

Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and Countervailing Measures

NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

AUSTRALIA

The following communication, dated 21 March 1995, has been received from the Permanent Mission of Australia.

Attached are the full texts of Australian Anti-Dumping and Countervailing legislation amended to incorporate obligations arising from the Uruguay Round negotiations, as requested in G/ADP/N/1 and G/SCM/N/1.

Explanatory Note

This notification is made pursuant to Articles 16.5 and 18.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement") and Articles 25.12 and 32.6 of the WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

2. The attachments are:

- (a) Customs Act 1901;
- (b) Customs Regulations;
- (c) Customs Tariff (Anti-Dumping) Act 1975; and
- (d) Anti-Dumping Authority Act 1988.

3. In accordance with the decisions of the Committees that the notification of anti-dumping and countervailing duty legislation and regulations be in the form of full and integrated texts, the attachments have incorporated amendments enacted in December 1994 into the principal acts. Accordingly these are working texts and are not legally authentic. The substantive part of the amending legislation commenced on 1 January 1995.

4. Moreover, given the need to incorporate the applying provisions (i.e. regarding commencement and transition) of the amending acts in addition to the actual amendments of the principal acts, certain aspects of the attached texts require some explanation. The provisions referred to below have been located at the ends of the texts titled "Customs Act 1901" and "Anti-Dumping Authority Act 1988".

- (a) In Sections 3 and 29 of the text titled Customs Act 1901 (pages 86 and 87) "Principal Act" refers to the Customs Act 1901 itself while "Act" refers to amending legislation (Customs Legislation (World Trade Organization Amendments) Act 1994) - neither of these sections is legally part of the Customs Act 1901;
- (b) In Section 3 of the text titled Customs Act 1901 (pages 86 and 87) "the day on which the Agreement Establishing the World Trade Organization enters into force for Australia" was proclaimed to be 1 January 1995 for that purpose; and
- (c) In Section 3 of the text titled Customs Act 1901 (pages 86 and 87) "the day fixed for the purposes of subsection 2(2) of the Act" is "the day on which the Agreement Establishing the World Trade Organization enters into force for Australia", which was proclaimed to be 1 January 1995 for that purpose; and
- (d) In Section 38 of the text titled Anti-Dumping Authority Act 1988 (page 133) "Principal Act" refers to the Anti-Dumping Authority Act 1988 itself while "Act" refers to the amending legislation (Customs Legislation (World Trade Organization Amendments) Act 1994) - this section is not legally part of the Anti-Dumping Authority Act 1988; and
- (e) In Section 38 of the text titled Anti-Dumping Authority Act 1988 (page 133) "the day fixed for the purposes of subsection 2(2) of this Act" is "the day on which the Agreement Establishing the World Trade Organization enters into force for Australia", which was proclaimed to be 1 January 1995 for that purpose.

5. Apart from the legislation and regulations provided in this notification, procedures are also set out in Australian Customs Service Manual Volume 22. This manual is currently being updated to cover the amendments that commenced on 1 January 1995. A copy of this manual can be provided to the Committee when it has been completed.

ARTICLE 13 OF THE ANTI-DUMPING AGREEMENT AND ARTICLE 23 OF THE SUBSIDIES AGREEMENT

6. Australia's national legislation containing provisions on anti-dumping and countervailing measures is reviewable under the Administrative Decisions Judicial Review Act (ADJR Act). Administrative actions relating to final determinations and reviews of determinations are reviewable, therefore, by the Federal Court, which is independent of the authorities responsible for the determination or review. Grounds for judicial review under the ADJR Act are:

- (a) breach of the rules of natural justice;
- (b) failure to observe procedures required by law to be observed;
- (c) lack of jurisdiction
- (d) a decision not being authorized by the enactment;
- (e) an improper exercise of power;
- (f) an error of law

- (g) fraud;
- (h) no evidence; and
- (i) the decision is otherwise contrary to law.

ARTICLE 16.5(A) OF THE ANTI-DUMPING AGREEMENT AND ARTICLE 25.12(A) OF THE
SUBSIDIES AGREEMENT

7. The Australian authorities that are competent to initiate and conduct investigations are the Australian Customs Service and the Anti-Dumping Authority.
8. The Australian Customs Service is responsible for:
 - (a) initiation and subsequent preliminary investigation;
 - (b) imposition of preliminary measures; and
 - (c) reviewing levels of existing measures.
9. The Anti-Dumping Authority is responsible for:
 - (a) conducting a final inquiry and recommending whether final measures should be imposed;
 - (b) recommending whether anti-dumping or countervailing measures already in place should be wholly or partly revoked;
 - (c) reviewing, on request by the original applicant, a negative prima facie or preliminary finding reached by the Australian Customs Service; and
 - (d) inquiring whether measures should continue beyond the five year sunset period.

CUSTOMS ACT 1901

An Act relating to the Customs

PART 1 - INTRODUCTORY

Short Title

1. This Act may be cited as the *Customs Act 1901*.

Interpretation

4. (1) In this Act except where otherwise clearly intended: "unmanufactured raw products" means natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and, without limiting the generality of the foregoing, includes:

- (a) animals;
- (b) bones, hides, skins and other parts of animals obtained by killing, including such hides and skins that have been sun-dried;
- (c) greasy wool;
- (d) plants and parts of plants, including raw cotton, bark, fruit, nuts, grain, seeds in their natural state and unwrought logs;
- (e) minerals in their natural state and ores; and
- (f) crude petroleum.

Approved forms and approved statements

4A.(1) In this Act, a reference to an approved form is a reference to a form that is approved, by instrument in writing, by the Comptroller.

(1A) In this Act, a reference to an approved statement is a reference to a statement that is approved, by instrument in writing, by the Comptroller.

(2) The instrument by which a form or statement is approved under subsection (1) after this section commences is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Delegation

9.(1) The Minister may, by signed instrument, delegate to an officer of Customs all or any of the functions and powers of the Minister under the Customs Acts.

(2) A function or power so delegated, when performed or exercised by the delegate, shall, for the purposes of the Customs Acts, be deemed to have been performed or exercised by the Minister.

(3) Paragraph 34AB(c) of the *Acts Interpretation Act 1901* does not apply to a delegation under subsection (1).

(4) Despite subsection (1), the power of the Minister to delegate the Minister's powers and functions under the Customs Acts does not extend to a power or function conferred by subsection 269TG(1) or (2), 269TH(1) or (2), 269TJ(1), (2), (4), (5) or (6) or 269TK(1) or (2) of this Act or by subsection 8(5), 9(5), 10(3B), 10(5) or 11(4) of the Anti-Dumping Act.

Right to require security

42. (1) The Customs shall have the right to require and take securities for compliance with this Act, for compliance with conditions or requirements to which the importation or exportation of goods is subject and generally for the protection of the revenue of the Customs, and pending the giving of the required security in relation to any goods subject to the control of the Customs may refuse to deliver the goods or to give any authority under section 71B to deal with the goods.

(1A) The right of the Customs under subsection (1) to require and take a security includes the right to require and take securities for payment of any penalty that a person may become liable to pay to the Commonwealth under the *Customs Undertakings (Penalties) Act 1981*.

(1B) The right of the Customs under subsection (1) to require and take a security includes the right to require and take securities in respect of any interim duty that may be payable on goods under the *Customs Tariff (Anti-Dumping) Act 1975* but no such security shall be required or taken under this Act:

- (a) on an application under section 269TB of this Act in respect of the goods to which the application relates before the time at which the Comptroller has made a preliminary finding under section 269TD that there are sufficient grounds for the publication by the Minister of a dumping duty notice or a countervailing duty notice within the meaning of Part XVB in respect of those goods; or
 - (b) on like goods imported into Australia before that time.
- (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.

(2) The right of the Customs under subsection (1) to require and take securities includes the right to require and take a security for a purpose or purposes for which security may be taken under that subsection and for a purpose or purposes for which security may be taken under section 16 of the *Excise Act 1901-1957* and the succeeding provisions of the Part apply to an in relation to such a security in the same manner as they apply to and in relation to any other security required and taken under subsection (1).

(3) The rights of the Customs under this section may be exercised by a Collector on behalf of the Customs.

Form of Security

43. A security shall be given in a manner and form approved by a Collector and may, subject to that approval, be by bond, guarantee, cash deposit or any other method, or by two or more different methods.

General bonds may be given

44. When security is required for any particular purpose security may by the authority of the Comptroller be accepted to cover all transactions for such time and for such amounts as the Comptroller may approve.

Cancellation of bonds

45.(1) All Customs securities may after the expiration of 3 years from the date thereof or from the time specified for the performance of the conditions thereof be cancelled by the Comptroller.

(2) A security taken in respect of any interim duty that may become payable on goods under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975*, being a security taken before the publication by the Minister of a notice declaring that section to apply to those goods, shall be cancelled before the expiration of the prescribed period after the date the security is taken.

(3) In subsection (2), "prescribed period" means:

- (a) in relation to a security in respect of any interim duty that may be payable on goods under section 8 or 9 of the *Customs Tariff (Anti-Dumping) Act 1975*—a period of 6 months or such longer period (not being a period exceeding 9 months) as is requested by the exporter of the goods concerned; or
- (b) in any other case—a period of 4 months.

(4) Where:

- (a) a notice is published by the Minister declaring section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975* to apply to goods of a particular kind that may be imported into Australia;
- (b) goods of that kind are imported while that notice is in force; and
- (c) security is taken after the importation of those goods in relation to the interim duty that may be payable in respect of them;

subsection (2) does not apply in relation to that security.

Powers of officers for purposes of *Customs Tariff (Anti-Dumping) Act 1975*

214B.(1) For the purposes of the *Customs Tariff (Anti-Dumping) Act 1975* an authorized officer may, at all reasonable times, enter premises where there are kept any accounts, books or other records relating to goods exported to Australia or manufactured or produced or sold, in Australia and may inspect any such accounts, books, documents or other records and make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

(2) Where an authorized officer proposes to enter any premises under subsection (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises.

(3) The occupier or person in charge of premises referred to in subsection (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under subsection (1).

Penalty: \$1,000.

(4) An authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information that is relevant to the operation of the *Customs Tariff (Anti-Dumping) Act 1975* and relates to goods exported to Australia or manufactured or produced, or sold, in Australia to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to goods exported to Australia or manufactured or produced, or sold, in Australia as are referred to in the notice.

(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of subsection (4).

(6) A person is not excused from answering a question or producing any accounts, books, documents or other records, when required to do so under subsection (4) on the grounds that the answer to the question, or the production of the accounts, books, documents, or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against this section or proceedings in respect of the falsity of any such answer.

(7) An authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of subsection (4) and, for that purpose, may administer an oath or affirmation to that person.

(8) The oath or affirmation to be made by a person for the purposes of subsection (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

(9) A person shall not, without reasonable excuse, refuse or fail:

- (a) to attend before an authorized officer;
- (b) to make an oath or an affirmation; or
- (c) to answer a question or produce an account, book, document or other record;

when so required in pursuance of this section.

Penalty: \$1,000.

PART XVB—SPECIAL PROVISIONS RELATING TO ANTI-DUMPING DUTIES

Division 1—Preliminary

Interpretation

269T.(1) In this Part, unless the contrary intention appears:

"affected party", in relation to an application under section 269Z requesting that the Minister review the rate of interim duty imposed on particular goods, means:

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

"Agreement on 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 Organisation 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 Organisation Agreement enters into force for Australia;

"agricultural operations" means:

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

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

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

- (a) the exemption of those goods from duties or taxes borne by like goods destined for domestic consumption; or
- (b) the remission of such duties or taxes otherwise payable in respect of those goods; in accordance with the provisions of Article XVI of the General Agreement on Tariffs and Trade 1994 and the provisions of Annexes I, II and III of the Agreement on Subsidies and Countervailing Measures;

"Anti-Dumping Act" means the *Customs Tariff (Anti-Dumping) Act 1975*;

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

"Authority" means the Anti-Dumping Authority established by section 4 of the *Anti-Dumping Authority Act 1988*;

"countervailable subsidy" means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy;

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

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

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

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

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

"determination" means a determination in writing;

"direction" means a direction in writing;

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

"dumping duty" means duty, other than interim dumping duty, that is payable on goods under section 8 or 9 of the Anti-Dumping Act;

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

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

"fishing operations" means:

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

"forestry operations" means the felling, in a forest or plantation, of standing timber;

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

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

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

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

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

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

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

"interested party", in relation to an application made to the Comptroller under section 269TB requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application, means:

- (a) the applicant;
- (b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods;
- (c) any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and
- (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
 - (ii) of like goods that have been, or are likely to be, exported to Australia;

"interim countervailing duty" means duty imposed under subsection 10(3B) or 11(4) of the Anti-Dumping Act;

"interim dumping duty" means duty imposed under subsection 8(5) and, where applicable, paragraph 8(4)(b) of the Anti-Dumping Act or under subsection 9(5) and, where applicable, paragraph 9(4)(b) of that Act;

"interim duty" means interim dumping duty or interim countervailing duty;

"investigation period", in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the 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;

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

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

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

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

"positive preliminary decision" means a decision of the kind referred in paragraph 269X(6)(a);

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

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

"raw agricultural goods" means goods directly obtained by the undertaking of any agricultural operation or any fishing operation;

"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;

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

"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 relation to 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:

- (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.

