

# GENERAL AGREEMENT ON

## TARIFFS AND TRADE

RESTRICTED

ADP/1/Add.18/Rev.1/Suppl.3

SCM/1/Add.18/Rev.1/Suppl.3

15 May 1990

Special Distribution

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Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and  
Countervailing Measures

### INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

#### Legislation of Australia

##### Supplement

The following communication has been received from the Permanent Mission of Australia.

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I wish to advise that a legislative package has been enacted amending Australia's anti-dumping legislation.

Accordingly and in pursuance of the provisions of Article 16:6(b) of the Anti-Dumping Code and Article 19:5(b) of the Subsidies Code, I am forwarding herewith, for the information of interested Contracting Parties, one copy of the legislation approved by the Australian Parliament for the:

- Customs Legislation (Anti-Dumping) Amendment Act 1989
- Customs Tariff (Anti-Dumping) Amendment Act 1989.

The attached legislation should be read in conjunction with previous Australian anti-dumping legislation which was notified to Contracting Parties in ADP/1/Add.18/Rev.1/Suppl.2.



## Customs Tariff (Anti-Dumping) Amendment Act 1989

No. 173 of 1989

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**An Act to amend the *Customs Tariff (Anti-Dumping) Act 1975*, and for related purposes**

[Assented to 20 December 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**Short title etc.**

5     **1. (1)** This Act may be cited as the *Customs Tariff (Anti-Dumping) Amendment Act 1989*.

**(2)** In this Act, "Principal Act" means the *Customs Tariff (Anti-Dumping) Act 1975*.

**Commencement**

10    **2. (1)** Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

**(2)** Subject to subsection (3), the remaining provisions of this Act commence on a day to be fixed by Proclamation.

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(3) If the provisions referred to in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period.

**Repeal of sections 3 to 5A (inclusive) 5**

3. Sections 3 to 5A (inclusive) of the Principal Act are repealed.

**Dumping duties**

4. Section 8 of the Principal Act is amended:

- (a) by omitting subsections (1), (2), (2AA) and (2A);
- (b) by inserting in subsection (3) “, by virtue of a declaration under subsection 269TG (1) or (2) of the Customs Act,” after “applies”; 10
- (c) by omitting from subsection (5A) “his powers” and substituting “his or her powers”;
- (d) by omitting from subsection (5A) “paragraph (1) (b) or (2) (b)” and substituting “paragraph 269TG (1) (b) or (2) (b) of the Customs Act”. 15

**Third country dumping duties**

5. Section 9 of the Principal Act is amended:

- (a) by omitting subsections (1), (2) and (2A);
- (b) by inserting in subsection (3) “, by virtue of a declaration under subsection 269TH (1) or (2) of the Customs Act,” after “applies”; 20
- (c) by omitting from subsection (5A) “his powers” and substituting “his or her powers”;
- (d) by omitting from subsection (5A) “paragraph (1) (b) or (2) (b)” and substituting “paragraph 269TH (1) (b) or (2) (b) of the Customs Act”. 25

**Countervailing duties**

6. Section 10 of the Principal Act is amended:

- (a) by omitting subsections (1), (2), (2A), (2B), (2C), (2D) and (2E);
- (b) by inserting in subsection (3) “, by virtue of a declaration under subsection 269TJ (1), (2), (4), (5) or (6) of the Customs Act,” after “applies”; 30
- (c) by omitting from paragraph (4) (a) “subsection (1), (2) or (2B)” and substituting “a declaration under subsection 269TJ (1), (2) or (4) of the Customs Act”; 35
- (d) by omitting from paragraph (4) (b) “subsection (2C) or (2D)” and substituting “a declaration under subsection 269TJ (5) or (6) of the Customs Act”;
- (e) by omitting from subsection (5A) “his powers” and substituting “his or her powers”; 40

