended:

- (a) by omitting subparagraphs (2)(a)(i) and (ii) and substituting the following subparagraphs:

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- “(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);”;
- (b) by omitting from subsection (2) all the words after subparagraph (2)(c)(i) and substituting:
- “(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, subject to subsection (13), 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 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”;
- (c) by omitting subsection (3) and substituting the following subsection:
- “(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.”;
- (d) by omitting paragraph (4)(d) and substituting the following paragraph:
- “(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) by omitting subparagraphs (4)(e)(ii) and (iii) and substituting the following subparagraph:
- “(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;”;

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- (f) by omitting subsection (5) and substituting the following subsections:

“(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 269TAAD(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.”;
- (g) by omitting from subsection (7) “subsection (6)” and substituting “this section”;
- (h) by omitting subsection (12);
- (i) by omitting from subsection (13) “subsection (12)” and substituting “section 269TAAD”;
- (j) by omitting from subsection (13) “sub-subparagraph (2)(c)(ii)(B)” and substituting “subparagraph (2)(c)(ii)”;
- (k) by adding at the end the following subsection:
- “(14) If:

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- (a) application is made for a dumping duty notice or a countervailing 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.”.

**Insertion of new sections**

**11.** After section 269TACA of the Principal Act the following sections are inserted:

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

“269TACB.(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 investigation period with the weighted average of corresponding normal values over that period; or
- (b) compare the export prices determined in respect of individual transactions over the investigation period with the corresponding normal values determined over that period; or
- (c) use the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period and the method of comparison referred to in paragraph (b) in respect of another part or other parts of that period.

“(3) If the Minister is satisfied:



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- (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 is the difference between those weighted averages.

“(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 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.

“(7) Subject to subsection (8), the existence of dumping and the size of a dumping margin will normally be worked out for individual exporters of goods to Australia.

“(8) If the number of exporters from a particular country of export who provide information in relation to an application for a dumping duty notice is so large that it is not practicable to determine the existence of dumping and to work out individual dumping margins for each of them, the Minister may, on the basis of information obtained from an investigation of a selected number of those exporters:

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- (a) who constitute a statistically valid sample of those exporters; or
- (b) who are responsible for the largest volume of exportations to Australia that can reasonably be investigated;

decide whether dumping exists, and, if it does, fix dumping margins for such selected exporters and for exporters who are not so selected.

“(9) If information is submitted by an exporter not initially selected under subsection (8) for the purposes of an investigation, the investigation must extend to that exporter unless to so extend it would prevent the investigation’s timely completion.

“(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.

**Working out whether benefits have been conferred and amounts of subsidy**

“269TACC.(1) If:

- (a) a financial contribution referred to in paragraph (a) of the definition of ‘subsidy’ in subsection 269T(1); or
- (b) income or price support referred to in paragraph (b) of that definition;

is received in respect of goods, the question whether that financial contribution or income or price support confers a benefit, and, if so, the amount of subsidy attributable to that benefit, are to be worked out according to this section.

“(2) If a financial contribution in respect of goods is a direct financial payment received from a government of a country, a public body of that government or of which that government is a member, or a private body entrusted or directed by that government or public body to carry out a governmental function, a benefit is taken to be conferred because of that payment.

“(3) If:

- (a) there is no financial contribution of the kind referred to in subsection (2) received in respect of goods; but
- (b) a financial contribution of another kind, or income or price support, is received in respect of those goods from a government of a country, a public body of that government or of which that government is a member, or a private body entrusted or directed by that government or public body to carry out a governmental function;

the question whether that financial contribution or income or price support confers a benefit is to be determined by the Minister.

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“(4) 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 the government or body referred to in subsection (3) 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 the government or a body referred to in subsection (3) does not confer a benefit unless the loan requires repayment of a lesser amount than would be required for a comparable commercial loan;
- (c) the guarantee of a loan by the government or a body referred to in subsection (3) does not confer a benefit unless, without the guarantee, the enterprise receiving the loan would have to repay a greater amount;
- (d) the provision of goods or services by the government or body referred to in subsection (3) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;
- (e) the purchase of goods by the government or body referred to in subsection (3) does not confer a benefit if the purchase is made for more than adequate remuneration.

“(5) For the purposes of paragraphs (4)(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 services in the country where those goods or services are provided or purchased.

“(6) If a benefit is conferred:

- (a) by a financial contribution in the form referred to in subsection (2)—the total amount of subsidy attributable to the benefit is an amount equal to the payment; or
- (b) by the making of a loan by the government or a body referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount equal to the difference between the amount required to be repaid on that loan and the amount that would be required to be repaid on a comparable commercial loan; or
- (c) by the guarantee of a loan by the government or a body referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount equal to the difference between the amount required to be repaid upon the loan so guaranteed and the amount that would be required to be repaid upon a commercial loan, without that guarantee, adjusted for any difference in fees; or

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- (d) by any other financial contribution, or income or price support as referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount determined by the Minister, in writing, in accordance with the regulations made for the purposes of this section.

“(7) If the Minister is satisfied, in respect of a particular financial contribution or form of income or price support:

- (a) that subsections (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred; or  
(b) that, if a benefit has been conferred, subsection (6) is inappropriate for determining the total amount of subsidy attributable to the benefit;

the Minister may determine, in writing, that he or she is so satisfied and determine an alternative basis for deciding whether a benefit has been conferred or for working out the amount of subsidy attributable to the benefit.