(2) For the purposes of this Part, goods, other than unmanufactured raw products, shall
not be taken to have been produced in Australia unless:

- (a) the goods were wholly or partly manufactured in Australia; and
- (b) not less than one quarter of the factory or works cost of the goods is represented by
the sum of:
 - (i) the value of labour in Australia;

- (ii) the value of materials in Australia; and
- (iii) the factory overhead expenses incurred in Australia in respect of the goods.

(2A) A reference in this Part to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy received in respect of goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.

(2AA) 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.

(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.

(2B) For the purposes of this Part, where, during the exportation of goods to Australia, the goods pass in transit from a country through another country, that other country shall be disregarded in ascertaining the country of export of the goods.

(3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.

(4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia

- (a) there is an Australian industry in respect of those like goods; and
- (b) subject to subsection (4A), the industry consists of that person or those persons:

(4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.

(4B) For the purposes of subsection (4A), processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Minister is satisfied that:

- (a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and
- (b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods; and
- (c) either:
 - (i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or
 - (ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be constituted by the cost to the producer of those goods of the raw agricultural goods.

(4C) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the production cost of processed agricultural goods to be ascertained for the purpose of subsection (4B), the production cost of those goods is such amount as is determined by the Minister having regard to all relevant information.

(4D) In this Act, a reference to variable factors relevant to the determination of duty payable under the Anti-Dumping Act on particular goods the subject of a dumping duty notice or a countervailing duty notice is a reference:

- (a) if the goods are the subject of a dumping duty notice—to the normal value and export price of the goods; and
- (b) if the goods are the subject of a countervailing duty notice:
 - (i) to the amount of countervailable subsidy received in respect of the goods; and
 - (ii) to the export price of the goods.

(4E) In this Act, a reference to variable factors relevant to the determination of interim duty payable on goods the subject of a dumping duty notice or a countervailing duty notice is a reference:

- (a) if the goods are the subject of a dumping duty notice—to the normal value, export price and non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; and

(b) if the goods are the subject of a countervailing duty notice:

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

(ii) to the non-injurious price of the goods;

as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(5) A reference in this Act to goods the subject of an application under section 269TB is a reference to goods referred in the application:

(a) that have been imported into Australia;

(b) that are likely to be so imported; or

(c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.

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

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

where:

"P₁, P₂ ... P_n" means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period;

"Q₁, Q₂ ... Q_n" means the number of units of the goods involved in each of the respective transactions.

(5B) In working out the number of units of goods involved in a transaction, any units of goods that are, for the purposes of paragraph 269TAB(1)(b) or (c), subsection 269TAB(3), paragraph 269TAC(2)(c) or (4)(e) or subsection 269TAC(6), treated as being involved in a particular transaction are taken to be actually involved in the transaction.

(6) Sundays and public holidays shall, notwithstanding the definition of "days" in section 4 be counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection shall derogate from the operation of section 36 of the *Acts Interpretation Act 1901*.

Anti-dumping measures not to apply to goods of New Zealand origin

269TAAA. (1) This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, does not apply to goods that are the produce or manufacture of New Zealand.

(2) In subsection (1):

"goods" includes goods imported into Australia before the commencement of this section.

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 Organisation; 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

- (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 the 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.

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.

Arms length transactions

269TAA.(1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:

- (a) there is any consideration payable for or in respect of the goods other than their price; or

- (b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
 - (c) in the opinion of the Minister the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.
- (2) Without limiting the generality of subsection (1), where:
- (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
 - (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

(3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:

- (a) the amount of the price paid or to be paid for the goods by the importer; and
- (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and
- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
- (d) such other matters as the Minister considers relevant.

(4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:

- (a) both being natural persons:
 - (i) they are connected by a blood relationship or by marriage or by adoption; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
- (b) both being bodies corporate:
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or

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

Export price

269TAB.(1) For the purposes of this Part, the export price of any goods exported to Australia is:

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

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

- (b) where:
 - (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
 - (ii) the purchase of the goods by the importer was not an arms length transaction; and
 - (iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

- (c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.

(2) A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:

- (a) any duties of Customs or sales tax paid or payable on the goods; and
- (b) any costs, charges or expenses arising in relation to the goods after exportation; and
- (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

(4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

Normal value of goods

269TAC.(1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.

(2) Subject to this section, where the Minister:

- (a) is satisfied that:
 - (i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or
 - (ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);

the normal value of goods exported to Australia cannot be ascertained under subsection (1); or

- (b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods

that would be relevant for the purpose of determining a price under subsection (1);

the normal value of the goods for the purposes of this Part is:

- (c) except where paragraph (d) applies, the sum of:
 - (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
 - (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and, 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.

(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.

(4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:

- (a) has a monopoly, or substantial monopoly, of the trade of the country; and
- (b) determines or substantially influences the domestic price of goods in that country;

the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:

- (c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;
- (d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;
- (e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:

- (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
- (ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;
- (f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.

(5) The price determined under paragraph (4)(d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4)(d) at that price, is representative of the price paid in such sales.

(5A) Amounts determined:

- (a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and
- (b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);

must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 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.

(6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections, the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.

(7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.

(8) Where the normal value of goods exported to Australia is the price paid for like goods and that price and the export price of the goods exported:

- (a) relate to sales occurring at different times; or
- (b) are not in respect of identical goods; or
- (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;

that price paid for like goods is to be taken to be that price paid adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price.

(9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

(10) Where:

- (a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
- (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;

he or she may direct that the normal value of the goods is to be so ascertained.

(11) For the purposes of subsection (10), the country of origin of goods is:

- (a) in the case of unmanufactured raw products—the country of which they are products; or
- (b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.

(13) Where, because of the operation of section 269TAAD, the normal value of goods is required to be determined under subsection (2), the Minister shall not include in his or her calculation of that normal value any profit component under subparagraph (2)(c)(ii).

(14) If:

- (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.

Non-injurious price

269TACA. The non-injurious price of goods exported to Australia is the minimum price necessary:

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

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:
- (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:

- (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.

(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

- (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.

Minister may re-ascertain certain normal values

269TAD. Where the Minister has, for the purpose of publishing a notice under section 269TG or 269TH declaring that section to apply to goods that may be imported into Australia, being like goods to goods that have been so imported, ascertained the normal value of the imported goods, the Minister may, at any time, and from time to time, if the Minister is of the opinion that any factor relevant to the ascertainment of the normal value of goods to which that section applies has altered, re-ascertain that normal value and, where the Minister does so, the Minister is to publish that normal value as so re-ascertained in the *Gazette* unless, in the opinion of the Minister, the publication of that information would adversely affect the business or commercial interests of any person.

Material injury to industry

269TAE.(1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A), (2B) and (2C), have regard to:

- (aa) if the determination is being made for the purposes of section 269TG —the size of the dumping margin, or of each of the dumping margins, worked out in respect of the goods of that kind that have been exported to Australia and dumped; and
- (ab) if the determination is being made for the purposes of section 269TJ —particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
- (c) any change or likely change, during a particular period, in the proportion that:
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;

bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and

- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and

repealed by Act No. 207 - but remains in force under transitional arrangements for measures imposed pre 1/1/93.

- (e) the difference between:
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
- (h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

(2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A), (2B) and (2C), have regard to:

- (aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of the goods of that kind that have been exported to Australia and dumped; and
- (ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
- (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and

- (c) any change or likely change, during a particular period, in the proportion that:
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
- (e) the difference between:
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.

(2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:

- (a) the volume and prices of imported like goods that are not dumped; or
- (b) the volume and prices of importations of like goods that are not subsidised; or
- (c) contractions in demand or changes in patterns of consumption; or
- (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or
- (e) developments in technology; or

- (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;

the Minister is satisfied that it is appropriate to do so.

(3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:

- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and
- (b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and
- (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:
 - (i) for which there are sales or forward orders; or
 - (ii) which are held as stocks; and
- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and
- (e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and

- (f) the level of return on investment in the industry; and
- (g) cash flow in the industry; and
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and
- (k) the ability of persons engaged in the industry to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
- (m) investment in the industry.

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.

(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

269TAJ.(1) The Minister may, by public notice, revoke a notice published by the Minister under this Part and must do so if satisfied that, were the notice not in force, the Minister would not be authorised by this Part to cause the notice to be published.

(2) The Minister may, by public notice, partly revoke a notice published by the Minister under this Part and must do so if satisfied that, if the notice had not applied to such goods, the Minister would not be authorised to cause a notice applying to such goods to be published.

(3) The Minister may, by public notice, release or partly release a person from an undertaking entered into under this Part.

(4) A notice of revocation under subsection (1) or of partial revocation under subsection (2) has effect from a date specified in the notice, which may be a date earlier than the date of publication of the notice of revocation or partial revocation in the *Gazette*.

(5) A notice releasing or partly releasing a person from an undertaking under subsection (3) has effect from a date specified in the notice, which may be a date earlier than the date of publication of the notice in the *Gazette*.

(6) Upon the revocation of a notice that declared that a section of the Anti-Dumping Act applies to goods, the special duty on the goods ceases to be payable, and shall not be charged

or collected on goods entered for home consumption on or after the date of effect of the notice of revocation.

(7) Upon the partial revocation of a notice that declared that a section of the Anti-Dumping Act applies to goods, the special duty on the goods to which the notice no longer applies ceases to be payable, and shall not be charged or collected on such goods entered for home consumption on or after the date of effect of the partial revocation.

Minister may give directions to Comptroller in relation to powers and duties under this Part

269TA.(1) The Minister may give to the Comptroller such written directions in connection with carrying out or giving effect to the Comptroller's powers and duties under this Part as the Minister thinks fit, and the Comptroller shall comply with any directions so given.

(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the Comptroller in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Comptroller's powers.

(3) Where the Minister gives a direction to the Comptroller, the Minister shall:

- (a) cause a written notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction; and
- (b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.

(4) A notice setting out particulars of the direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2—Consideration of anti-dumping matters by the Comptroller

Application for action under Anti-Dumping Act

269TB. (1)Where:

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

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

that person may, by application in writing lodged with the Customs in accordance with subsection (5), request that the Minister publish that notice in respect of the goods in the consignment.

(2) Where:

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

- (i) has been imported into Australia;
 - (ii) is likely to be imported into Australia; or
 - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies; and
- (b) there is, in a third country, an industry that produces or manufactures like goods for export to Australia; and
- (c) the Government of that third country believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

the Government of that third country may, by application in writing lodged with the Customs in accordance with subsection (5), request that the Minister publish that notice in respect of the goods in the consignment.

(2A) During the period after receiving an application for a dumping duty notice and before giving public notice under subsection 269TC(4) of a decision not to reject the application, the 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.

(3) An applicant may, at any time before a preliminary finding is made under section 269TD in respect of the application, by notice in writing lodged with the Customs in accordance with subsection (4), withdraw the application in whole or in part.

(4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated on the form; and
- (e) in the case of an application under subsection (1)—be supported by a sufficient part of the domestic industry.

(5) An application, or a notice withdrawing an application, may be lodged with the Customs:

- (a) by giving it to an officer doing duty in relation to the receipt of dumping applications; or
- (b) by posting it by pre-paid post to a postal address specified by Customs in the approved form; or
- (c) by sending it by electronic facsimile to a facsimile number specified by Customs in the approved form;

and the application or notice is taken to have been received by Customs when the application or notice, or a facsimile of the application or notice, is first received by an officer doing duty in relation to the receipt of dumping applications.

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

Consideration of Application

269TC.(1) The Comptroller shall, within 25 days, or, if another period is prescribed, within that other period, after Customs receives an application under subsection 269TB(1) in respect of goods, examine the application and, if the Comptroller is not satisfied, having regard to the matters contained in the application and to any other information that the Comptroller considers relevant:

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

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

(2) The Comptroller shall, within 25 days, or, if another period is prescribed, within that other period, after Customs receives an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application and, if the Comptroller is not satisfied, having regard to the matters contained in the application and to any other information that the Comptroller considers relevant:

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

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

(2A) If an applicant, after lodging an application under section 269TB, decides to give Customs further information in support of that application without having been requested to do so:

- (a) the information may be lodged with Customs, in writing, in accordance with section 269TB; and
 - (b) the information is taken to have been received by Customs in accordance with subsection 269TB(5); and
 - (c) this Part has effect as if:
 - (i) the application had included that further information; and
 - (ii) the application had only been lodged when that further information was lodged; and
 - (iii) the application had only been received when that further information was received.
- (3) Where, in accordance with subsection (1) or (2), the Comptroller rejects an application, the notice informing the applicant of that rejection:
- (a) shall state the reasons why the Comptroller was not satisfied of one or more of the matters set out in that subsection; and
 - (b) shall inform the applicant of the applicant's right to refer the decision of the Comptroller in respect of the matters in respect of which the Comptroller was not so satisfied to the Authority for review.
- (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:
- (a) setting out particulars of those goods; and
 - (b) setting out the identity of the applicant; and
 - (ba) setting out the countries of export known to be involved; and
 - (bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and
 - (bc) setting a date, which should be the date or estimated date of publication of the notice 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

- (c) stating that, within a specified period after the date of initiation of the investigation, being the period of 120 days or, if another period is prescribed by regulations for the purposes of this paragraph, that other period, the Comptroller will make a preliminary finding as to whether there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods; and
- (d) stating that a preliminary finding that there are or will be such grounds may result in the imposition of provisional measures including the taking of securities under section 42 of this Act for the period specified in subsection 45(2) of this Act in respect of interim duty that may become payable on the importation of the goods the subject of the application; and
- (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 application; and
- (f) indicating the address at which, or the manner in which, such submissions can be lodged.