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- (f) by omitting from subsection (5A) "subsection (1) or (2)" and substituting "subsection 269TJ (1) or (2) of the Customs Act";
- (g) by omitting from subsection (5A) "paragraph (1) (b) or (2) (b)" and substituting "paragraph 269TJ (1) (b) or (2) (b) of that Act";
- 5 (h) by omitting subsections (7) and (7A) and substituting the following subsections:
- “(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.
- 10
- “(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 declaration 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.”;
- 15
- (j) by inserting in subsection (8) "or she" after "he";
- (k) by omitting from subsection (9) "by reason of his being satisfied" and substituting "because he or she is satisfied";
- 20
- (m) by omitting subsection (10).
- 25

**Third country countervailing duties**

7. Section 11 of the Principal Act is amended:

- (a) by omitting subsections (1) and (2);
- 30 (b) by inserting in subsection (3) " , by virtue of a declaration under subsection 269TK (1) or (2) of the Customs Act," after "applies";
- (c) by omitting from subsection (5A) "his powers" and substituting "his or her powers";
- (d) by omitting from subsection (5A) "paragraph (1) (b) or (2) (b)" and substituting "paragraph 269TK (1) (b) or (2) (b) of the Customs Act";
- 35 (e) by omitting subsection (7) and substituting the following subsection:
- “(7) Where the Minister has determined, under subsection 269TK (3) 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 269TK (1) or (2) 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.”;
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- (f) by inserting in subsection (8) "or she" after "he";
- (g) by omitting from subsection (9) "by reason of his being satisfied" and substituting "because he or she is satisfied";
- (h) by omitting subsection (10).

**Repeal of further provisions**

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8. Sections 11A, 12, 12A, 12B, 13, 17, 18, 19, 20 and 22 of the Principal Act are repealed.

**Transitional provisions**

9. (1) Any act or thing done, including, but without limiting the generality of the foregoing, any determination made, any notice given or published, or any undertaking given or accepted, under a provision of the *Customs Tariff (Anti-Dumping) Act 1975* that is repealed and re-enacted in similar form in a provision (in this subsection called the "corresponding provision") inserted in Part XVB of the *Customs Act 1901* has effect, on and after the day this section commences, for all purposes, as if it were an act or thing done under the corresponding provision. 10  
15

(2) Any delegation under section 19 of the *Customs Tariff (Anti-Dumping) Act 1975* of a power or function conferred on the Minister under a provision of that Act that is repealed and re-enacted in similar form in a provision (in this subsection called the "corresponding provision") inserted in Part XVB of the *Customs Act 1901*, being a delegation that is in force immediately before the day this section commences, continues to have effect, on and after that day, for all purposes, as if it were a delegation under section 9 of the *Customs Act 1901* of that power or function as conferred on the Minister by the corresponding provision. 20  
25

(3) A delegation under section 14 of the *Customs Administration Act 1985* of the power conferred on the Comptroller-General of Customs under subsection 17 (2) of the *Customs Tariff (Anti-Dumping) Act 1975* that is in force immediately before the day this section commences continues to have effect, on and after that day, for all purposes, as if it were a delegation of the power conferred upon the Comptroller-General of Customs under subsection 269TAH (2) of the *Customs Act 1901*. 30

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**NOTE**

- 1. No. 169, 1973, as amended. For previous amendments, see No. 91, 1976; No. 1, 1978; No. 74, 1981; No. 80, 1982; Nos. 21 and 75, 1983; Nos. 2, 63 and 72, 1984; No. 65, 1985; No. 76, 1987; and No. 69, 1988.

[Minister's second reading speech made in—  
*House of Representatives on 30 October 1989*  
*Senate on 14 December 1989*]



## Customs Legislation (Anti-Dumping) Act 1989

No. 174 of 1989

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## Customs Legislation (Anti-Dumping) Act 1989

No. 174 of 1989

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**An Act to amend the *Customs Act 1901* and the *Anti-Dumping Authority Act 1988*, and for related purposes**

[Assented to 21 December 1989]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### PART 1—PRELIMINARY

#### Short title

- 5       1. This Act may be cited as the *Customs Legislation (Anti-Dumping) Act 1989*.

#### Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- 10       (2) The remaining provisions of this Act commence on the day on which the provisions referred to in subsection 2 (2) of the *Customs Tariff (Anti-Dumping) Amendment Act 1989* commence.

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**PART 2—AMENDMENTS OF THE ANTI-DUMPING AUTHORITY  
ACT 1988**

**Principal Act**

3. In this Part, "Principal Act" means the *Anti-Dumping Authority Act 1988*. 5

**Interpretation**

4. Section 3 of the Principal Act is amended:

- (a) by adding at the end of paragraph (b) of the definition of "anti-dumping matter" in subsection (1) "or of Part XVB of the *Customs Act 1901*"; 10
- (b) by omitting from subsection (1) the definitions of "countervailing duty notice" and "dumping duty notice" and substituting the following definitions:
  - "'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*;" 15
  - "'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*;"
- (c) by omitting from the definition of "like goods" in subsection (1) "the Anti-Dumping Act" and substituting "Part XVB of the *Customs Act 1901*". 20

**Functions**

5. Section 5 of the Principal Act is amended:

- (a) by omitting "subsections 8 (2A) or 10 (2A) of the Anti-Dumping Act" and substituting "subsection 269TG (4) or 269TJ (3) of the *Customs Act 1901*"; 25
- (b) by omitting "section 20 of the Anti-Dumping Act revoke a notice under that Act or release a person from an undertaking given under that Act" and substituting "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". 30

**Authority to make recommendations on publication of dumping duty notices etc.** 35

6. Section 7 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (d) "under the Anti-Dumping Act";
- (b) by omitting from paragraph (1) (e) "subsection 8 (2A) or 10 (2A) of that Act" and substituting "subsections 269TG (4) or 269TJ (3) of the *Customs Act 1901*"; 40
- (c) by omitting from subsection (3) " , under section 20 of the Anti-Dumping Act, revoke a notice under that Act or release a person

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- 5 from an undertaking given under that Act” and substitute “revoke a notice under subsection 8 (5), 9 (5), 10 (5) or 11 (5) 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”;
- (d) by inserting in subparagraph (4) (b) (i) “or a notice under Part XVB of the *Customs Act 1901*” after “a notice under the Anti-Dumping Act”;
- 10 (e) by omitting from subparagraph (4) (b) (ii) “an undertaking given under that Act” and substituting “an undertaking given under Part XVB of the *Customs Act 1901*”.

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

- 15 7. Section 11 of the Principal Act is amended:
- (a) by omitting from subsection (1) “under the Anti-Dumping Act”;
- (b) by omitting from subsection (1) “, under that Act,”;
- (c) by omitting from subsection (3) “section 8, 9, 10 or 11 of the Anti-Dumping Act” and substituting “the Anti-Dumping Act or of Part
- 20 XVB of the *Customs Act 1901*”.

**PART 3—AMENDMENTS OF THE CUSTOMS ACT 1901**

**Principal Act**

8. In this Part, “Principal Act” means the *Customs Act 1901*.

**Delegation**

- 25 9. Section 9 of the Principal Act is amended by adding at the end the following subsection.

30 “(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 (5) or 11 (5) of the Anti-Dumping Act.”.

**Right to require security**

10. Section 42 of the Principal Act is amended by inserting after subsection (1B) the following subsection:
- 35 “(1C) Where an undertaking is given and accepted under subsection 269TG (4) or 269TJ (3) in respect of goods to which an application under section 269TB relates and that undertaking is subsequently breached, then, despite subsection (1B), the Customs may forthwith require and take securities

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in respect of any duty that may be payable under the *Customs Tariff (Anti-Dumping) Act 1975* on the goods the subject of the application or on like goods imported into Australia before that time even though the Comptroller has not made a preliminary finding of the kind referred to in paragraph (1B) (a) in respect of the goods the subject of the application.” 5

**Insertion of new Division heading**

11. Before section 269T of the Principal Act the following Division heading is inserted in Part XVB:

*“Division 1—Preliminary”.*

**Interpretation** 10

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

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

“‘determination’ means a determination in writing;

‘direction’ means a direction in writing;

‘importer’, in relation to goods exported to Australia, means: 15

(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 20 25

(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 30 35

(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;”;

(b) by inserting after subsection (2) the following subsections: 40

“(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, bounty, reduction or remission of freight or other

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financial assistance in relation to 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.