“(8) If the number of exporters from a particular country of export who provide information in relation to an application for a countervailing duty notice is so large that it is not practicable to work out whether a benefit has been conferred and the amount of subsidy received by them, the Minister may, on the basis of information obtained from an investigation of a selected number of those exporters:

- (a) who constitute a statistically valid sample of those exporters; or  
(b) who are responsible for the largest volume of exportations to Australia that can reasonably be investigated;

decide whether a benefit is conferred and, if it is, the amount of subsidy attributable to that benefit for such selected exporters and for exporters who are not so selected.

“(9) If information is submitted by an exporter not initially selected under subsection (8) for the purposes of an investigation, the investigation must extend to that exporter unless to so extend it would prevent the investigation’s timely completion.

“(10) After the total amount of the 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.”.

### **Material injury to industry**

**12.** Section 269TAE of the Principal Act is amended:

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- (a) by omitting from subsection (1) “by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this subsection called the ‘**country of export**’), the Minister may, without limiting the generality of that section” and substituting “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), (2B) and (2C)”;
- (b) by inserting in subsection (1), before paragraph (a), the following paragraphs:
  - “(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”;
- (c) by omitting from paragraph (1)(h) “in a case where” and substituting “if”;
- (d) by omitting from subsection (2) “a producer or manufacturer” and substituting “an industry”;
- (e) by omitting from subsection (2) “by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this subsection called the ‘**country of export**’), the Minister may, without limiting the generality of that section” and substituting “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), (2B) and (2C)”;
- (f) by inserting in subsection (2), before paragraph (a), the following paragraphs:
  - “(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”;

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- (g) by omitting from subsection (2) “by the producer or manufacturer” (wherever occurring);
- (h) by inserting after subsection (2) the following subsections:

“(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
- (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.

“(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 exportation of like goods to Australia by different exporters from the same country of export or from different countries of export, the Minister should consider the cumulative effect of those exportations only if, having regard to:

- (a) the conditions of competition between those goods; and
- (b) the conditions of competition between those goods and like goods that are domestically produced;

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- the Minister is satisfied that it is appropriate to do so.”;
- (i) by omitting from subsection (3) “in relation to a producer or manufacturer” and substituting “in relation to an industry”;
  - (j) by omitting from subsection (3) “or by the producer or manufacturer” (wherever occurring);
  - (k) by omitting from subsection (3) “or in the business of the producer or manufacturer” (wherever occurring);
  - (l) by omitting from paragraph (3)(b) “, producer or manufacturer”;
  - (m) by omitting from paragraph (3)(k) “, or of the producer or manufacturer,”.

**Repeal of sections and substitution of new section**

**13.** Sections 269TAF, 269TAG and 269TAH of the Principal Act are repealed and the following section is substituted:

**Currency conversion**

“269TAF.(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 in the *Gazette*, 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.

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“(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
- (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 Comptroller may, if he or she considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, 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.”.

#### **Revocation of notices**

**14.** Section 269TAJ of the Principal Act is amended:

- (a) by omitting from subsection (1) “notice published in the *Gazette*” and substituting “public notice”;
- (b) by omitting from subsection (2) “notice published in the *Gazette*” and substituting “public notice”;
- (c) by omitting from subsection (3) “by notice in writing” and substituting “by public notice”;
- (d) by omitting from subsection (5) “on which the notice was signed by the Minister” and substituting “of publication of the notice in the *Gazette*”.

#### **Application for action under Anti-Dumping Act**

**15.** Section 269TB of the Principal Act is amended:

- (a) by omitting paragraph (2)(b) and substituting the following word and paragraph:



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

**(b)** by inserting after subsection (2) the following subsections:

“(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 Comptroller 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 Comptroller 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 Comptroller under subsection (2B) must include an invitation to consult with the Comptroller 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.”;

**(c)** by adding after paragraph (4)(d) the following word and paragraph:

“; and (e) in the case of an application under subsection (1)—be supported by a sufficient part of the domestic industry.”;

**(d)** by adding at the end the following subsection:

“(6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the domestic industry if the Comptroller 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.”.

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**Consideration of application**

**16.** Section 269TC of the Principal Act is amended:

(a) by omitting from subsection (4) all the words preceding paragraph (a) and substituting the following:

“(4) If the Comptroller decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the Comptroller must give public notice of the decision.”;

(b) by inserting at the end of paragraph (4)(a) “and”;

(c) by omitting paragraph (4)(b) and substituting the following paragraphs:

“(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 in the *Gazette*, 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 the preliminary finding will be made on the basis of the examination of exportations to Australia of goods the subject of the application during a period identified in the notice; and”;

(d) by omitting from paragraph (4)(c) “after the publication of the notice” and substituting “after the date of initiation of the investigation”;

(e) by inserting at the end of paragraph (4)(c) “and”;

(f) by omitting from subsection (4) all the words after paragraph (d) and substituting the following paragraphs:

“(e) inviting interested parties to lodge with the Comptroller, within a specified period of not more than 40 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought by the applicant; and

(f) indicating the address at which, or the manner in which, such submissions can be lodged”;

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(g) by adding at the end the following subsections:

“(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.

“(6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the Comptroller, if the Comptroller 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 Comptroller 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 Comptroller decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the Comptroller 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.”.