(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 that 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

269TD.(1) After the end of the period for lodging submissions in respect of an application for the imposition of dumping duty or countervailing duty but before the end of the period referred to in paragraph 269TC(4)(c), the Comptroller shall consider the application, taking into account any submissions received and any other matters that the Comptroller considers relevant.

(2) If, as a result of that consideration of the application, the Comptroller makes a preliminary finding that there are sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods:

- (a) the Comptroller must give public notice of that finding; and
- (b) the Comptroller shall, within 7 days of publication of that notice in the *Gazette*, refer the question whether the publication of the notice sought in the application is so justified to the Authority; and
- (c) the Comptroller may, if he or she thinks it appropriate to do so, upon the importation of goods to which the application relates, require and take securities under section 42 of this Act in respect of interim duty that may become payable.

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

(3) If, as a result of that consideration of the application, the Comptroller makes a preliminary finding that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods, the Comptroller must give public notice of that finding.

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.

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%.

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.

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:
 - (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:
 - (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
 - (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
- (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.

Comptroller to have regard to same considerations as Minister in certain circumstances

269TE. (1) Where the Comptroller:

- (a) in making a decision under section 269TC to accept or reject an application in relation to the goods the subject of the application; or
- (b) in making a preliminary finding under section 269TD in relation to those goods;

is required to determine any matter ordinarily required to be determined by the Minister under the Anti-Dumping Act in respect of those goods, the Comptroller:

- (c) must determine the matter in like manner as if he or she was the Minister; and
- (d) must have regard to the same considerations (other than the considerations referred to in subsection 8(5A), 8(5B), 9(5A), 10(3C), 10(3D) or 11(5) of that Act, whichever is appropriate) to which the Minister would be required to have regard under that Act if the Minister was determining the matter.

(2) Subsection (1) applies in respect of goods that have not, at the time of the Comptroller's determination of a matter in respect of those goods, been imported into Australia, as if the Comptroller's determination of the matter were being made after an importation of those goods into Australia, being an importation occurring at the time of the anticipated importation of those goods into Australia.

(3) Nothing in subsection (1) shall be taken to imply that the determination of a matter by the Comptroller affects the power of the Minister to make a final determination in respect of that matter for the purposes of the Anti-Dumping Act.

Reviews by Authority

269TF. (1) Application may be made to the Authority by a person who has lodged an application under section 269TB in a manner and form approved by the Authority for the purposes of this subsection, and within a period prescribed for the purposes of this subsection, for the review by the Authority of:

- (a) a decision by the Comptroller under subsection 269TC(1) or (2) to reject the application so lodged; or
- (b) a decision by the Comptroller under subsection 269TD(3) to the effect that there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods; **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.

(2) Where the Authority decides to revoke the decision of the Comptroller under subsection 269TC(1) or (2) to reject an application and to substitute a decision accepting that application then, with effect from the day that the Authority so decides, this Act shall have effect

as if the substituted decision were a decision of the Comptroller and, accordingly, the Comptroller shall publish a public notice of the substituted decision.

(3) Where the Authority decides to revoke a preliminary finding of the Comptroller that under subsection 269TD(3) there are not sufficient grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods and to substitute a preliminary finding that there are or will be such grounds then, with effect from the day the Authority so decides, this Act shall have effect as if the substituted finding were a preliminary finding of the Comptroller the making of which had been duly published in accordance with paragraph 269TD(2)(a), which had been duly referred to the Authority under paragraph 269TD(2)(b) and in respect of which the Comptroller may exercise the powers specified in paragraph 269TD(2)(c).

(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
- (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.

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

Dumping duties

269TG.(1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

- (a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and

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

the Minister may, by public notice, declare that section 8 of that Act applies to those goods.

- (2) Where the Minister is satisfied, as to goods of any kind, that:
 - (a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
 - (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Anti-Dumping Act applies to like goods:

- (c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and
- (d) the amount of the export price of which is less than the amount of their normal value.

- (3) Where:

- (a) a notice under subsection (1) declares particular goods to be goods to which section 8 of the Anti-Dumping Act applies; or
- (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

the notice must, subject to subsection (3A), include a statement of the respective amounts that the Minister ascertained, at the time of publication of the notice:

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

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

(3A) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:

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

(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.

(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 as the total price of the goods is not more than the non-injurious price of the goods.

(6) The Minister:

- (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

269TH.(1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

- (a) the amount of the export price of the goods is less than the amount of the normal value of the goods; and
- (b) because of that:
 - (i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened; or
 - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 9 of the Anti-Dumping Act—material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country so to do, may, by public notice, declare that section 9 of that Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:

- (a) the amount of the export price of like goods so produced or manufactured that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and
- (b) because of that, material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods so manufactured or produced that have been exported to Australia), declare that section 9 of the Anti-Dumping Act applies to like goods so produced or manufactured:

- (c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

- (d) the amount of the export price of which is less than the amount of their normal value.

(3) Where:

- (a) a notice under subsection (1) declares particular goods to be goods to which section 9 of the Anti-Dumping Act applies; or
- (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;

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

- (c) was or would be the normal value of the goods to which the declaration relates; and
- (d) was or would be the export price of those goods; and
- (e) was or would be the non-injurious price of those goods.

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

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

(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

269TJ.(1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:

- (a) a countervailable subsidy has been received in respect of the goods; and
- (b) because of that:
 - (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened or the establishment of an Australian industry producing like goods has been or may be materially hindered; or
 - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 10 of the Anti-Dumping Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by public notice, declare that section 10 of that Act applies to those goods.

- (2)** Where the Minister is satisfied, as to goods of any kind that:
 - (a) a countervailable subsidy:
 - (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
 - (ii) may be received in respect of like goods that may be exported to Australia in the future; and
 - (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is being threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice, (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 10 of the Anti-Dumping Act applies to like goods:

- (c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and

- (d) in respect of which a countervailable subsidy is received.

(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
- (b) to an undertaking by a 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.

(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.

(4) Where the Minister is satisfied that:

(a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and

- (b) those duties are imposed because it is alleged that a countervailable subsidy is received in respect of goods of that kind; and
- (c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, because of the receipt of that subsidy;

the Minister may, by public notice declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice:

- (d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and
- (e) in respect of which a countervailable subsidy is received.

(5) Where the Minister is satisfied that:

- (a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and
- (b) those duties are imposed because it is alleged that:
 - (i) prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and
 - (ii) material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance; and
- (c) prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed has been paid or granted in relation to goods exported from that country to Australia and material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of such an Australian industry has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance;

the Minister may, by public notice, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice, being goods of a kind mentioned in paragraph (c):

- (d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and
- (e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a

substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

- (6) Where the Minister is satisfied that:
- (a) under the law of a country other than Australia there are imposed on goods of a particular kind that are exported from Australia to that country special duties of customs in the nature of countervailing duties; and
 - (b) those duties are imposed because it is alleged that prescribed assistance is paid or granted, directly or indirectly, in relation to goods of that kind that are exported from Australia to that country; and
 - (c) those duties are imposed without regard to, or without proper regard to, whether or not material injury to an industry in that country producing like goods has been or is being caused or is threatened, or the establishment of such an industry in that country has been or may be materially hindered, by reason of the payment or grant of that prescribed assistance;

the Minister may, by notice published in the *Gazette*, declare that section 10 of the Anti-Dumping Act applies to goods specified in the notice:

- (d) that are exported from that country to Australia after the date of publication of the notice or, if a later date is specified in the notice, that later date; and
- (e) in relation to which there is paid or granted prescribed assistance of a kind specified in the notice, being prescribed assistance of the same kind as, or a substantially similar kind to, the prescribed assistance by reason of which the duties referred to in paragraph (a) were imposed.

(7) A reference in this section to prescribed assistance in relation to goods is a reference to any assistance, incentive, exemption, privilege or benefit (whether financial or otherwise) in relation to goods other than the receipt of a countervailable subsidy in respect of those goods.

(8) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods to be ascertained for the purpose of this section, that amount is to be taken to be such amount as is determined by the Minister having regard to all relevant information.

(9) If the Minister is satisfied that adequate information as to the amount, cost or value of the prescribed assistance in relation to goods cannot be obtained for the purposes of this section, the amount, cost or value of that prescribed assistance is to be taken to be such amount, cost or value as is determined, in writing, by the Minister.

(10) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to that exporter.

(11) If a notice under subsection (1) or (2) declares particular goods to be goods to which section 10 of the Anti-Dumping Act applies, the notice must, subject to subsection (12), include a statement setting out:

- (a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and
- (b) the amount that the Minister has ascertained, at that time, was or would be the non-injurious price of the goods.

(12) If any person who has provided information to assist the Minister to ascertain:

- (a) the amount of any countervailable subsidy received in respect of goods to which a declaration under subsection (1) or (2) relates; or
- (b) the non-injurious price of any goods to which a declaration under subsection (1) or (2) relates;

claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:

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

Concurrent dumping and subsidy

269TJA.(1) Where the Minister is satisfied, as to any goods that have been exported to Australia:

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

the Minister may publish a notice under subsection 269TG(1), a notice under subsection 269TJ(1) or notices under both subsections 269TG(1) and 269TJ(1) at the same time in respect of the same goods.

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

the Minister may publish a notice under subsection 269TG(2), a notice under subsection 269TJ(2) or notices under both subsections 269TG(2) and 269TJ(2) at the same time in respect of the same goods.

(3) If the Minister has had under consideration the export of a consignment of goods to Australia with a view to determining whether or not notices should be published in accordance with subsection (1) or (2), under both section 269TG and 269TJ in respect of the same goods, the Minister may defer the decision to publish or not to publish notices under both of those sections covering the exporter concerned if he or she is given and accepts:

- (a) an undertaking by the exporter under section 269TG, and an undertaking by the exporter under section 269TJ, in respect of the same goods; or
- (b) an undertaking by the exporter under section 269TG and an undertaking by the government of the country of origin, or of the country of export, of the goods in the consignment under section 269TJ.

(4) If, in respect of the same consignment of goods, the Minister accepts 2 undertakings from the exporter of the goods or an undertaking from the exporter of the goods and an undertaking from the government of the country of origin or the country of export of the goods, the Minister must be satisfied that the combined effect of the undertakings is not greater than is necessary to prevent material injury or the recurrence of material injury to an

Australian industry producing like goods or to remove the actual or possible hindrance to the establishment of such an Australian industry.

Third country Countervailing duties

269TK.(1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

- (a) a countervailable subsidy has been received in respect of the goods; and
- (b) because of that:
 - (i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is being threatened; or
 - (ii) in a case where security has been taken under section 42 in respect of interim duty that may become payable on the goods under this section-material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country so to do, may, by public notice, declare that section 11 of the Anti-Dumping Act applies to those goods.

(2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:

- (a) a countervailable subsidy:
 - (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
 - (ii) may be received in respect of like goods that may be exported to Australia in the future; and
- (b) by reason thereof material injury to an industry in a third country engaged in the production of like goods has been or is being caused or is being threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or makes, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 11 of the Anti-Dumping Act applies to like goods:

- (c) that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice; and
- (d) in respect of which a countervailable subsidy is received.

(3) If the Minister is satisfied that adequate information as to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods cannot

be obtained for the purposes of this section, the amount of subsidy, bounty, reduction or remission of freight or other financial assistance is to be taken to be such amount as is determined, in writing, by the Minister.

(4) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to the exporter.

(5) Where a notice under subsection (1) or (2) declares particular goods to be goods to which section 11 of the Anti-Dumping Act applies, the notice must, subject to subsection (6), include a statement setting out:

- (a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and
 - (b) the amount that the Minister ascertained, at that time, was or would be the non-injurious price of goods.
- (6) If any person who has provided information to assist the Minister to ascertain:
- (a) the amount of any countervailable subsidy received in respect of goods to which a notice under subsection (1) or (2) relates; or
 - (b) the non-injurious price of such goods;

claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:

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

Minister to give public notice not to impose duty

269TL.(1) Where the Minister receives a recommendation from the Anti-Dumping Authority concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on particular goods or on goods of a like kind to particular goods and the Minister decides, after having regard to that recommendation, not to declare those goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the Anti-Dumping Act applies, the Minister must give public notice to that effect.