5           “(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.”

10           13. After section 269T of the Principal Act the following sections are inserted:

**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:

- 15           (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
- 20           (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:

- 25           (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)
- 30           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.

35

“(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
- 40           (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

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(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 5
  - (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 10
  - (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 15
- (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 20
- (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: 25

- (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; 30

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 35
- (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 40
  - (iii) the goods are subsequently sold by the importer, in the

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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

- 5 (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:

- 10 (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  
15 (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.

20 “(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.

25 “(4) For the purposes of subsection (3), 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**

30 “259TAC. (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  
35 goods.

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

- (a) is satisfied that:  
40 (i) by reason of the absence of sales that would be relevant for the purpose of determining a price under subsection (1); or  
(ii) by reason that the situation in the relevant market is such that sales in that market that would otherwise be relevant for the purpose of determining a price under subsection (1) are not suitable for use in determining such a price;

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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); 5

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

- (c) except where paragraph (d) applies, the sum of: 10

(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: 15

(A) such amounts as the Minister determines would be the delivery charges and other costs necessarily incurred in that sale; and

- (B) subject to subsection (13), an amount calculated in accordance with such rate, if any, as the Minister determines would be the rate of profit on that sale; or 20

- (d) where the Minister so directs, the price determined by the Minister to be representative of the price paid for like goods sold in the ordinary course of trade in the country of export for export to a third country, being sales that are arms length transactions. 25

“(3) Where the Minister gives a direction under paragraph (2) (d) in relation to the ascertainment of the normal value of goods for the purposes of this Part, the price determined by the Minister for the purposes of that paragraph: 30

- (a) is to be a price that, by reason of the quantity of goods, being like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and 35

- (b) may be the highest price paid for like goods sold in the ordinary course of trade in the country of export for export to the third country, being sales that are arms length transactions.

“(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: 40

- (a) has a monopoly, or substantial monopoly, of the trade of the country; and

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(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:

- 5
- (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;
- 10
- (d) a value equal to the price determined by the Minister to be representative of the price of like goods produced or manufactured in a country determined by the Minister and sold for export from that country to another country in the ordinary course of trade, being sales that are arms length transactions;
- 15
- (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:
- 20
- (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 are the delivery charges and other costs necessarily incurred in selling the like goods;
- 25
- (iii) an amount calculated in accordance with such rate, if any, as the Minister determines is to be regarded as the rate of profit on the sale of the like goods;
- (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.
- 30

“(5) Where the normal value of goods for the purposes of this Part is a value ascertained in accordance with paragraph (4) (d), the price determined by the Minister for the purposes of that paragraph:

- 35
- (a) is to be a price that, by reason of the quantity of goods, being like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions, for which the price has been paid, is representative of the price paid in such sales of those goods; and
- 40
- (b) may be the highest price paid for like goods produced or manufactured in the country determined by the Minister and sold for export from that country to the other country in the ordinary course of trade, being sales that are arms length transactions.

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“(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. 5

“(7) For the purposes of subsection (6), 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: 10

- (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. 15

“(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. 20

“(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; 25

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: 30

- (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. 35

“(12) Where the Minister is satisfied, in relation to goods exported to Australia, that:

- (a) the price paid for like goods:
  - (i) sold for home consumption in the country of export in sales that are arms length transactions; or 40
  - (ii) sold in the country of export for export to a third country in sales that are arms length transactions;

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is, and has been for an extended period of time and in respect of a substantial quantity of goods, less than the sum of:

- 5 (iii) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
- (iv) such other amounts as the Minister determines to be the costs necessarily incurred in the sale of the goods by the seller of the goods; and
- 10 (b) it is likely that the seller of the goods referred to in paragraph (a) will not be able to fully recover the amounts referred to in subparagraphs (a) (iii) and (iv) within a reasonable period of time; the price so paid for the goods referred to in paragraph (a) is to be taken not to have been paid in the ordinary course of trade.