### **Preliminary findings**

17. Section 269TD of the Principal Act is amended:

(a) by omitting paragraph (2)(a) and substituting the following paragraph:

“(a) the Comptroller must give public notice of that finding; and”;

(b) by inserting after subsection (2) the following subsection:

“(2A) If the Comptroller decides to require securities under paragraph (2)(c), the Comptroller must give public notice of the decision.”;

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- (c) by omitting all the words in subsection (3) after “importation into Australia of such goods,” and substituting “the Comptroller must give public notice of that finding”;
- (d) by omitting subsection (4).

**Insertion of new section**

**18.** After section 269TD of the Principal Act the following section is inserted:

**Termination of investigations**

*Comptroller must terminate if all dumping margins are negligible*

“269TDA.(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 Comptroller 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 Comptroller must terminate the investigation so far as it relates to the exporter.

*Comptroller 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 Comptroller 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 after the start of the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

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

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*Comptroller 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 Comptroller 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 Comptroller 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 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%.

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*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.

*Comptroller 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 Comptroller 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 Comptroller 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.

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*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, or may be, been received, if:

- (a) the country of export is not 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 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:

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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 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 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
  - (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:



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- (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.

*Comptroller must terminate investigation if dumping causes negligible injury*

- “(13) 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 Comptroller is satisfied that:
    - (i) there has been, or may be, dumping of some or all of those goods; but

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- (ii) 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 dumping is negligible;

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

*Comptroller must terminate investigation if subsidisation causes negligible injury*

“(14) 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 Comptroller is satisfied that:
  - (i) a countervailable subsidy has been, or may be, received in respect of some or all of those goods; but
  - (ii) the injury, if any, to an Australian industry or an industry in a third country has been, or may be, caused by the subsidisation is negligible;

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

*Comptroller must give public notice of termination decisions*

“(15) If the Comptroller decides to terminate an investigation so far as it relates to a particular exporter or country of export, the Comptroller 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.

*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

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- (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.”

**Reviews by Authority**

**19.** Section 269TF of the Principal Act is amended:

- (a) by adding at the end of subsection (1) the following word and paragraph:

“; or (c) a decision by the Comptroller under section 269TDA to terminate an investigation so far as it relates to a particular exporter or country of export.”;

- (b) by omitting from subsection (2) “a notice in the *Gazette* and in a newspaper as required under subsection 269TC(4)” and substituting “a public notice of the substituted decision”;

- (c) by adding at the end the following subsections:

“(4) If the Authority decides, on a review of a decision to terminate an investigation, to substitute a preliminary finding for the decision to terminate:

- (a) this Act has effect, subject to paragraphs (b), (c) and (d), as if the substituted finding were a preliminary finding of the Comptroller; and
- (b) the Comptroller must publish a public notice of the substituted finding; and

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- (c) if the substituted finding is a preliminary finding that there are sufficient grounds for publication of a dumping duty notice or a countervailing duty notice, the substituted finding is to be treated as if it had been duly referred to the Authority under paragraph 269TD(2)(b); and
- (d) if the substituted finding is a preliminary finding that there are sufficient grounds for the publication of such a notice, the Comptroller may exercise the powers specified in paragraph 269TD(2)(c).

“(5) If the investigation is remitted to the Comptroller, the Comptroller must, for the purpose of the further investigation of that exporter, treat the matter as if he or she had just made a decision under subsection 269TC(4) in respect of the matter and give public notice of a new investigation of the matter accordingly.

“(6) For the purpose of any investigation of a matter remitted to the Comptroller, an interested party may request the Comptroller to treat a submission duly made by it in the prior investigation of the matter as a submission made for the purposes of the remitted matter and, where the party does so, the submission must be treated as if duly received for the purpose of the further investigation.”.

### **Dumping duties**

**20.** Section 269TG of the Principal Act is amended:

- (a) by omitting from subsection (1) “notice published in the *Gazette*” and substituting “public notice”;
- (b) by omitting from subsection (2) “notice published in the *Gazette*” and substituting “public notice”;
- (c) by inserting in paragraph (3A)(a) “in accordance with subsection 269ZI(9)”, before “the Minister”;
- (d) by omitting subsections (4), (4A) and (5) and substituting the following subsections:

“(3B) In ascertaining a normal value and export price for goods of the residual exporter, the Minister must ensure that:

- (a) the normal value does not exceed the weighted average of normal values for like goods of selected exporters from the same country of export; and
- (b) the export price is not less than the weighted average of export prices for like goods of selected exporters from the same country of export.

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“(3C) For the purposes of subsection (3B), the weighted average of normal values and the weighted average of export prices of the selected exporters must not include any normal value or export price if:

- (a) in a comparison under section 269TACB involving that normal value or export price, the Minister has determined:
  - (i) that there is no dumping; or
  - (ii) 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%; or
- (b) that normal value was determined under subsection 269TAC(6) or that export price was determined under subsection 269TAB(3).

“(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:

- (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.

“(6) The Minister:

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- (a) may give a notice under subsection (3D) whether or not the giving of such a notice has been recommended by the Authority in a report under section 7 of the *Anti-Dumping Authority Act 1988*; and
- (b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the Authority in a report under section 7 of that Act; and
- (c) must not give a notice to an exporter under subsection (3D), or accept an undertaking from an exporter, before a positive preliminary finding 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 Authority in relation to the matter.

“(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.”.