(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.

Periods during which certain notices and undertakings to remain in force

269TM.(1) Where a notice is published after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant notification provision in respect of goods of a particular kind, that notice expires 5 years after the day on which it is published unless it is revoked before the end of that period.

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

(3) If:

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

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

(3A) If:

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

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

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

(4) (5) & (6) Omitted

(7) In this section:

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

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

Retrospective notices

269TN.(1) Subject to this section, the Minister must not cause a notice to be published under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1) in respect of goods that have been entered for home consumption.

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

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

- (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 8 of the Anti-Dumping Act or, within that period, the Customs had the right to require and take such security; and
- (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, being injury arising by reason of the amount of the export price of the goods exported being less than the amount of the normal value of the goods exported, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.

(4) Subsection (3) applies to goods:

- (a) that have been imported into Australia by an importer who knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australia industry; or
- (b) that are goods of a kind the exportation of which to Australia on a number of occasions has caused, or, but for the publication of a notice under section 269TG in respect of goods of that kind, would have caused, material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.

(4A) Before the Minister decides to publish a dumping duty notice under subsection 269TG(1) in circumstances referred to in subsection (3) of this section, in respect of goods that have already been entered for home consumption, the Minister must:

- (a) inform the importer of the goods of the decision he or she proposes to make; and
- (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.

(5) Subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that have been entered for home consumption if:

- (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 10 of the Anti-Dumping Act or, within that period, the Customs had the right to require and take such security; and
- (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.

(6) Where

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TG(4) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 8 of the Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TG(1) of this Act in respect of goods that:

- (c) have been exported by the exporter;
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that:
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(7) Where:

- (a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with subsection 269TJ(3) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that:

- (c) are the produce or manufacture of that country or have been exported from that country, as the case may be; and
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that:
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(8) Where:

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TJ(3) is a violation of that undertaking; and
- (b) at the time of, or any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Anti-Dumping Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that:

- (c) have been exported by the exporter; and
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that:
 - (i) was not earlier than the day on which that act or omission occurred; and

- (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

Power to specify goods

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

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

Inquiries in relation to undertakings

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

- (a) whether to give a notice, in accordance with paragraph 269TG(4)(a), to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry; or
- (b) whether to give a notice, in accordance with paragraph 269TJ(3)(a), to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry;

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

(2) An officer authorized under subsection (1) to convene a meeting of representatives of an Australian industry shall give notice in writing to such persons as, in his opinion, represent the Australian industry, setting out:

- (a) the day, time and place for the convening of the meeting; and
- (b) the question to be considered by the meeting.

(3) The officer convening a meeting in pursuance of subsection (2):

- (a) shall preside at the meeting; and
- (b) may adjourn the meeting from time to time.

(4) At a meeting of representatives of an Australian industry convened in pursuance of subsection (2), the representatives attending the meeting may provide information, or make submissions, to the officer convening the meeting in relation to the question being considered by the meeting.

(5) Nothing in subsection (4) shall be taken to prevent a representative of an Australian industry who attends a meeting convened in pursuance of subsection (2) from providing information or making a submission, in relation to the question considered or to be considered at the meeting, to the officer convening the meeting otherwise than at the meeting or to the Minister.

(6) The officer convening a meeting in pursuance of subsection (2) may, subject to subsection (7), put before the meeting information in relation to the question being considered by the meeting.

(7) The officer convening a meeting in pursuance of subsection (2) shall not put before the meeting any information provided to him by another person that is information of a confidential nature (whether or not confidentiality was claimed in respect of the information by the person who provided the information).

(8) After the close of a meeting convened in pursuance of subsection (2), the officer convening the meeting shall furnish to the Comptroller for submission to the Minister a report in writing of the information provided and the submissions made at the meeting.

(9) Nothing in this section shall be taken, for the purposes of subsection 51(1) of the *Trade Practices Act 1974*, to authorize any act or thing other than the providing of information or the making of a submission, at a meeting of representatives of an Australian industry convened in pursuance of subsection (2), by a representative of the Australian industry to the officer convening the meeting in relation to the question being considered by the meeting.

Division 4—Dumping duty or countervailing duty assessment

Importers may apply for duty assessment in certain circumstances

269V.(1) An importer of goods on which, under the Anti-Dumping Act, an interim duty has been paid may, subject to subsection (2), by application lodged with the Comptroller, request that the Minister make an assessment of the liability of those goods to duty under that Act.

(2) An application for an assessment of duty under subsection (1) may only be made if:

- (a) the application is made not more than 6 months after the end of the particular importation period in which the goods the subject of the application were entered for home consumption; and
- (b) the importer contends that the total amount of duty payable in respect of those goods under the Anti-Dumping Act is less, by a specified amount, than the total amount of interim duty that has been paid on those goods under that Act.

Manner of making application for duty assessment

269W.(1) An application for an assessment of duty on goods of a particular kind entered for home consumption during a particular importation period must be in writing and contain:

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

and information to establish those amounts; and

- (e) a statement of the amount by which the applicant contends that the total interim duty paid on those goods exceeds the total duty payable under the Anti-Dumping Act.
- (2) An application must be lodged with the Comptroller:
- (a) by leaving it at a place that has been allocated for lodgement of duty assessment applications at Customs House in Canberra; or
 - (b) by posting it by pre-paid post to a postal address notified by Customs in the *Gazette*; or
 - (c) by sending it by electronic facsimile to a facsimile number notified by Customs in the *Gazette*;

and the application is taken to have been lodged when the application, or a facsimile of the application, is first received by an officer of Customs doing duty in relation to final duty assessment applications.

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

Consideration of duty assessment applications

269X.(1) The Comptroller must, as soon as practicable after the lodgement of an application for assessment of duty in respect of goods that were entered for home consumption during a particular importation period but not more than 180 days after the lodgement of that

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

(2) If the Comptroller considers that any person (including the applicant) may be able to supply information relevant to the consideration of the application, the Comptroller may, by notice in writing, request the supply of that information, in writing:

- (a) if the information is sought from a person other than the applicant—within a period specified in the notice ending not later than 150 days after the lodgement of the application; and
- (b) if the information is sought from the applicant—within a period specified in the notice ending not later than 180 days after the lodgement of the application.

(3) Where the Comptroller proposes to take into account any relevant information that was not supplied to the Comptroller by the applicant, the Comptroller must:

- (a) give the applicant a copy of the information that he or she proposes to take into account unless, in the opinion of the Comptroller, the provision of that information would adversely affect the business or commercial interests of a person supplying the information; and
- (b) invite the applicant, within a specified period ending not later than 180 days after the lodgement of the application, to make any further submission the applicant considers appropriate in relation to that information.

(4) If a person refuses or fails to supply information or to make a submission within the period allowed but subsequently supplies that information or makes that submission, the Comptroller may disregard that information or submission in considering the application.

(5) On the basis of the information contained in the application, any other information provided under subsection (2) or (3) that is not disregarded under subsection (4) and any other information the Comptroller considers relevant, the Comptroller must:

- (a) provisionally ascertain, in relation to each consignment of goods to which the application relates, each variable factor relevant to the determination of duty payable on the goods under the Anti-Dumping Act; and
- (b) having regard to those variable factors as so provisionally ascertained and, where appropriate, to the non-injurious price of goods of that kind— provisionally calculate, in respect of each such consignment, the amount of duty payable under the Anti-Dumping Act.

(6) On the basis of the provisional calculation of duty referred to in paragraph (5)(b), the Comptroller must decide:

- (a) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Anti-Dumping Act by at least the amount contended in the application—to recommend to the Minister:

- (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and
 - (ii) that the Minister order a repayment of the amount of interim duty overpaid; or
 - (b) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Anti-Dumping Act but not to the extent contended in the application—to recommend to the Minister:
 - (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and
 - (ii) that the Minister order a repayment of the amount of interim duty overpaid; or
 - (c) if satisfied that the total amount of duty payable under the Anti-Dumping Act on the goods the subject of the application is equal to or exceeds the total of interim duty that was paid on the goods—to recommend to the Minister:
 - (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; but
 - (ii) that the Minister order that any duty in excess of the interim duty paid on those goods be waived.
- (7) As soon as practicable, but not later than 7 days after making a decision under subsection (6), the Comptroller must:
- (a) notify the applicant, in writing, of the decision made; and
 - (b) if the decision is a negative preliminary decision:
 - (i) inform the applicant of the reasons why the Comptroller made the decision; and
 - (ii) inform the applicant of the applicant's right, within 28 days of the day of notification of the decision, to refer the decision to the Authority for review.
- (8) The Comptroller must:

- (a) if he or she has made a positive preliminary decision—recommend to the Minister, not later than 7 days after making the decision, that the Minister give effect to that decision; and
- (b) if he or she has made a negative preliminary decision and the applicant has not exercised the right to seek a review of the decision by the Authority—recommend to the Minister, not later than 7 days after the end of the period available for seeking review of the decision, that the Minister give effect to that decision.

Duty assessments

269Y.(1) As soon as practicable after receiving a recommendation from the Comptroller or from the Authority in relation to goods the subject of an application, the Minister must, having regard to the terms of that recommendation, by notice in writing:

- (a) ascertain, for the purposes of this Act and the Anti-Dumping Act, the variable factors relevant to the determination of duty payable under the Anti-Dumping Act in respect of each consignment; and
- (b) order that the total interim duty overpaid in respect of all consignments to which the application relates be repaid or that the total unpaid duty in excess of the interim duty already paid be waived, as the case requires.

(2) As soon as practicable after issuing a notice under subsection (1) the Minister must ensure that a copy of that notice is provided to the applicant.

(3) If the Minister issues a notice under subsection (1) ordering that an amount of interim duty be repaid to an applicant the Commonwealth is liable to make a repayment to the applicant accordingly.

(4) If:

- (a) one or more consignments of goods of a particular kind that are the subject of a dumping duty notice or a countervailing duty notice are entered for home consumption during an importation period; and
- (b) interim duty is paid on those goods under the Anti-Dumping Act; and
- (c) application is not made under section 269V of this Act for an assessment of duty payable on those goods under the Anti-Dumping Act;

then:

- (d) the Minister is taken, for the purposes of this Act and the Anti-Dumping Act, to have ascertained each variable factor relevant to the determination of duty on each such consignment at the level at which that factor was ascertained or last ascertained by the Minister for the purpose of the dumping duty notice or countervailing duty notice; and
- (e) the interim duty paid on those goods is taken to be the duty payable.

Division 5—Review of interim duty

Circumstances in which review may be sought

269Z. (1) If:

- (a) a dumping duty notice or a countervailing duty notice has been published in respect of goods; and
- (b) an affected party considers that it is appropriate to review the rate of interim duty imposed on goods of that kind because one or more of the variable factors relevant to the determination of interim duty has changed;

the affected party may, by application lodged with the Comptroller, request a review of the rate of interim duty.

(2) If:

- (a) a dumping duty notice or a countervailing duty notice has been published in respect of goods; and
- (b) the Minister considers that it may be appropriate to vary the rate of interim duty because one or more of the variable factors relevant to the determination of interim duty may have changed;

the Minister may, at any time, by notice in writing, request the Comptroller to review the rate of interim duty.

(3) An application under subsection (1) must not be made earlier than 12 months after:

- (a) the day of publication of the dumping duty notice or countervailing duty notice to which the application relates; or
- (b) if a review has, or reviews have, already been undertaken under subsection (1) or (2)—the day on which the Minister published the result of the last such review to be undertaken.

Application for review of interim duty by affected party

269ZA. (1) An application under subsection 269Z(1) for review of interim duty must be in writing and contain:

- (a) a description of the kind of goods to which the dumping duty notice or countervailing duty notice the subject of the application relates; and
- (b) a statement of the variable factor or factors relevant to the determination of interim duty that, in the opinion of the applicant, have changed; and
- (c) a statement of the amount by which each such factor has changed and information to establish that amount.

- (2) An application may be lodged with Customs:
 - (a) by leaving it at a place that has been allocated for lodgement of review applications at Customs House in Canberra; or
 - (b) by posting by pre-paid post to a postal address specified by Customs in the *Gazette*; or
 - (c) by sending it by electronic facsimile to a facsimile number specified by Customs in the *Gazette*;

and the application is taken to have been lodged when the application, or a facsimile of the application, is first received by an officer of Customs doing duty in relation to applications for review of interim duty.

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

Consideration of the application or request for review

269ZB.(1) As soon as practicable after:

- (a) the lodgement of an application under subsection 269Z(1); or
- (b) the receipt of a request under subsection 269Z(2);

but not later than 25 days after the lodgement of the application or receipt of the request, the Comptroller must publish a notice in the *Gazette* and in a newspaper circulating in all States and internal Territories stating that it is proposed to review the rate of interim duty attaching to the goods the subject of the application or request.