15 “(13) Where, because of the operation of subsection (12), 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 sub-subparagraph (2) (c) (ii) (B).

**Minister may re-ascertain certain normal values**

20 “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

25 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.

30 **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, by reason of any circumstances in relation to the exportation of

35 goods to Australia from another country (in this subsection called the ‘country of export’), the Minister may, without limiting the generality of that section, have regard to:

- 40 (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

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- (c) any change or likely change, during a particular period, in the proportion that:
- (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
  - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;
- bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
- (e) the difference between:
- (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
  - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
- (g) 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) in a case where 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 a producer or manufacturer in a third country has been or is being caused or is threatened or would or might have been caused by reason of any circumstances in relation to the exportation of goods to Australia from another country (in this subsection called the ‘country of export’), the Minister may, without limiting the generality of that section, have regard to:
- (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

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- (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
- 5 (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 by the producer or manufacturer in the
- 10 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
- 15 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 by the
- 20 producer or manufacturer 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 by the producer or manufacturer in the
- 25 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.
- 30
- “(3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to a producer or manufacturer in a third country, in relation to goods of a particular kind exported to Australia is a reference to:
- 35 (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer; and
- (b) the degree of utilization of the capacity of the industry, producer or manufacturer to produce or manufacture goods of that kind, or like goods; and
- 40 (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry or by the producer or manufacturer:
- 45 (i) for which there are sales or forward orders; or

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- (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 or by the producer or manufacturer; and
- (e) the level of profits earned in the industry, or by the producer or manufacturer, that are attributable to the production or manufacture of goods of that kind, or like goods; and 5
- (f) the level of return on investment in the industry or in the business of the producer or manufacturer; and
- (g) cash flow in the industry or in the business of the producer or manufacturer; and 10
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry or by the producer or manufacturer in relation to the production or manufacture of goods of that kind, or like goods; and 15
- (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 or by the producer or manufacturer; and
- (k) the ability of persons engaged in the industry, or of the producer or manufacturer, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and 20
- (m) investment in the industry or in the business of the producer or manufacturer.
- Amount of subsidy may be determined by Minister for purposes of section 269TJ or 269TK 25**
- “269TAF. Where the Minister is satisfied that it is inappropriate to ascertain the amount of a subsidy, bounty, reduction or remission of freight or other financial assistance referred to in subsection 269TJ (1) or (2) or 269TK (1) or (2) except in accordance with this section by reason that the Government of the country of export: 30
- (a) has a monopoly, or substantial monopoly, of the trade of the country; or
- (b) determines or substantially influences the domestic price of goods in that country; 35
- the Minister may, for the purposes of section 269TJ or 269TK, as the case may be, determine the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance, as the case may be, on the basis that the normal value of the goods is such value as is ascertained in accordance with subsection 269TAC (4). 40
- Freight less than normal freight**
- “269TAG. (1) Where the Minister is satisfied that, by reason of any circumstances, including the granting of rebates, refunds or other allowances, goods exported to Australia have been carried, whether within the country

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of export for the purpose of exporting the goods to Australia or from the country of export to Australia or both, freight free, or the amount of freight paid or payable in respect of the carriage of the goods is less than the normal freight in relation to the goods:

- 5 (a) the Minister is to be taken, for the purposes of section 269TJ or 269TK, to be satisfied that a reduction of freight has been granted upon the carriage of the goods; and
- 10 (b) where a special duty of Customs imposed by section 10 or 11 of the Anti-Dumping Act is chargeable on goods as to which the Minister is so satisfied, the Minister is to be taken, for the purposes of subsection 269TJ (8) or 269TK (3), to be satisfied that the amount of the reduction of freight that has been granted upon the carriage of the goods is an amount equal to:
- 15 (i) in the case of goods carried freight free—the amount of the normal freight in relation to the goods; and
- (ii) in the case of other goods—the amount by which the normal freight in relation to the goods exceeds the amount or the net amount of the freight paid or payable in respect of the carriage of the goods.