### **Third country dumping duties**

**21.** Section 269TH of the Principal Act is amended:

- (a) by omitting from paragraph (1)(b) “a producer or manufacturer in a third country” (wherever occurring), and substituting “an industry in a third country engaged in the production or manufacture”;
- (b) by omitting from subsection (1) “notice published in the *Gazette*” and substituting “public notice”;

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- (c) by omitting from paragraph (2)(b) “a producer or manufacturer in a third country” and substituting “an industry in a third country engaged in the production or manufacture”;
- (d) by omitting from subsection (2) “notice published in the *Gazette*” and substituting “public notice”;
- (e) by inserting in paragraph (4)(a) “in accordance with subsection 269ZI(9),” before “the Minister”;
- (f) by adding at the end the following subsections:

“(5) In ascertaining a normal value and export price for goods of the residual exporter, the Minister must ensure that:

- (a) the normal value does not exceed the weighted average of normal values for like goods of selected exporters from the same country of export; and
- (b) the export price is not less than the weighted average of export prices for like goods of selected exporters from the same country of export.

“(6) For the purposes of subsection (5), the weighted average of normal values and the weighted average of export prices of the selected exporters must not include any normal value or export price if:

- (a) in a comparison under section 269TACB involving that normal value or export price, the Minister has determined:
  - (i) that there is no dumping; or
  - (ii) 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%; or
- (b) that normal value was determined under subsection 269TAC(6) or that export price was determined under subsection 269TAB(3).”.

### **Countervailing duties**

**22.** Section 269TJ of the Principal Act is amended:

- (a) by omitting paragraph (1)(a) and substituting the following paragraph:

“(a) a countervailable subsidy has been received in respect of the goods; and”;
- (b) by omitting from subsection (1) “notice published in the *Gazette*” and substituting “public notice”;
- (c) by omitting paragraph (2)(a) and substituting the following paragraph:

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- “(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”;
- (d) by omitting from subsection (2) “notice published in the *Gazette*” and substituting “public notice”;
- (e) by omitting paragraph (2)(d) and substituting the following paragraph:
  - “(d) in respect of which a countervailable subsidy is received.”;
- (f) by omitting subsections (3) and (3A) and substituting the following subsections:

“(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 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



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- (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.

“(3C) The Minister:

- (a) may give a notice under subsection (2A) whether or not the giving of such a notice is the subject of a recommendation from the Authority in a report under section 7 of the *Anti-Dumping Authority Act 1988*; and
- (b) may accept an undertaking whether or not the acceptance of such an undertaking is the subject of a recommendation from the Authority in a report under section 7 of that Act; 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 finding has been made 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.

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“(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 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 of the Authority 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.”;

(g) by omitting paragraph (4)(b) and substituting the following paragraph:

“(b) those duties are imposed because it is alleged that a countervailable subsidy is received in respect of goods of that kind; and”;

(h) by omitting from paragraph (4)(c) “by reason of the payment or grant of that subsidy, bounty, reduction or remission of freight or other financial assistance” and substituting “because of the receipt of that subsidy”;

(i) by omitting from subsection (4) “notice published in the *Gazette*” and substituting “public notice”;

(j) by omitting paragraph (4)(e) and substituting the following paragraph:

“(e) in respect of which a countervailable subsidy is received.”;

(k) by omitting from subsection (5) “notice published in the *Gazette*” and substituting “public notice”;

(l) by omitting from subsection (7) all the words after “other than the” and substituting “receipt of a countervailable subsidy in respect of those goods”;

(m) by omitting paragraph (11)(a) and substituting the following paragraph:

“(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”;

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- (n) by omitting paragraph (12)(a) and substituting the following paragraph:
  - “(a) the amount of any countervailable subsidy received in respect of goods to which a declaration under subsection (1) or (2) relates; or”;
- (o) by omitting from subsection (12) “, bounty, reduction or remission of freight or other financial assistance” (second occurring);
- (p) by inserting in paragraph (12)(c) “in accordance with subsection 269ZI(9),” before “the Minister”.

**Concurrent dumping and subsidy**

23. Section 269TJA of the Principal Act is amended:

- (a) by omitting paragraph (1)(b) and substituting the following paragraph:
  - “(b) that a countervailable subsidy has been received in respect of the goods; and”;
- (b) by omitting paragraph (2)(b) and substituting the following paragraph:
  - “(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”;
- (c) by omitting from subsection (3) “the Minister may suspend consideration of the consignment under both of those sections” and substituting “the Minister may defer the decision to publish or not to publish notices under both of those sections covering the exporter concerned”;
- (d) by omitting subsection (5).

**Third country countervailing duties**

24. Section 269TK of the Principal Act is amended:

- (a) by omitting paragraph (1)(a) and substituting the following paragraph:
  - “(a) a countervailable subsidy has been received in respect of the goods; and”;
- (b) by omitting from paragraph (1)(b) “a producer or manufacturer in a third country” (wherever occurring) and substituting “an industry in a third country engaged in the production or manufacture”;

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- (c) by omitting from subsection (1) “notice published in the *Gazette*” and substituting “public notice”;
- (d) by omitting paragraph (2)(a) and substituting the following paragraph:
  - “(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”;
- (e) by omitting from paragraph (2)(b) “a producer or manufacturer in a third country” and substituting “an industry in a third country engaged in the production”;
- (f) by omitting from subsection (2) “notice published in the *Gazette*” and substituting “public notice”;
- (g) by omitting paragraph (2)(d) and substituting the following paragraph:
  - “(d) in respect of which a countervailable subsidy is received.”;
- (h) by omitting paragraph (5)(a) and substituting the following paragraph:
  - “(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”;
- (i) by omitting paragraph (6)(a) and substituting the following paragraph:
  - “(a) the amount of any countervailable subsidy received in respect of goods to which a notice under subsection (1) or (2) relates; or”;
- (j) by omitting from subsection (6) “, bounty, reduction or remission of freight or other financial assistance” (second occurring);
- (k) by inserting in paragraph (6)(c) “in accordance with subsection 269ZI(9),” before “the Minister”.