(2) The notice must invite interested parties to make submissions within a period of 40 days after the day of publication of the notice.

(3) The Comptroller may disregard any submission received after the end of that period.

(4) The Comptroller must, not later than 100 days after the day of publication of the notice, after considering the application for review any submissions made and any other material he or she considers relevant, give the Minister a report recommending:

- (a) that the rate of interim duty remain as originally calculated; or
- (b) that the rate of interim duty be altered;

and setting out the Comptroller's reasons for so recommending.

Minister to consider recommendations

269ZC.(1) After considering the recommendation of the Comptroller and the reasons for that recommendation, the Minister must, subject to subsection (2) by notice in writing published in the *Gazette*:

- (a) declare that, with effect from the day of publication of the notice, this Act and the Anti-Dumping Act are taken to have had effect as if the Minister had, in the dumping duty notice or countervailing duty notice, as the case requires, fixed each of the variable factors relevant to the determination of interim duty at the respective amounts specified in the notice; or
- (b) declare that, for the purposes of this Act and the Anti-Dumping Act, each of the variable factors relevant to the determination of interim duty is to remain unchanged;

and where the Minister does so, he or she must notify the applicant accordingly.

(2) If the applicant or any other person who has provided information for the purpose of a review under this Division claims, in writing, that the information is confidential or that the inclusion in a notice under subsection (1) of a particular variable factor relevant to the determination of interim duty would adversely affect the person's business or commercial interests:

- (a) the Minister is not required to include in the notice a statement of that factor; but
- (b) upon request the Comptroller may notify that factor to persons who, in the opinion of the Comptroller, would be affected parties in any further review of the rate of interim duty.

(3) If the Minister publishes a declaration under paragraph (1)(a), this Act has effect, with effect from the day of publication of the declaration, as if each of the variable factors relevant to the determination of interim duty as so fixed under that paragraph had been ascertained for the purpose of the dumping duty notice or the countervailing duty notice.

Effect of review of interim duty on entitlement to seek duty assessment

269ZD. If, as a result of the review of a rate of interim duty, that rate is altered with effect from a particular day, that does not affect in any way the entitlement of an importer to apply under section 269V for a final assessment of the duty payable on goods imported into Australia on or after that day.

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:
 - (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;

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
- (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.

- (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
- (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) contains sufficient detail to allow a reasonable understanding of the substance of the information; but
- (b) 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:

- (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.

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 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.

Transition

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 the 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 on applications for, those notices;

as if those amendments had not been made.

Determination of costs (subsection 269TAAD (4) of the Act)

180. (1) In determining an amount to be:

- (a) the cost of production or manufacture of goods in a country of export for the purposes of paragraph 269TAAD (4) (a) of the Act; or
- (b) the administrative, selling and general costs associated with the sale of goods for the purposes of paragraph 269TAAD (4) (b) of the Act,

the Minister must take into account the matters, and use the methods of calculation, set out in this regulation.

- (2) If:
 - (a) an exporter or other seller of like goods keeps records relating to like goods; and
 - (b) the records:
 - (i) are in accordance with generally accepted accounting principles in the country of export; and

- (ii) reasonably reflect the costs associated with the production, or manufacture, and sale of like goods;

the Minister must calculate the costs using the information set out in the records.

(3) The Minister must take into account the information available to the Minister concerning the allocation of costs in relation to like goods, in particular to establish:

- (a) appropriate amortisation and depreciation periods; and
- (b) allowances for capital expenditures and other development costs;

including information given by the exporter or other seller of the goods referred to in subregulation (1) that demonstrates that the exporter or other seller of the goods has historically used the method of allocation.

- (4) If:
 - (a) the Minister identifies a non-recurring item of cost that benefits:
 - (i) current production of the goods referred to in subregulation (1); or
 - (ii) future production of those goods; or
 - (iii) current and future production of those goods; and
 - (b) the information referred to in subregulation (3) does not identify the item;

the Minister must adjust the costs identified by the exporter or other seller to take that item into account.

- (5) If:
 - (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start-up operations; and
 - (b) the information referred to in subregulation (3) does not identify the circumstance;

the Minister must adjust the costs identified in the information:

- (c) to take the circumstance into account; and
- (d) to reflect
 - (i) the costs at the end of the start-up period; or
 - (ii) if the start-up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.

(6) If the Minister is satisfied that sufficient information has not been furnished or is not available to enable the cost of production or manufacture to be identified under the preceding subregulations (2) to (5) (inclusive), the cost is the amount determined by the Minister having regard to all relevant information.

(7) For the purposes of this regulation, the Minister may disregard any information that he or she considers to be unreliable.

(8) A word or expression that is defined in Part XVB of the Act and used in this regulation has the meaning given by that Part.

Determination of costs and profits (subsections 269TAAD (4) and 269TAC (5B) of the Act)

181. (1) In determining an amount to be:

- (a) the administrative, selling and general costs associated with the sale of goods for the purposes of paragraph 269TAAD (4) (b) of the Act; or
- (b) the profit on the sale of goods for the purpose of subsection 269TAC (5B) of the Act;

the Minister must take into account the matters, and use the methods of calculation, set out in this regulation.

(2) Subject to subregulation (3):

- (a) the Minister must calculate, for the purposes of paragraph 269TAAD (4) (b) of the Act, an amount representing the administrative, selling and general costs associated with the sale of the goods; and
- (b) the Minister must calculate, for the purposes of subsection 269TAC (5B) of the Act, an amount representing the profit of the exporter or other seller of the goods;

using data relating to the production, or manufacture, and sale of like goods by the exporter or other seller of the goods referred to in subregulation (1) in the ordinary course of trade.

(3) If the Minister is unable to calculate an amount using the data referred to in subregulation (2), the Minister must calculate the amount:

- (a) by identifying the actual amounts incurred and realised by the exporter or other seller in respect of the production, or manufacture, and sale of the same general category of goods in the domestic market of the country of export; or
 - (b) by identifying the weighted average of the actual amounts incurred and realised by selected exporters for the production, or manufacture, and sale of like goods in the domestic market of the country of export.
- (4) Subject to subregulation (5), if the Minister is satisfied that sufficient information has not been furnished or is not available to enable costs or profits to be

ascertained under subregulation (2) or (3), the cost or profit is the amount determined by the Minister having regard to all relevant information.

- (5) If:
 - (a) the Minister uses a method of calculation under subregulation (4) to calculate an amount representing the profit of the exporter or other seller of the goods; and
 - (b) the amount calculated exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;

the Minister must disregard the amount by which the amount calculated exceeds the amount of profit normally realised by other exporters or producers.

(6) For the purposes of this regulation, the Minister may disregard any information that he or she considers to be unreliable.

(7) A word or expression that is defined in Part XVB of the Act and used in this regulation has the meaning given by that Part".

Anti-dumping: time for making preliminary finding under section

269TD of the Act

183AB(1) Subject to subregulation (2), if the Comptroller does not reject an application under subsection 269TB(1) or (2) of the Act for publication of a dumping duty notice or a countervailing duty notice, the prescribed period for the purposes of paragraph 269TC(4)(c) of the Act within which the Comptroller will make a preliminary finding under section 269TD of the Act is the period ending 100 days after the initiation of the investigation under subsection 269TC(4) of the Act.

(2) If the Comptroller is of the opinion that more than 100 days will be needed to make a preliminary finding under section 269TD of the Act, the prescribed period for the purposes of paragraph 269TC(4)(c) of the Act is the period ending 120 days after the initiation of the investigation under subsection 269TC(4) of the Act.

(3) In forming that opinion, the Comptroller must have regard to all the circumstances of the case including, in particular, the following:

- (a) the complexity, or novelty, of the issues to be considered;
- (b) the variety of goods to be considered;
- (c) the number of persons whose activities must be investigated;
- (d) the difficulty of obtaining evidence.

Prescribed period for purposes of subsection 269TF(1) of the Act

183A. For the purposes of subsection 269TF(1) of the Act, the prescribed period in relation to a decision of the Comptroller is the period ending at the expiry of 30 days after notification of that decision.

TABLE OF PROVISIONS

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An Act relating to certain Special Duties of Customs

Short title

1. This Act may be cited as the *Customs Tariff (Anti-Dumping) Act 1975*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Incorporation

6. The *Customs Act 1901* (in this Act referred to as the Customs Act) is incorporated and shall be read as one with this Act.

Imposition of duties of Customs

7. Duties of Customs are imposed in accordance with this Act.

Dumping Duties

8. (1) This section does not apply to goods that are:

- (a) the produce or manufacture of New Zealand; and
- (b) imported into Australia after the commencement of this subsection.

- (2) There is imposed, and there must be collected and paid, on goods to which this section applies by virtue of a notice under subsection 269TG(1) or (2) of the Customs Act, a special duty of Customs, to be known as dumping duty calculated in accordance with subsection (6).

(3) Pending final assessment of the dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act, an interim dumping duty is payable on those goods.

(4) Subject to subsection (5), the interim dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to the sum of:

- (a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and
- (b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the amount by which the latter export price exceeds the former.

(5) The Minister must, by signed notice, direct that the element of interim dumping duty referred to in paragraph (4)(a) in respect of particular goods be ascertained:

- (a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or
- (b) by reference to a measure of the quantity of those particular goods; or
- (c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

(5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a notice under subsection 269TG(1) or (2), if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (a) the export price of goods of that kind as so ascertained or last so ascertained; and
- (b) that lesser duty;

does not exceed that non-injurious price.

(5B) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TG of that Act and a notice under section 269TJ of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (5) in relation to interim dumping duty in respect of the goods, have regard to the desirability of fixing the amount of interim dumping duty in respect of the goods such that the sum of:

- (a) the export price of those particular goods; and

- (b) the amount of the interim dumping duty as so fixed; and
- (c) the amount of interim countervailing duty as fixed under section 10;

does not exceed the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of those notices.

(5C) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(5D) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(6) The dumping duty payable on goods the subject of a notice under subsection 269TG(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or
- (b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the first-mentioned notice—the difference between:
 - (i) the amount that the Minister ascertains to be the export price of those particular goods; and
 - (ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.

(7) The Minister may, by notice in writing, exempt goods from interim dumping duty and dumping duty if he is satisfied:

- (7a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- (b) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force;
- (c) that:
 - (i) where the goods are goods to which section 11 of the *Customs Tariff Act 1987* applies—the item in Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and
 - (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

- (d) that:
 - (i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Schedule 4 on the goods, and
 - (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or
- (e) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(8) Where the Minister exempts goods from interim dumping duty and dumping duty under subsection (7) by reason of his being satisfied as to a matter specified in paragraph (7)(a), (c) or (d), the instrument of exemption shall be published in the *Gazette*.

(9) In this section, a reference to a Tariff Concession Order includes a reference to a Commercial Tariff Concession Order made under Part XVA of the Customs Act as in force before section 10 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences.

Third country dumping duties

9.(1) This section does not apply to goods that are:

- (a) the produce or manufacture of New Zealand; and
- (b) imported into Australia after the commencement of this subsection.

(2) There is imposed, and there must be collected and paid, on goods to which this section applies by virtue of a notice under subsection 269TH(1) or (2) of the Customs Act, a special duty of Customs, to be known as third country dumping duty calculated in accordance with subsection (6).

(3) Pending final assessment of the third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act, an interim third country dumping duty is payable on those goods.

(4) Subject to subsection (5), the interim third country dumping duty payable on goods the subject of a notice under subsection 269TH (1) or (2) of the Customs Act is an amount equal to the sum of:

- (a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and
- (b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the amount by which the latter export price exceeds the former.

(5) The Minister must, by signed notice, direct that the element of interim third country dumping duty referred to in paragraph (4)(a) in respect of particular goods be ascertained:

- (a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or
- (b) by reference to a measure of the quantity of those particular goods; or
- (c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

(5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a dumping duty notice under subsection 269TH(1) or (2), if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:

- (a) the export price of goods of that kind as so ascertained or last so ascertained; and
- (b) that lesser duty;

does not exceed that non-injurious price.

(5B) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(5C) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(6) The third country dumping duty payable on goods the subject of a notice under subsection 269TH(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or
- (b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim third country dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the first-mentioned notice—the difference between:
 - (i) the amount that the Minister ascertains to be the export price of those particular goods; and

- (ii) the lower of the amount that the Minister ascertains to be the normal value of those particular goods and that non-injurious price.

(7) The Minister may, by notice in writing, exempt goods from interim third country dumping duty and third country dumping duty if he is satisfied:

- (a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or
- (c) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(8) Where the Minister exempts goods from interim third country dumping duty and third country dumping duty under subsection (7) by reason of his being satisfied as to a matter specified under paragraph (7)(a), the instrument of exemption shall be published in the *Gazette*.

Countervailing duties

10.(1) There is imposed, and there must be collected and paid, on goods to which this subsection applies by virtue of a notice under subsection 269TJ(1), (2), (4), (5) or (6) of the Customs Act a special duty of Customs, to be known as countervailing duty.