20 “(2) In this section:

‘normal freight’, in relation to goods exported to Australia, means:

- 25 (a) the amount of freight that would have been payable in respect of the carriage of the goods within the country of export for the purpose of exporting the goods from that country to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the time of that carriage, in respect of the carriage of like goods, and to any other matter that the Minister considers relevant; or
- 30 (b) the amount of freight that would have been payable in respect of the carriage of the goods from the country of export to Australia if the rate of freight applicable to that carriage were a rate determined by the Minister to be the appropriate rate in respect of that carriage having regard to the ruling rates of freight (if any), at the date of exportation of the goods, in respect of the carriage of like goods by sea or, if like goods are regularly carried by aircraft, by aircraft, and to any other matter that the Minister considers relevant;
- 35 or
- 40 (c) the sum of the amount of freight referred to in paragraph (a) and the amount of freight referred to in paragraph (b);
- as the case may be.

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**Ascertainment of equivalent amount in Australian currency**

"269TAH. (1) For the purposes of this Part, the equivalent amount in Australian currency of an amount in a currency other than Australian currency is to be ascertained in accordance with a fair rate of exchange at the appropriate date. 5

"(2) For the purpose of this section, the Comptroller may, where he or she considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, a means of ascertaining a rate that is to be deemed to be, or to have been, a fair rate of exchange in relation to a currency: 10

(a) on a date, or during a period, preceding the date of publication of the notice; or

(b) from and including the date of publication of the notice, or an earlier date specified in the notice, until the revocation of the notice.

"(3) The rate of exchange ascertained in relation to a currency under subsection (2) is, for the purpose of calculating the amount of duty payable on any goods exported on the date or during the period to which the rate so specified applies, the rate of exchange that applies for the purpose of subsection (1) in respect of the currency specified in the notice. 15

**Revocation of notices** 20

"269TAJ. (1) The Minister may, by notice published in the *Gazette*, 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 notice published in the *Gazette*, 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. 25

"(3) The Minister may, by notice in writing, release or partly release a person from an undertaking entered into under this Part. 30

"(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 on which the notice was signed by the Minister. 35

"(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. 40

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5     “(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.”.

14. After section 269TA of the Principal Act the following Division heading is inserted:

*“Division 2—Consideration of anti-dumping matters by the Comptroller”.*

**Consideration of application**

10     15. Section 269TC of the Principal Act is amended:

- (a) by inserting after paragraph (1) (a) “or”;
- (b) by omitting from paragraph (1) (b) “and” and substituting “or”;
- (c) by inserting after paragraph (2) (a) “or”;
- (d) by omitting from paragraph (2) (b) “and” substituting “or”.

15     16. After section 269TF of the Principal Act the following Division heading and sections are inserted:

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

**Dumping duties**

20     “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:

25         (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

30         (ii) in a case where security has been taken under section 42 in respect of any 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 notice published in the *Gazette*, declare that section 8 of that Act applies to those goods.

35     “(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
- 40     the normal value of the goods; and

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- (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 notice published in the *Gazette* (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: 5

- (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 10  
(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 15  
(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 shall include a statement of the amount that the Minister has ascertained is or would be the normal value of the goods to which the declaration relates at the time of publication of the notice unless, in the opinion of the Minister, the inclusion of that statement would adversely affect the business or commercial interests of any person. 20

“(4) Where the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to like goods, the Minister may: 25

- (a) give notice in writing to the exporter stating that:  
(i) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with paragraph (b); and 30  
(ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and
- (b) whether or not a notice has been given to the exporter in accordance with paragraph (a), suspend indefinitely his or her consideration of the export of that consignment if he or she is given and accepts an undertaking by the exporter, in terms that are satisfactory to the Minister, that the exporter will so conduct future export trade to Australia in like goods as to avoid causing or threatening material injury to an Australian industry producing like goods or hindering the establishment of such an Australian industry. 35 40