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

**25.** Section 269TL of the Principal Act is amended:

- (a) by omitting “shall, by notice published in the *Gazette*, state that he or she has so decided” and substituting “must give public notice to that effect”;
- (b) by adding at the end the following subsection:

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“(2) If the Minister receives a report from the Authority recommending the termination of an inquiry so far as a particular exporter is concerned and the Minister decides, having regard to that recommendation, not to declare goods exported to Australia by that exporter to be goods to which section 8, 9, 10 or 11 of the Anti-Dumping Act applies, the Minister must give public notice to that effect.”.

### **Retrospective notices**

**26.** Section 269TN of the Principal Act is amended:

(a) by inserting after subsection (4) the following subsection:

“(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
- (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.”;

(b) by omitting paragraph (5)(b) and substituting the following paragraph:

“(b) 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 because a countervailable subsidy has been received from the country of export or country of origin of those goods.”.

### **Manner of making applications for duty assessment**

**27.** Section 269W of the Principal Act is amended by omitting subparagraph (1)(d)(i) and substituting the following subparagraph:

“(i) the amount of the countervailable subsidy received on goods of that kind in each such consignment; and”.

### **Insertion of new Divisions**

**28.** After Division 5 of Part XVB of the Principal Act, the following Divisions are inserted:

***“Division 6—Accelerated review of dumping duty notices or  
countervailing duty notices for residual exporters***

**Circumstances in which accelerated review may be sought**

“269ZE.(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 residual exporters from a particular country of export;

a residual exporter from that country (other than such an exporter in respect of whom a declaration has already been made under subparagraph 269ZG(3)(b)(ii) in respect of a previous application) may, by application lodged with the Comptroller, request an accelerated review of that notice in so far as it affects that exporter.

“(2) If the Comptroller 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 who was a selected exporter in relation to the application for publication of that notice;

the Comptroller may reject the application.

“(3) If, during the course of an accelerated review, the Comptroller 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 who was a selected exporter in relation to the application for publication of that notice;

the Comptroller may terminate the review.

“(4) For the purposes of this section, an exporter is taken to be related to another exporter who is a selected exporter if the 2 exporters are associates of each other under subsection 269TAA(4).”.

**Application for accelerated review**

“269ZF.(1) An application for accelerated review must be in writing, be lodged in accordance with subsection (2), 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) An application may be lodged with Customs:

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- (a) by leaving it at a place allocated for lodgment of accelerated review applications; or
- (b) by posting it by pre-paid post to a postal address specified by Customs in the *Gazette*; or
- (c) by sending it by electronic facsimile to a number specified by Customs in the *Gazette*;

and the application is taken to be lodged when the application, or a facsimile of it, is first received by an officer of Customs doing duty in relation to such applications.

“(3) The day on which an application is taken to be lodged must be recorded on the application.

**Consideration of application**

“269ZG.(1) The Comptroller must, after considering the application and making such inquiries as the Comptroller 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:
  - (i) so as not to apply to the applicant; or
  - (ii) so as to apply to the applicant as if different variable factors had been fixed;

and set out the Comptroller’s reasons for so recommending.

“(2) A report by the Comptroller 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 Comptroller and the reasons for the recommendation, the Minister must, by notice in writing published in the *Gazette*:

- (a) declare that, for the purposes of this Act and the Anti-Dumping 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 Anti-Dumping Act have effect as if:
  - (i) the original dumping duty notice or countervailing duty notice had not applied to the applicant; or
  - (ii) 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 payable by the applicant;

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and, where the Minister does so, the declaration has effect according to its terms.

“(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.

**Effect of accelerated review**

“269ZH. 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 from the applicant in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review; but
- (b) the Comptroller 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 7—Procedural and evidentiary matters*

**Public notice**

“269ZI.(1) If a person or body is required or empowered to give public notice of a finding or decision 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 in the *Gazette* and in a newspaper circulating in each State and in the internal Territories.

“(2) If a person or body is required or empowered to give public notice of a finding or decision in a particular publication, whether because of subsection (1) or otherwise, that person or body must:

- (a) set out in the notice particulars of the finding or decision made; and
- (b) set out in the notice, or in a separate report to which the notice refers, the reasons for the finding or decision including all material findings of fact or law on which the finding or decision is based; and
- (c) if a person has a right to have the finding or decision reviewed by another body or referred to another body for 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 finding or decision 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 finding or decision; and



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- (b) give a copy of the report to each other interested party known to be affected by the finding or decision.

“(4) If the Comptroller gives public notice of a decision under paragraph 269TD(2)(c) 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 1987* 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 finding.

“(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.

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“(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
  - (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 1987* 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 1987* 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 finding or decision in a particular publication:

- (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

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- (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.

**Comptroller to maintain public record for certain purposes**

“269ZJ.(1) The Comptroller must, in relation to each application received under subsection 269TB(1) or (2) or 269Z(1) or request made under subsection 269Z(2):

- (a) maintain a public record of the investigation or review conducted for the purposes of the application or request, containing, subject to subsection (2), a copy of all submissions from interested parties and all relevant correspondence between the Comptroller 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 Comptroller by a person is claimed to be confidential or to be information whose publication would adversely affect a person’s business or 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 Comptroller for inclusion in the public record.