(2) The countervailing duty on goods to which this section applies is to be calculated:

- (a) if this section applies by virtue of a notice under subsection 269TJ(1) or (2) under the Customs Act—in accordance with subsection (3E); and
- (b) if this section applies by virtue of a notice under subsection 269TJ (4), (5) or (6) of the Customs Act—in accordance with subsection (5).

(3) Pending final assessment of the countervailing duty payable on goods subject of a notice under subsection 269TJ(1) or (2) of the Customs Act, an interim countervailing duty is payable on those goods.

(3A) Subject to subsection (3B), the interim countervailing duty payable on goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act is an amount equal to the countervailable subsidy in respect of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(3B) The Minister must, by signed notice, direct that the interim countervailing duty in respect of particular goods to which this section applies by virtue of a declaration under subsection 269TJ(1) or (2) be ascertained:

- (a) as a proportion of the export price of those particular goods; or
- (b) by reference to a measure of the quantity of those particular goods; or
- (c) by reference to a combination of a proportion of the export price of those particular goods and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

(3C) The Minister must, in exercising his or her powers under subsection (3B) in respect of particular goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the sum of:

- (a) the countervailable subsidy in respect of goods of that kind as so ascertained, or last so ascertained; and
- (b) the export price of those particular goods;

have regard to the desirability of fixing a lesser amount of duty such that the sum of the export price of those particular goods and the lesser duty does not exceed that non-injurious price.

(3D) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TJ of that Act and a notice under section 269TG of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (3B) in relation to interim countervailing duty in respect of the goods, have regard to the desirability of fixing the amount of interim countervailing duty in respect of the goods such that the sum of:

- (a) the export price of those particular goods; and
- (b) the amount of the interim countervailing duty as so fixed; and
- (c) the amount of interim dumping duty as fixed under section 8;

does not exceed the non-injurious price of goods of that kind, as ascertained, or last ascertained, by the Minister for the purpose of those notices.

(3E) The countervailing duty payable on goods the subject of a notice under subsection 269TJ(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the countervailable subsidy in respect of those particular goods; or
- (b) if, in a notice under subsection (3B), the Minister determines that the interim countervailing duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind—the difference between:
 - (i) the amount that the Minister ascertains to be the export price of those particular goods; and
 - (ii) the lower of the sum of the amounts that the Minister ascertains to be the export price of, and the countervailable subsidy in respect of, those particular goods and the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice under subsection 269TJ(1) or (2).

(4) Subject to subsection (5), the countervailing duty in respect of other goods to which this section applies is:

- (a) in the case of goods to which this section applies by virtue of a notice under subsection 269TJ(4) of the Customs Act—an amount equal to the amount of the countervailable subsidy in respect of the goods; or
- (b) in the case of goods to which this section applies by virtue of a notice under subsection 269TJ(5) or (6) of the Customs Act, an amount equal to:
 - (i) if the prescribed assistance that has been paid or granted, directly or indirectly, in relation to the goods was financial assistance—the amount of that financial assistance; or
 - (ii) if the prescribed assistance that has been granted, directly or indirectly, in relation to the goods was not financial assistance, whichever of the following is determined by the Minister to be appropriate:
 - (A) the cost of granting that assistance;
 - (B) the value of that assistance to the person to whom it was granted.

(5) The Minister may, by notice in writing signed by the Minister, direct that the countervailing duty in respect of goods referred to in subsection (4) is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the countervailing duty that would be payable in respect of the goods under subsection (4), and the notice has effect accordingly.

(5B) Where the Minister signs a notice under subsection (3B) or (5), the Minister shall cause a copy of that notice to be published in the *Gazette* unless in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(6) A notice under subsection (3B) or (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(7) If the Minister has determined, under subsection 269TJ(8) of the Customs Act, the amount of the countervailable subsidy in relation to goods to which this section applies by virtue of a notice under subsection 269TJ(1), (2) or (4) of that Act, that amount is to be taken to be the amount of that countervailable subsidy for the purposes of this section.

(7A) Where the Minister has determined, under subsection 269TJ(9) of the Customs Act, the amount, cost or value of prescribed assistance in relation to goods to which this section applies by virtue of a notice under subsection 269TJ(5) or (6) of that Act, that amount, cost or value is to be taken to be the amount, cost or value of that prescribed assistance in relation to those goods for the purposes of this section.

(8) The Minister may, by notice in writing, exempt goods from interim countervailing duty or countervailing duty if he or she is satisfied:

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- (aa) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force;
- (b) that -
 - (i) where the goods are goods to which section 11 of the *Customs Tariff Act 1987* applies—the item in Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and
 - (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;
- (c) that:
 - (i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Schedule 4 on the goods; and
 - (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or
- (d) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(9) Where the Minister exempts goods from interim countervailing duty or countervailing duty under subsection (8) because he or she is satisfied as to a matter specified in paragraphs (8)(a), (b) and (c), the instrument of exemption shall be published in the *Gazette*.

(10) In this section, a reference to a Tariff Concession Order includes a reference to a Commercial Tariff Concession Order made under Part XVA of the Customs Act as in force before section 10 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences.

Third country countervailing duties

11.(1) There is imposed, and there must be collected and paid, on goods to which this subsection applies by virtue of a notice under subsection 269TK(1) or (2) of the Customs Act a special duty of Customs, to be known as third country countervailing duty, calculated in accordance with subsection (7).

(2) Pending final assessment of the third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act, an interim third country countervailing duty is payable on those goods.

(3) Subject to subsection (4), the interim third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act is an amount equal to the countervailable subsidy in respect of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice.

(4) The Minister must, by signed notice, direct that the interim countervailing duty in respect of particular goods to which this section applies by virtue of a notice under subsection 269TK(1) or (2) be ascertained:

- (a) as a proportion of the export price of those particular goods; or
- (b) by reference to a measure of the quantity of those particular goods; or
- (c) by reference to a combination of a proportion of the export price of those particular goods and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

(5) The Minister must, in exercising his or her powers under subsection (4) in respect of particular goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act, if the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice is less than the sum of:

- (a) the countervailable subsidy as so ascertained, or last so ascertained; and
- (b) the export price of those particular goods;

have regard to the desirability of fixing a lesser amount of duty such that the sum of the export price of those particular goods and the lesser duty does not exceed that non-injurious price.

(6) If the Minister signs a notice under subsection (4), the Minister must cause a copy of that notice to be published in the *Gazette* unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(7) The third country countervailing duty payable on goods the subject of a notice under subsection 269TK(1) or (2) of the Customs Act is an amount equal to:

- (a) unless paragraph (b) applies—the countervailable subsidy in respect of those particular goods; or
- (b) if, in a notice under subsection (4), the Minister determines that the interim countervailing duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind—the difference between:
 - (i) the amount that the Minister ascertains to be the export price of those particular goods; and
 - (ii) the lower of the sum of the amounts that the Minister ascertains to be the export price of, and the countervailable subsidy in respect of, those particular goods and the non-injurious price of goods of that kind as ascertained, or last

ascertained, by the Minister for the purpose of the notice under subsection 269TK(1) or (2).

(7A) A notice under subsection (4) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

(7B) If the Minister has determined, under subsection 269TK(3) of the Customs Act, the amount of any countervailable subsidy in respect of goods to which this section applies by virtue of a notice under subsection 269TK(1) or (2) of that Act, that amount is to be taken to be the amount of that countervailable subsidy for the purposes of this section.

(8) The Minister may, by notice in writing, exempt goods from interim third country countervailing duties and third country countervailing duty if he or she is satisfied:

- (a) that like or directly competitive goods are not offered or sold in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade; or
- (b) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(9) Where the Minister exempts goods from interim third country countervailing duties and third country countervailing duty under subsection (8) because he or she is satisfied as to a matter specified under paragraph (8)(a), the instrument of exemption shall be published in the *Gazette*.

Interim duty not to exceed security taken

12. If:

- (a) a security has been taken under section 42 of the *Customs Act 1901* in respect of interim duty that may become payable under section 8, 9, 10 or 11 of this Act in respect of goods imported into Australia; and
- (b) the amount of interim duty that would be so payable under section 8, 9, 10 or 11 of this Act would, but for the operation of this section, exceed the amount of the security taken;

the interim duty payable is equal to the amount of security taken.

Duties to be charged separately

16. The several duties imposed by this Act shall be separately charged, notwithstanding that more than one duty applies to any particular goods.

Special duties to be additional to ordinary duties

21. The special duties of Customs payable under this Act are in addition to such other duties of Customs (if any) as are payable under any other Act.

Application

3. This Act applies in respect of applications for dumping duty notices or countervailing duty notices that are made on after the day on which the Agreement Establishing the World Trade Organization enters into force for Australia.

Superseded Sections

Sections 8 and 10 of the Customs Tariff (Anti-Dumping) Act 1975 operative pre 1 January 1993. Under transitional arrangements applying to the introduction of interim dumping/countervailing duty provisions on 1 January 1993, measures in place prior to that date remain in force under the legislation applying at that time. Sections 8 and 10 as operative pre 1 January 1993 are recorded below for purposes of reference.

Dumping Duties

8. (1) This section does not apply to goods that are:

- (a) the produce or manufacture of New Zealand; and
- (b) imported into Australia after the commencement of this subsection.

(3) There shall be charged, collected and paid on goods to which this section applies, by virtue of a declaration under subsection 269TG (1) or (2) of the Customs Act, a special duty of Customs, to be known as dumping duty.

(4) Subject to subsection (5), the dumping duty in respect of goods is a sum equal to the amount by which the amount of the export price of the goods is less than the amount of the normal value of the goods.

(5) The Minister may, by notice in writing signed by the Minister, direct that the dumping duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the dumping duty that would be payable in respect of the goods under subsection (4), and the notice has effect accordingly.

(5A) In exercising his or her powers under subsection (5) in relation to dumping duty in respect of goods, the Minister shall have regard to the desirability of ensuring that the amount of dumping duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TG (1)(b) or (2)(b) of the Customs Act, as the case requires.

(5AA) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TG of that Act and a notice under section 269TJ of that Act are published, at the same time and in respect of the same goods, the Minister must, in exercising his or her power under subsection (5) in relation to dumping duty in respect of the goods, have regard to the desirability of ensuring that the amount of dumping duty in respect of the goods, when aggregated with the amount of countervailing duty in respect of the goods, is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance

referred to in paragraphs 269TG(1)(b) and 269TJ(1)(b) or in paragraphs 269TG(2)(b) and 269TJ(2)(b), as the case requires.

(5B) Where the Minister signs a notice under subsection (5), the Minister shall cause a copy of that notice to be published in the *Gazette* unless in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(6) A notice under subsection (5) applies to goods entered for home consumption on or after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that subsection applied to the goods.

(7) The Minister may, by notice in writing, exempt goods from dumping duty if he is satisfied:

(a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;

(b) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force;

(c) that:

(i) where the goods are goods to which section 11 of the *Customs Tariff Act 1987* applies—the item in Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;

(d) that:

(i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Schedule 4 on the goods; and

(ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or

(e) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.

(8) Where the Minister exempts goods from the dumping duty under subsection (7) by reason of his being satisfied as to a matter specified in paragraph (7)(a), (c) or (d), the instrument of exemption shall be published in the *Gazette*.

(9) In this section, a reference to a Tariff Concession Order includes a reference to a Commercial Tariff Concession Order made under Part XVA of the Customs Act as in force before section 10 of the *Customs Legislation (Tariff Concession and Anti-Dumping) Amendment Act 1992* commences.

Countervailing duties

10. (3) There shall be charged, collected and paid on goods to which this section applies, by virtue of a declaration under subsection 269TJ(1), (2), (4), (5) or (6) of the Customs Act, a special duty of Customs, to be known as countervailing duty.

(4) Subject to subsection (5), the countervailing duty in respect of goods is:

(a) in the case of countervailing duty in respect of goods to which this section applies by virtue of a declaration under subsection 269TJ(1), (2) or (4) of the Customs Act—a sum equal to the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance that has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods; or

(b) in the case of countervailing duty in respect of goods to which this section applies by virtue of a declaration under subsection 269TJ(5) or (6) of the Customs Act, a sum equal to:

(i) if the prescribed assistance that has been paid or granted, directly or indirectly, in relation to the goods was financial assistance—the amount of that financial assistance; or

(ii) if the prescribed assistance that been granted, directly or indirectly, in relation to the goods was not financial assistance, whichever of the following is determined by the Minister to be appropriate:

(A) the cost of granting that assistance;

(B) the value of that assistance to the person to whom it was granted.

(5) The Minister may, by notice in writing signed by the Minister, direct that the countervailing duty in respect of goods is an amount to be ascertained by reference to the value, or to the weight or other measure of quantity, of the goods less the amount, if any, by which that amount exceeds the countervailing duty that would be payable in respect of the goods under subsection (4), and the notice has effect accordingly.