“(5) Where the export of a consignment of goods to Australia has been under consideration by the Minister as referred to in subsection (4) and the Minister accepts an undertaking under that subsection in respect of like

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goods, the Minister must, as soon as practicable after accepting that undertaking, publish in the *Gazette* particulars of:

- (a) the goods in respect of which the undertaking was accepted; and
- 5 (b) the price below which, in accordance with the terms of the undertaking, the goods will not be sold in Australia;

unless, in the opinion of the Minister, the publication of those particulars would adversely affect the business or commercial interests of any person.

**Third country dumping duties**

10 "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:
  - 15 (i) material injury to a producer or manufacturer in a third country 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 duty that may become payable on the goods under section 9 of the Anti-Dumping Act—material injury to a producer or manufacturer in a third country of like goods would or might have been caused if the security had not been taken;

25 the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette*, 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:

- 30 (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
- 35 (b) because of that, material injury to a producer or manufacturer in a third country of like goods has been or is being caused or is threatened;

40 the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette* (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



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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. 5

“(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; 10

the notice shall include a statement of the amount that the Minister has ascertained is or would be the normal value of the goods to which the declaration relates at the time of publication of the notice unless, in the opinion of the Minister, the inclusion of that statement would adversely affect the business or commercial interests of any person. 15

**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) in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of those goods a subsidy, bounty, reduction or remission of freight or other financial assistance; and 20
- (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 25
  - (ii) in a case where security has been taken under section 42 in respect of any 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; 30

the Minister may, by notice published in the *Gazette*, declare that section 10 of that Act applies to those goods. 35

“(2) Where the Minister is satisfied, as to goods of any kind that:

- (a) there has been paid or granted, directly or indirectly upon the production, manufacture, carriage or export of like goods that have already been exported to Australia, and there may be paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of like goods that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and 40

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- (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;
- 5 the Minister may, by notice published in the *Gazette* (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:
- 10 (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) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.
- 15 “(3) Where the export of a consignment of goods to Australia has been under consideration by the Minister with a view to determining whether or not a declaration should be made under this section in relation to the goods in the consignment or to like goods, the Minister may:
- 20 (a) give notice in writing 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 stating that:
- (i) the Minister is of the opinion that it would be appropriate for the Government or exporter to whom the notice is given to give an undertaking in accordance with paragraph (b); and
- 25 (ii) an undertaking in the terms set out in the notice may be satisfactory to the Minister; and
- (b) whether or not a notice has been given to the Government of the country of origin, or of the country of export, or to the exporter in accordance with paragraph (a), suspend indefinitely his or her
- 30 consideration of the export of that consignment if he or she is given and accepts:
- (i) an undertaking by the Government of the country of origin, or of the country of export, of the goods in the consignment, in terms that are satisfactory to the Minister, that that
- 35 Government will, in relation to any future export trade to Australia in like goods, review any financial assistance by that Government and make any changes that may be found to be necessary to avoid causing or threatening material injury to an Australian industry producing like goods or
- 40 hindering the establishment of such an Australian industry; or
- (ii) an undertaking by the exporter of the goods in the consignment, in terms that are satisfactory to the Minister, that the exporter will so conduct his or her future export
- 45 trade to Australia in like goods as to avoid causing or threatening material injury to an Australian industry

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producing like goods or hindering the establishment of such an Australian industry.

“(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 5
- (b) those duties are imposed because it is alleged that there is paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of goods of that kind a subsidy, bounty, reduction or remission of freight or other financial assistance; and 10
- (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 subsidy, bounty, reduction or remission of freight or other financial assistance; 15

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: 20

- (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) upon the production, manufacture, carriage or export of which there is paid or granted, directly or indirectly, a subsidy, bounty, reduction or remission of freight or other financial assistance. 25

“(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 30
- (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 35
  - (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 40
- (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 45

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- 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;
- 5 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, 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
- 10 (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.
- 15 “(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
- 20 (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
- 25 (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;
- 30 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
- 35 (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.
- 40 “(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 payment or grant of a subsidy, bounty, reduction or remission of freight or other financial assistance on the production, manufacture, carriage or export
- 45 of the goods.