“(3) A person is not required to give the Comptroller a summary of information under subsection (2) for inclusion in the public record if the person satisfies the Comptroller 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 Comptroller by a person, the Comptroller must not take that information into account unless it is subsequently put in writing by the person or by the Comptroller 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:

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

but, despite the opinion of the Comptroller, 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 Comptroller 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) or 269Z(1) or a request under subsection 269Z(2), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and
- (b) the Comptroller 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 Comptroller may disregard the information unless it is demonstrated that the information is correct.”.

### **Transitional**

**29.** Despite the amendments of the Principal Act made by this Act, the provisions of the Principal Act as in force immediately before the day fixed for the purposes of subsection 2(2) of this Act, continue to apply, subject to section 3:

- (a) in relation to applications for dumping duty notices or countervailing duty notices made, but not completed, before that day; and
- (b) in relation to all securities taken, and duty imposed, as a result of, or of applications for, those notices;

as if those amendments had not been made.

## **PART 3—AMENDMENTS OF THE ANTI-DUMPING AUTHORITY ACT 1988**

### **Principal Act**

**30.** In this Part, “**Principal Act**” means the *Anti-Dumping Authority Act 1988*<sup>2</sup>.

## **Definitions**

**31.** Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“ ‘**application**’ has the same meaning as it has for the purposes of Part XVB of the *Customs Act 1901*;

‘**countervailable subsidy**’ has the same meaning as it has for the purposes of Part XVB of the *Customs Act 1901*;

‘**country of export**’ has the same meaning as it has for the purposes of Part XVB of the *Customs Act 1901*;

‘**country of origin**’ has the same meaning as it has for the purposes of Part XVB of the *Customs Act 1901*;

‘**inquiry period**’, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period starting on a day specified by the Authority under paragraph 23(2)(d) in relation to the examination of importations of goods and ending on the day the Authority commences to prepare its report for the Minister;

‘**interested party**’ has the same meaning as it has for the purposes of Part XVB of the *Customs Act 1901*;”;

(b) by adding at the end the following subsection:

“(3) The fact that an inquiry 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 Australian industry or to an industry of a third country.”.

## **Functions**

**32.** Section 5 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

“(ba) to review under section 7A any decision by the Comptroller to terminate his or her investigation of an exporter or of a country of export;”.

## **Authority may make recommendations on publication of dumping duty notices etc.**

**33.** Section 7 of the Principal Act is amended:

(a) by omitting paragraph (1)(e) and substituting the following paragraph:

“(e) recommending, where applicable:

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- (i) whether the Minister ought to give to the government of the country of export or to the exporter a notice under subsection 269TG(3D) or 269TJ(2A) of the *Customs Act 1901*; or
- (ii) whether the Minister ought to accept an undertaking the terms of which have been considered by the Authority under section 7C; and”;
- (b) by omitting from subsection (3) “10(5)” and substituting “10(3B)”;
- (c) by omitting from subsection (4) “shall” and substituting “must, subject to subsection (4A)”;
- (d) by inserting after subsection (4) the following subsection:

“(4A) An application for the holding of an inquiry into whether the Minister:

  - (a) should revoke a notice under subsection 8(5), 9(5), 10(3B) or 11(4) of the *Anti-Dumping Act*; or
  - (b) should, under section 269TAJ of the *Customs Act 1901*, revoke or partly revoke a notice under Part XVB of that Act or release or partly release a person from an undertaking given under that Part;

must not be made until after 12 months have elapsed from the date of publication of the notice or the date of acceptance of the undertaking.”;
- (e) by omitting subsection (5);
- (f) by omitting from subsection (6) all the words after “received by the Authority” and substituting “within the period specified in the notice of inquiry under section 23 but, subject to subsection (7), may disregard any submissions received after the end of that period”;
- (g) by inserting after subsection (6) the following subsection:

“(7) In reaching a decision as to the recommendation to make in its report, the Authority:

  - (a) must have regard to any submission:
    - (i) that relates to the statement of essential facts placed on the public record under subsection 23A(8); and
    - (ii) that is received by the Authority within 7 days after placing the statement on the record; but
  - (b) may disregard any submission received more than 7 days after placing the statement on the record.”.

**Insertion of new sections**

**34.** After section 7 of the Principal Act the following sections are inserted:

**Review of termination decision under section 269TDA of the  
*Customs Act 1901***

“7A.(1) If:

- (a) the Comptroller has decided under section 269TDA of the *Customs Act 1901* to terminate an investigation so far as it relates to a particular exporter or country of export; and
  - (b) the decision has been referred to the Authority for review;
- the Authority must, within 60 days after the decision is referred to it:
- (c) confirm the decision; or
  - (d) reject the decision and substitute a finding to the effect:
    - (i) that there are sufficient grounds for the publication of a notice applied for in respect of the goods the subject of the application; or
    - (ii) that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods; or
  - (e) reject the decision and remit the investigation to the Comptroller.

“(2) The Authority must:

- (a) give public notice of the decision made by the Authority on a review under this section; and
- (b) give written notice of the decision to the Comptroller and the exporter concerned.

“(3) In conducting a review under this section, the Authority must not have regard to any information that was unavailable to the Comptroller at the time the Comptroller made the decision to terminate the investigation.