(5A) In exercising his or her powers under subsection (5) in relation to countervailing duty in respect of goods to which this section applies by virtue of subsection 269TJ(1) or (2) of the Customs Act, the Minister shall have regard to the desirability of ensuring that the amount of countervailing duty in respect of those goods is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance, referred to in paragraph 269TJ(1)(b) or (2)(b) of that Act, as the case requires.

(5AA) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TJ of that Act and a notice under section 269TG of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his powers under subsection (5) in relation to countervailing duty in respect of the goods, have regard to the desirability of ensuring that the amount of countervailing duty in respect of the goods, when aggregated with the amount of dumping duty in respect of the goods, is not greater than is necessary to prevent the injury or a recurrence of the injury, or to remove the hindrance referred

to in paragraphs 269TG(1)(b) and 269TJ(1)(b) or in paragraphs 269TG(2)(b) and 269TJ(2)(b), as the case requires.

(5B) Where the Minister signs a notice under subsection (5), the Minister shall cause a copy of that notice to be published in the *Gazette* unless in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.

(6) A notice under subsection (5) applies to goods entered for home consumption after a date specified in the notice, which may be a date earlier than the date of publication of the notice but shall not be a date on or before a date on which an earlier notice under that subsection applied to the goods.

(7) Where the Minister has determined, under subsection 269TJ(8) of the Customs Act, the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance in relation to goods to which this section applies by virtue of a declaration under subsection 269TJ(1), (2) or (4) of that Act, that amount is to be taken to be the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance in relation to those goods for the purposes of this section.

(7A) Where the Minister has determined, under subsection 269TJ(9) of the Customs Act, the amount, cost or value of prescribed assistance in relation to goods to which this section applies by virtue of a notice under subsection 269TJ(5) or (6) of that Act, that amount, cost or value is to be taken to be the amount, cost or value of that prescribed assistance in relation to those goods for the purposes of this section.

(8) The Minister may, by notice in writing, exempt goods from countervailing duty if he or she is satisfied:

- (a) that like or directly competitive goods are not offered for sale in Australia to all purchasers on equal terms under like conditions having regard to the custom and usage of trade;
- (aa) that a Tariff Concession Order under Part XVA of the *Customs Act 1901* in respect of the goods is in force;
- (b) that:
 - (i) where the goods are goods to which section 11 of the *Customs Tariff Act 1987* applies—the item in Schedule 4 to that Act that applies to the goods is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; and
 - (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available;
- (c) that:
 - (i) the tariff classification in Schedule 3 to that Act that applies to the goods is such that no duty is payable in respect of the goods or the duty payable in respect of the goods is at a rate equivalent to a rate payable under Schedule 4 on the goods; and

- (ii) suitably equivalent goods the produce or manufacture of Australia are not reasonably available; or
- (d) that the goods, being articles of merchandise, are for use as samples for the sale of similar goods.
- (9) Where the Minister exempts goods from countervailing duty under subsection (8) because he or she is satisfied as to a matter specified in paragraphs (8)(a), (b) and (c), the instrument of exemption shall be published in the *Gazette*.
- (10) In this section, a reference to a Tariff Concession Order includes a reference to a Commercial Tariff Concession Order made under Part XVA of the Customs Act as in force before section 10 of the *Customs legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences.

PART I - PRELIMINARY

Short title

1. This Act may be cited as the *Anti-Dumping Authority Act 1988*.

Commencement

2. This Act commences on a day to be fixed by Proclamation.

Interpretation

- 3.(1) In this Act, unless the contrary intention appears:

"**Anti-Dumping Act**" means the *Customs Tariff (Anti-Dumping) Act 1975*;

"**Anti-dumping matter**" means a matter relating to:

- (a) the imposition of duties under the Anti-Dumping Act; or
- (b) the operation of the Anti-Dumping Act or of Part XVB of the *Customs Act 1901*.

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

"**approved form**" means a form approved under section 3AA;

"**Authority**" means the Anti-Dumping Authority established by section 4;

"**Comptroller**" means the Comptroller-General of Customs;

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

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

"**dumping duty notice**" means a notice published by the Minister under subsection 269TG (1) or (2) or 269TH (1) or (2) of the *Customs Act 1901*;

"**inquiry**" means an inquiry conducted by the Authority under this Act;

"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*;

"like goods", in relation to goods under consideration, has the same meaning as it has for the purposes of Part XVB of the *Customs Act 1901*;

"member" means the member of the Authority;

"negative preliminary finding", in relation to goods the subject of an application under section 269TB of the *Customs Act 1901*, means a preliminary finding under section 269TD of that Act to the effect that there are not sufficient grounds for the publication of a dumping duty notice or countervailing duty notice in respect of the goods the subject of the application or that there will not be sufficient grounds for such publication subsequent to the importation into Australia of such goods;

"negative prima facie decision" means:

- (a) a decision of the Comptroller under subsection 269TC (1) of the *Customs Act 1901* rejecting an application made under subsection 269TB (1) of that Act; or
- (b) a decision of the Comptroller under subsection 269TC (2) of that Act rejecting an application made under subsection 269TB (2) of that Act.

(2) A reference in this Act to goods the subject of an application under section 269TB of the *Customs Act 1901* is a reference to goods referred to in the application:

- (a) that have been imported into Australia;
- (b) that are likely to be so imported; or
- (c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.

(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.

Approved forms

3AA.(1) In this Act, a reference to an approved form is a reference to a form that is approved, by instrument in writing, by the member.

(2) The instrument by which a form is approved under subsection (1) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

Anti-dumping measures not to apply to goods of New Zealand origin

3A.(1) This Act, so far as it relates to duty that may become payable under section 8 or 9 of the Anti-Dumping Act, does not apply to goods that are the produce or manufacture of New Zealand.

(2) Division 1A of Part VIII of the *Customs Act 1901* applies in determining the question whether goods are the produce or manufacture of New Zealand for the purposes of this Act in the same way that it applies in determining that question for the purposes of Part XVB of that Act.

(3) In this section:

"**goods**" includes goods imported into Australia before the commencement of this section.

PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF ANTI-DUMPING AUTHORITY

Establishment

4. An Anti-Dumping Authority is established.

Functions

5. The functions of the Authority are:
- (a) to recommend to the Minister under section 7 whether the Minister should publish a dumping duty notice or a countervailing duty notice in respect of goods and, where applicable, whether notices should be given under subsection 269TG (4) or 269TJ (3) of the *Customs Act 1901*;
 - (b) to recommend to the Minister under section 7 whether the Minister 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;
 - (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;
 - (c) to review under section 8 negative *prima facie* decisions and negative preliminary findings;
 - (ca) to recommend to the Minister under section 8A whether an anti-dumping measure within the meaning of that section should be continued; and
 - (d) to prepare and give to the Minister reports under section 9.

Powers

6. In addition to any other power conferred on it by this Act, the Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

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

- 7.(1) Where, in relation to an application under section 269TB of the *Customs Act 1901*:
- (a) the Comptroller refers to the Authority under subsection 269TD(2) of the *Customs Act 1901* the question whether the publication of a dumping duty notice or countervailing duty notice sought in respect of the goods the subject of the application is justified; or
 - (b) the Authority revokes, under subsection 8(2), a negative preliminary finding relating to such goods and substitutes a preliminary finding to the effect that there are sufficient grounds for the publication of a dumping duty notice or countervailing duty notice in respect of the goods the subject of the application or that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods;

the Authority shall, after holding an inquiry into the matter and before the expiration of a period of 120 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after the reference, give to the Minister a report:

- (c) recommending whether any such notice should be published and the extent of any duties that are or should be payable under the Anti-Dumping Act in consequence of such notice;
- (d) in particular recommending whether the Minister ought to be satisfied as to the matters in respect of which the Minister is required to be satisfied before such a notice can be published;
- (e) recommending, where applicable:
 - (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
- (f) which shall include all reasons for any recommendations.

(2) In a report under subsection (1) in relation to goods the subject of an application under subsection 269TB(1) of the *Customs Act 1901*, the Authority's recommendations shall, to the extent that it is practicable to do so, also relate to any like goods not covered by the application but imported into Australia during the period commencing on the day on which:

- (a) the Comptroller made, under subsection 269TD(2) of that Act, a finding that there were sufficient grounds for the publication of a dumping duty notice or countervailing duty notice in respect of the goods the subject of the application or that there would be sufficient grounds for such publication subsequent to the importation into Australia of such goods; or
- (b) where the Comptroller did not make such a finding in relation to the goods the subject of the application - the Authority, under subsection 8(2) of this Act, substituted such a finding in substitution for a negative preliminary finding of the Comptroller in relation to the goods the subject of the application;

and ending on the day on which the report is given to the Minister.

(3) Where an application is made in accordance with subsection (4) for the Authority to hold an inquiry into whether the Minister should revoke a notice under subsection 8(5), 9(5), 10(3B) or 11(4) of the Anti-Dumping Act or 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, the Authority shall, after holding an inquiry into the matter and before the expiration of a period of 120 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after the application, give to the Minister a report recommending:

- (a) whether the notice should be revoked; or

- (b) whether the person should be released from the undertaking;

as the case requires.

(4) An application for the holding of an inquiry under subsection (3) must, subject to subsection (4A):

- (a) be in the form approved by the Authority; and
- (b) be made by:
 - (i) if the application concerns a notice under the Anti-Dumping Act or a notice under Part XVB of the *Customs Act 1901*—a person concerned in the importation or exportation of goods to which the notice relates; or
 - (ii) if the application concerns an undertaking given under Part XVB of the *Customs Act 1901*—the person who gave the undertaking.

(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.

(6) In reaching a decision as to the recommendations to make in its report, the Authority shall have regard to all the submissions received by the Authority 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.

(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.

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%;

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
- (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.

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.

Review of *prima facie* decisions and preliminary findings

8.(1) Where:

- (a) an application is made under section 269TB of the *Customs Act 1901* requesting the Minister to publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application;
- (b) the Comptroller has made a negative *prima facie* decision in relation to the application; and
- (c) the applicant refers the decision to the Authority for review;

the Authority shall, after reviewing the decision and within 60 days after the decision is referred to it, confirm the decision, or revoke the decision and substitute a decision accepting the application, and shall, by notice in writing, inform the Comptroller accordingly.

(2) Where:

- (a) an application is made under section 269TB of the *Customs Act 1901* requesting the Minister to publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application;
- (b) the Comptroller has made a negative preliminary finding in relation to the application; and
- (c) the applicant refers the finding to the Authority for review;

the Authority shall, after reviewing the finding and within 60 days after the finding is referred to it, confirm the finding, or reject the finding and substitute a finding to the effect that there are sufficient grounds for the publication of a dumping duty notice or countervailing duty notice in respect of the goods the subject of the application or that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods, and shall, by notice in writing, inform the Comptroller accordingly.

(3) In conducting a review, the Authority shall not have regard to any information that was unavailable to the Comptroller at the time the Comptroller made the negative *prima facie* decision or the negative preliminary finding, as the case may be.

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

8A.(1) Not later than 8 months before an anti-dumping measure expires, the Authority must publish in the *Gazette* and in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory, a notice:

- (a) informing that the dumping duty notice, countervailing duty notice or undertaking is due to expire on a specified day (the "specified expiry day"); and
- (b) inviting interested parties to apply to the Authority in accordance with this section, within 60 days, for the continuation of the anti-dumping measure.

(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.

(2) If no application is received by the Authority within the period specified in the notice then, on the specified expiry day:

- (a) the dumping duty notice expires; or
- (b) the countervailing duty notice expires; or
- (c) the person who gave the undertaking is taken to be released from that undertaking;

as the case requires.

(3) An application must:

- (a) be in writing; and
- (b) be in an approved form; and
- (c) contain such information as the form requires; and
- (d) be signed in the manner indicated in the form.

(4) If:

- (a) an application is received for the continuation of an anti-dumping measure; and
- (b) the Authority is satisfied that the application complies with the requirements of this section;

the Authority must, within 120 days or such other period as is prescribed after the receipt of the application, give the Minister a report recommending whether the measures should be continued.

(5) For the purpose of giving the Minister a report in respect of a matter, the Authority must hold an inquiry into the matter.

(7) If an inquiry is held under subsection (5), the Authority must have regard to all the submissions it receives within the period specified in the notice of inquiry under section 23 but may disregard any submission received after the end of that period.

(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.

(8) The Minister may, after having regard to the report in relation to the continuation of an anti-dumping measure and before the specified expiry day, take steps to secure the continuation of the measure.

(9) If the Minister does not take steps to secure the continuation of an anti-dumping measure before the specified expiry day, the measure expires in accordance with section 269TM of the *Customs Act 1901*.

(10) If the Minister decides to secure the continuation of an anti-dumping measure, the continuation of that measure is so secured:

- (a) if the measure is a dumping duty notice or a countervailing duty notice-by the Minister determining, in writing, that the notice continues in force after the specified expiry day; and
- (b) if the measure is an undertaking-by the person who gave that undertaking agreeing to extend the undertaking beyond the specified expiry day or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect from the day after the specified expiry day in substitution for that undertaking.