**Termination of inquiry by Authority**

*Authority must terminate inquiry if all dumping margins are negligible*

“7B.(1) If:

- (a) application has been made for a dumping duty notice; and
- (b) that application has become the subject of an inquiry under subsection 7(1) by the Authority; and
- (c) so far as that inquiry relates to an exporter to Australia of goods the subject of the application, the Authority 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 of the *Customs Act 1901*, 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%;

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the Authority must recommend to the Minister that the inquiry be terminated so far as the exporter is concerned.

*Authority must terminate if countervailable subsidisation is negligible*

“(2) If:

- (a) application is made for a countervailing duty notice; and
- (b) that application has become the subject of an inquiry under subsection 7(1) by the Authority; and
- (c) so far as that inquiry relates to an exporter to Australia of goods the subject of the application, the Authority 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 after the start of the inquiry period, exceeded the negligible level of countervailable subsidy worked out under subsection 269TDA(16) of the *Customs Act 1901* as applied by subsection (7) of this section;

the Authority must recommend to the Minister that the inquiry be terminated so far as the exporter is concerned.

*Authority must terminate inquiry if negligible volumes of dumping are found*

“(3) If:

- (a) application has been made for a dumping duty notice; and
  - (b) that application has become the subject of an inquiry under subsection 7(1) by the Authority; and
  - (c) during the inquiry the Authority becomes satisfied that the total volume of the 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 Authority must terminate the inquiry so far as it relates to that country.

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

“(4) If:

- (a) application is made for a countervailing duty notice; and



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- (b) that application has become the subject of an inquiry under subsection 7(1) by the Authority; and
- (c) during the inquiry the Authority becomes satisfied that the total volume of the 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 Authority must terminate the inquiry so far as it relates to that country.

*Authority must terminate if dumping causes negligible injury*

- “(5) If:
- (a) application is made for a dumping duty notice; and
  - (b) that application has become the subject of an inquiry under subsection 7(1) by the Authority; and
  - (c) during the inquiry the Authority becomes satisfied, in relation to goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, that:
    - (i) there has been, or may be, dumping of some or all of those goods; but
    - (ii) the injury, if any, to an Australian industry or an industry in a third country that has been or may be caused by that dumping is negligible;

the Authority must terminate the inquiry so far as it relates to that country.

*Authority must terminate investigation if subsidisation causes negligible injury*

- “(6) If:
- (a) application is made for a countervailing duty notice; and
  - (b) that application has become the subject of an inquiry under subsection 7(1) by the Authority; and
  - (c) during the inquiry, the Authority becomes satisfied, in relation to goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, that:
    - (i) a countervailable subsidy has been, or may be, received in respect of some or all of those goods; but
    - (ii) the injury, if any, to an Australian industry or an industry in a third country has been, or may be, caused by the subsidisation is negligible;

the Authority must terminate the inquiry so far as it relates to that country.

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*Application of provisions of the Customs Act 1901*

“(7) Subsections 269TDA(4), (5), (6), (8), (9), (10), (11), (12), (15), (16) and (17) of the *Customs Act 1901* apply for the purposes of an inquiry under subsection 7(1) of this Act in the same manner as they apply for the purposes of an investigation under the *Customs Act 1901* but as if:

- (a) references to the Comptroller were references to the Authority; and
- (b) the references in subsection (17) to the investigation period were references to the inquiry period.

**Authority may consider recommending to the Minister whether undertaking should be accepted**

“7C.(1) If a person has applied for a dumping duty notice or a countervailing duty notice in respect of goods, the government of the country of export of the goods the subject of the application or an exporter of such goods may, at any time during an inquiry under subsection 7(1), indicate in writing to the Authority the terms in which the government or exporter would be prepared to give an undertaking to the Minister.

“(2) If the terms of a proposed undertaking are given to the Authority by a government or an exporter, the Authority must, subject to subsection (3), consider those terms and, by notice in writing given to the party offering the undertaking, indicate:

- (a) whether it would be prepared to recommend the acceptance of the undertaking by the Minister; or
- (b) if it is not prepared to do so, the reasons why it is not prepared to do so.

“(3) The Authority is not obliged to consider the terms of any proposed undertaking, provided by an exporter or a government, if to do so would prevent the timely completion of a report by the Authority to the Minister under section 7.

“(4) A government or an exporter may, having regard to the reasons given to it by the Authority, indicate to the Authority that the government or exporter is prepared to give an undertaking to the Minister in revised terms.

“(5) The Authority may, when it makes a report to the Minister under section 7:

- (a) inform the Minister of the terms or revised terms of an undertaking and recommend whether or not it should be accepted; or
- (b) recommend to the Minister that he or she seek an undertaking from a government or an exporter and set out the terms of the undertaking that it recommends the Minister seek.”

**Authority may make recommendations of continuation of dumping duty notices etc.**

**35.** Section 8A of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsection:

“(1A) If the Minister makes a declaration under paragraph 269ZG(3)(b) of the *Customs Act 1901*, 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 purpose of this section as if they had been issued at the time of the issue of the original notice.”;

(b) by omitting from subsection (5) “may” and substituting “must”;

(c) by omitting subsection (6);

(d) by omitting from subsection (7) all the words after “submissions it receives” and substituting “within the period specified in the notice of inquiry under section 23 but may disregard any submission received after the end of that period”;

(e) by inserting after subsection (7) the following subsection:

“(7A) The Authority must not recommend the continuation of an anti-dumping measure unless it is satisfied that the expiration of the notice would lead, or would be likely to lead, to a continuation of, or recurrence of the material injury that the anti-dumping measure is intended to prevent.”.