(11) If the Minister secures the continuation of an anti-dumping measure in accordance with this section, the measure continues in force for a period of 5 years after the specified expiry day unless:

- (a) in the case of a dumping duty notice or countervailing duty notice-it is revoked before the end of that period; or
- (b) in the case of an undertaking-provision is made for its earlier expiration.

(12) In this section:

'anti-dumping measure' means:

- (a) a dumping duty notice or a countervailing duty notice; or

- (b) an undertaking given under subsection 269TG(4) or 269TJ(3) of the *Customs Act 1901*;

that is in force when this section commences or that comes into force after this section commences.

Review of negative preliminary decision under section 269X

8B.(1) If:

- (a) an application is made under section 269V of the Customs Act requesting an assessment of duty on goods entered for home consumption during a particular importation period; and
- (b) the Comptroller has made a negative preliminary decision in relation to the application; and
- (c) the applicant refers the negative preliminary decision to the Authority for review;

the Authority must, after reviewing the decision and within 90 days after the decision is referred to it:

- (d) confirm the recommendation to which the decision related; or
- (e) revoke the recommendation and substitute any other recommendation that the Comptroller might have made;

and must, by notice in writing, inform the applicant and the Comptroller accordingly.

(2) In conducting a review, the Authority must only have regard to that information to which the Comptroller had regard in making the negative preliminary decision in respect of which the review is sought.

(3) The Authority must, as soon as practicable but not later than the 7 days after deciding whether to confirm the recommendation of the Comptroller or to revoke the recommendation and substitute another recommendation, recommend to the Minister that the Minister give effect to the recommendation as so confirmed or as so substituted.

Reports on anti-dumping matters

9.(1) The Minister may, by notice in writing delivered to the Authority, request the Authority to consider, and prepare and give to the Minister a report on, an anti-dumping matter specified in the notice, and the Authority shall comply with the request as soon as practicable.

(2) The Authority may, where it considers it appropriate to do so, consider, and prepare and give to the Minister a report on, any anti-dumping matter.

Matters to which Authority is to have regard

10. Without limiting the matters to which the Authority may have regard in performing its functions and exercising its powers, the Authority shall, in performing its functions and exercising its powers, have regard to:

- (a) the Commonwealth Government's policy in relation to anti-dumping matters; and
- (b) Australia's obligation under the General Agreement on Tariffs and Trade;

not to use the imposition of duties under the Anti-Dumping Act to assist import competing industries in Australia or to protect industries in Australia from the need to adjust to changing economic conditions.

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

11.(1) Where the Authority, in making a recommendation under section 7, or in reviewing under section 8 a negative *prima facie* decision or a negative preliminary finding, in respect of the goods the subject of an application under section 269TB of the *Customs Act 1901*, is required to determine any matter ordinarily required to be determined by the Minister, the Authority shall determine the matter in like manner as if it was the Minister and, subject to subsection (4), having regard to the same considerations as the considerations to which the Minister would be required to have regard if the Minister were determining the matter.

(2) Subsection (1) applies in respect of goods that have not, at the time of the Authority's determination of a matter in respect of those goods, being imported into Australia as if the Authority's determination of the matter were being made after an importation of those goods into Australia, being an importation occurring at the time of the anticipated importation of those goods into Australia.

(3) Nothing in subsection (1) shall be taken to imply that the determination of a matter by the Authority affects the power of the Minister to make a final determination in respect of that matter for the purposes of the Anti-Dumping Act or of Part XVB of the *Customs Act 1901*.

(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.

Minister may give directions to Authority

12.(1) The Minister may give to the Authority such written directions in connection with carrying out or giving effect to the Authority's powers and duties under this Act as the Minister thinks fit, and the Authority shall comply with any directions so given.

(2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers of the Authority in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the Authority's powers.

(3) Where the Minister gives a direction to the Authority, the Minister shall:

- (a) cause a written notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction; and
- (b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.

(4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

PART III - CONSTITUTION OF AUTHORITY

Member of Authority

13.(1) The Authority shall consist of one member appointed by the Governor-General with effect from such day as is specified in the instrument of appointment.

(2) The member shall be appointed on a full-time basis or on a part-time basis.

(3) The member holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

(4) A person who has attained the age of 65 years shall not be appointed as the member and a person shall not be appointed as the member for a period that extends beyond the day on which the person will attain the age of 65 years.

(5) The member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined, in writing, by the Minister.

(6) The member may resign from office by writing signed by the member and delivered to the Governor-General, but the resignation is not effective until it is accepted by the Governor-General.

Acting member

14. (1) The Minister may appoint a person to act as the member:

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

but a person appointed to act during a vacancy shall not continue to act for more than 6 months.

(2) Anything done by or in relation to a person purporting to act as the member is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Associate members

15. (1) The Minister, after consultation with the member, may appoint persons to be associate members.

(2) An associate member shall be appointed:

- (a) for such period, not exceeding 12 months; or
- (b) in order to conduct such inquiry;

as is specified in the instrument of appointment, but, subject to this Act, is eligible for re-appointment.

(3) An associate member may be appointed on a full-time or part-time basis.

(4) Subject to this Part, an associate member holds office on such terms and conditions as the Minister determines in writing.

(5) An associate member shall be deemed to be the member for the purposes of the exercise by the associate member of any powers, or the performance by the associate member of any functions or duties, of the member in relation to an inquiry, and, unless the contrary intention appears, a reference in this Act (other than this section) to the member shall, for those purposes, be construed as including a reference to an associate member.

Outside employment

16. (1) The member shall not, except with the consent of the Minister:

- (a) if appointed on a full-time basis - engage in paid employment outside the duties of the office of member; or
- (b) if appointed on a part-time basis - engage in paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions.

(2) A reference in this section to paid employment includes a reference to the performance by a person of a service for which it could reasonably be expected the person will receive payment.

Disclosure of interests

17. The member shall give written notice to the Minister of all direct and indirect pecuniary interests that the member has or acquires in any business in Australia or elsewhere or in any body corporate carrying on such a business.

Leave of absence

18.(1) Subject to section 87E of the *Public Service Act 1922*, a full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may:

- (a)** grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines; and
- (b)** grant a part-time member leave to be absent from a meeting or meetings of the Authority.

Retirement from office

19. The Governor-General may, with the consent of the member, retire the member from office on the ground of invalidity.

Suspension and removal from office

20.(1) The member shall not be removed from office except as provided by this section.

(2) The Governor-General may suspend the member from office on the ground of misbehaviour or physical or mental incapacity.

(3) Where the Governor-General suspends the member from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

(4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member should be restored to office and, if each House so passes a resolution, the Governor-General shall terminate the suspension.

(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the member from office.

(6) If the member:

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for the benefit of those creditors;

- (b) fails, without reasonable excuse, to comply with the member's obligations under section 17;
- (c) being appointed on a full-time basis, engages in any paid employment outside the duties of the office of the member; or
- (d) being appointed on a part-time basis, engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions;

the Governor-General shall remove the member from office.

(8) The member is not entitled to be paid any remuneration or allowances in respect of a period during which the member is suspended from office unless the member is restored to office.

Removal taken to be retirement on ground of invalidity

20A.(1) If the member:

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
- (b) is removed from office under section 20 on the ground of physical or mental incapacity;

for the purposes of that Act, the member is taken to have been retired on the ground of invalidity within the meaning of Part IVA of that Act on the day on which the suspension from office took effect.

(2) In spite of subsection (1), section 54C of the *Superannuation Act 1976* applies in relation to the member.

(3) If the member:

- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
- (b) is removed from office under section 20 on the ground of physical or mental incapacity;

for the purposes of that Act, the member is taken to have been retired on the ground of invalidity within the meaning of that Act on the day on which suspension from office took effect.

(4) In spite of subsection (3), section 13 of the *Superannuation Act 1990* applies in relation to the member.

Retirement on ground of invalidity under the Superannuation Acts

20B.(1) In spite of anything contained in sections 19 and 20, a member who:

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
- (b) has not reached his or her maximum retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustee No. 2 has given a certificate under section 54C of that Act.

- (2) In spite of anything contained in sections 19 and 20, a member who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

Remuneration and allowances

21.(1) The member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Remuneration Tribunal is in operation, the person shall be paid such remuneration as is prescribed.

- (2) The member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

PART IV - INQUIRIES

General conduct of inquiries

- 22.(1)** Subject to this Act, in an inquiry:
- (a) the procedure to be followed is within the Authority's discretion; and
 - (b) the Authority:
 - (i) is not bound to act in a formal manner;
 - (ii) is not bound by the rules of evidence; and
 - (iii) may inform itself on any matter in such manner as it thinks fit.
- (2) The Authority may, for the purposes of an inquiry, take evidence on oath or affirmation.

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.

(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;

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.

False or misleading evidence or information

24.(1) A person shall not:

(a) give to the Authority information, whether orally or in writing, or documents, that the person knows to be false or misleading in a material particular; or

(b) at an inquiry, give evidence, or produce a document, that the person knows to be false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$2,000; or
- (b) in the case of a body corporate—\$10,000.

(2) Subsection (1) does not apply to a document if, at the time when the person gives it to the Authority, produces it at an inquiry or sends it to the Authority, the person informs the Authority that it is false or misleading in a material particular and specifies in what respect it is, to the person's knowledge, false or misleading in a material particular.

Protection of member

25. The member has, in the performance of his or her duties as the member, the same protection and immunity as a justice of the High Court.

Powers of Authority relating to documents produced

26.(1) The member, or a person assisting the member in the performance of his or her functions, may inspect any books or documents given to the Authority for the purposes of the performance of its functions or produced at an inquiry and may make copies of, or take extracts from, those books or documents.

(2) A book or document so given or produced may be retained by the Authority for such reasonable period as is necessary for the purposes of the Authority, but during that period the Authority shall permit a person otherwise entitled to possession of the book or document to inspect, make copies of and take extracts from the book or document at such places and times as the Authority thinks appropriate.

Person prejudiced in employment because assisting Authority

27.(1) An employer shall not:

- (a) dismiss an employee, or prejudice an employee in his or her employment, because the employee has assisted the Authority in connection with an inquiry; or
- (b) dismiss or threaten to dismiss an employee, or prejudice or threaten to prejudice an employee in his or her employment, because the employee proposes to assist the Authority in connection with an inquiry.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

(2) For the purposes of this section, a person shall be taken to assist the Authority in connection with an inquiry if, and only if, the person:

- (a) gives information, whether orally or in writing, or gives documents, to the Authority in connection with the inquiry; or

- (b) gives evidence, or produces documents, at the inquiry.

PART V - MISCELLANEOUS

Availability of reports etc. of Authority

28.(1) As soon as practicable after giving to the Minister a copy of a report under section 7 or 9, or giving to the Comptroller a notice under section 8, the Authority shall:

- (a) subject to subsection (2), make copies of the report, or notice, freely available to the public; or
- (b) cause to be published in the *Gazette* a statement informing the public of the existence of the report or notice and of the manner in which copies of the report or notice may be obtained.

(2) The Authority shall ensure that all matters that would, in the Authority's opinion, adversely affect the business or commercial interests of any person have been removed from the copies of reports and notices made available to the public.

Annual report

29.(1) The Authority shall, not later than 31 December in each year, prepare and give to the Minister a report on the Authority's activities during the period of 12 months that ended on the preceding 30 June.

(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister received the report.

Provision of resources to Authority

30.(1) The member shall arrange with the Minister for sufficient resources (including personnel) to be made available to the Authority to enable the Authority to perform its functions effectively.

(2) While a person is performing services for the Authority under such an arrangement, the person shall perform those services in accordance with the directions of the Authority.

Engagement of consultants

31.(1) The member may, on behalf of the Commonwealth, engage as consultants to the Authority persons having suitable qualifications and experience.

(2) The terms and conditions of engagement of the persons engaged under subsection (1) are such as are determined by the member.

Authority may supply information

32. Subject to section 33, the Authority may supply to a person information received by it under this Act.

Confidentiality

33.(1) The member, a person whose services are being made available to the Authority under section 30 or a person engaged as a consultant under section 31 shall not, except for the purposes of this Act, supply information to a person if the supplying of the information would constitute a breach of confidence.

(2) Subsection (1) does not apply to the supply of information to:

- (a) the Minister;
- (b) the Secretary to the Department;
- (c) an officer of the Department designated by the Secretary to the Department;
- (d) the Comptroller; or
- (e) an officer of the Australian Customs Service designated by the Comptroller.

Conduct by directors, servants or agents

34.(1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person other than a body corporate:

- (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or

- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.

(6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

Cessation of Act

35.(1) This Act shall cease to be in force on 31 August 2001.

(2) When this Act so ceases to be in force, it shall be taken, for the purposes of section 8 of the *Acts Interpretation Act 1901*, to have been repealed by an Act other than this Act.

Regulations

36. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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.