**Authority to have regard to same considerations as Minister in certain circumstances**

**36.** Section 11 of the Principal Act is amended:

(a) by inserting in subsection (1) “, subject to subsection (4),” after “the Minister and”;

(b) by adding at the end the following subsection:

“(4) If, in an inquiry under section 7, the Authority needs to determine:

(a) whether the price paid for goods has been paid in the ordinary course of trade; or

(b) whether goods exported to Australia have been dumped and the dumping margin in respect of those goods;

the references in section 269TAAD and 269TACB of the *Customs Act 1901* to the investigation period are taken to be references to the inquiry period specified by the Authority for the purpose of that inquiry.”.

**Repeal of section and substitution of new sections**

37. Section 23 of the Principal Act is repealed and the following sections are substituted:

**Public notice of inquiries**

“23.(1) Before the Authority commences to hold an inquiry under section 7 or 8A of this Act it must give public notice of that inquiry, by notice published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories.

“(2) Without limiting the matters to be dealt with in a public notice, the notice must:

- (a) describe the goods to which the inquiry relates; and
- (b) if the inquiry is made under subsection 7(1) – set out the identity of the known exporters and of the countries of export known to be involved in the matter to which the inquiry relates; and
- (c) set out the subject of the inquiry; and
- (d) if the inquiry is made under subsection 7(1)—indicating the basis on which the dumping or countervailable subsidisation is alleged to have occurred; and
- (e) if the inquiry is made under subsection 7(1)—indicate that the inquiry will be made on the basis of the examination of importations into Australia of like goods that are entered for home consumption after a day specified for the purposes of this paragraph; and
- (f) summarise the factors alleged to constitute the basis for the inquiry; and
- (g) invite interested parties to lodge with the Authority, within a specified period of not less than 40 days after the date of the public notice of the inquiry, submissions concerning the subject matter of the inquiry; and
- (h) indicate the address at which, or the manner in which, such submissions can be lodged.

**Authority to maintain public record for certain purposes**

“23A.(1) The Authority must, in relation to an inquiry conducted under section 7 or section 8A:

- (a) maintain a public record of the inquiry containing, subject to subsection (3), a copy of all submissions to the Authority from interested parties and all relevant correspondence between the Authority and other persons; and
- (b) at the request of an interested party make that record available to that party for inspection.

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“(2) So far as concerns an inquiry under subsection 7(1), the public record must also contain the full public record of the preceding investigation by the Comptroller.

“(3) To the extent that information provided to the Authority by a person is claimed to be confidential or to be information whose publication would adversely affect a person’s business or 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 Authority for inclusion in the public record.

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

“(5) If oral information is given to the Authority by a person, the Authority must not take that information into account unless it is subsequently put in writing by the person or by the Authority 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.

“(6) If:

- (a) in relation to an inquiry referred to in subsection (1), a person claims that material is confidential or would adversely affect a person’s business or commercial interests; and
  - (b) the Authority indicates to the party that it disagrees with the claim; but, despite the opinion of the Authority, 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 Authority may disregard the information unless it is demonstrated that the information is correct.

“(7) If:

- (a) in relation to an inquiry referred to in subsection (1), a person claims that material is confidential or would adversely affect a person’s business or commercial interests; and
- (b) the Authority indicates to the party that it agrees with the claim;

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

“(8) Before reporting to the Minister the Authority must ensure that there is placed on the public record a statement of the essential facts on which it proposes to base its report.”.

### **Transitional**

**38.** Despite the amendments of the Principal Act made by this Act, the provisions of the Principal Act as in force immediately before the day fixed for the purposes of subsection 2(2) of this Act, continue to apply in relation to dumping duty notices or countervailing duty notices, subject to section 3:

- (a) that are published by the Minister before that day; or
- (b) that are published by the Minister on or after that day in consequence of an application for such a notice made before that day;

as if those amendments had not been made.

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### **NOTES**

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos 9 and 36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos 42 and 111, 1960; No. 48, 1963; Nos 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos 14 and 104, 1968; Nos 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos 28 and 120, 1974; Nos 56, 77 and 107, 1975; Nos 41, 91 and 174, 1976; No. 154, 1977; Nos 36 and 183, 1978; Nos 92, 116, 177 and 180, 1979; Nos 13, 15 and 110, 1980; Nos 45, 64, 67, 152 and 157, 1981; Nos 48, 51, 80, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos 19, 39 and 101, 1983; Nos 2, 22, 63, 72 and 165, 1984; Nos 39, 40 and 175, 1985; Nos 10, 34 and 149, 1986; Nos 51, 76, 81, 104 and 141, 1987; Nos 63, 66 and 76, 1988; Nos 23, 24, 79, 108 and 174, 1989; Nos 5, 6, 11, 70, 79 and 111, 1990; Nos 28, 82, 120 and 123, 1991; Nos 34, 89, 104, 164, 207, 209, 210 and 221, 1992; No. 113, 1993; and Nos 8, 20 and 65, 1994.
2. No. 72, 1988, as amended. For previous amendments, see No. 174, 1989, No. 70, 1990; No. 122, 1991; and Nos 89, 94 and 207, 1992.

[*Minister's second reading speech made in—  
House of Representatives on 18 October 1994  
Senate on 7 November 1994*]