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“(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. 5

“(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

“(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. 15

**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) in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of those goods a subsidy, bounty, reduction or remission of freight or other financial assistance; and 20

(b) because of that:

(i) material injury to a producer or manufacturer in a third country of like goods has been or is being caused or is being threatened; or 25

(ii) in a case where security has been taken under section 42 in respect of any duty that may become payable on the goods under this section—material injury to a producer or manufacturer in a third country of like goods would or might have been caused if the security had not been taken; 30

the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette*, declare that section 11 of the Anti-Dumping Act applies to those goods. 35

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

(a) there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of like goods that have already been exported to Australia, and there may be paid or granted directly or indirectly, upon the production, manufacture, carriage or export of like goods that may be exported to Australia in the future, a subsidy, bounty, reduction or remission of freight or other financial assistance; and 40

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(b) by reason thereof material injury to a producer or manufacturer in a third country of like goods has been or is being caused or is being threatened;

5 the Minister, if requested by the Government of the third country so to do, may, by notice published in the *Gazette* (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:

10 (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) on the production, manufacture, carriage or export of which a subsidy, bounty, reduction or remission of freight or other financial assistance is paid or granted.

15 “(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.

20 “(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.

**Minister to give notice of decision not to impose duty**

25 “269TL. 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 shall, by notice published in  
30 the *Gazette*, state that he or she has so decided.

**Period during which certain notices and undertakings to remain in force**

35 “269TM. (1) Where a notice is published after the commencement of this section under a relevant notification provision in respect of goods of a particular kind, that notice expires, unless sooner revoked:

(a) if, at the time of publication of the first-mentioned notice, no previous notice relating to like goods is in force under a relevant notification provision and no previous undertaking relating to like goods is in force under a relevant undertaking provision—3 years after the date on which the first-mentioned notice is published; and  
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(b) if, at the time of publication of the first-mentioned notice, a previous notice relating to like goods is in force under the relevant notification provision or a previous undertaking relating to like goods is in force under a relevant undertaking provision—3 years after the date on

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which that notice or undertaking, or, if there is more than one previous notice or undertaking, the first such notice or undertaking, was published or entered into, as the case requires.

“(2) Where an undertaking is entered into after the commencement of this section under a relevant undertaking provision in respect of goods of a particular kind, that undertaking expires, unless provision is made for its earlier expiration: 5

(a) if, at the time when the first-mentioned undertaking was entered into, no previous undertaking relating to like goods is in force under a relevant undertaking provision and no previous notice relating to like goods is in force under a relevant notification provision—3 years after the date that first-mentioned undertaking was entered into; and 10

(b) if, at the time when that first-mentioned undertaking is entered into, a previous undertaking relating to like goods is in force under a relevant undertaking provision or a previous notice relating to like goods is in force under a relevant notification provision—3 years after the date on which that previous undertaking or notice, or, if there is more than one such undertaking or notice, the first such undertaking or notice, was entered into or published, as the case requires. 15 20

“(3) In subsections (1) and (2):

(a) a reference to a previous notice in relation to particular goods shall be taken to include a reference to a notice published before the commencement of this section; and 25

(b) a reference to a previous undertaking shall be taken to include a reference to an undertaking entered into before the commencement of this section.

“(4) A notice originally published in the *Gazette* on or after 1 March 1986 and before 1 September 1988 under the Anti-Dumping Act, being a notice that is to be treated, on and after the commencement of section 9 of the *Customs Tariff (Anti-Dumping) Amendment Act 1989*, by virtue of the operation of that section, as having been published under a relevant notification provision, is to be taken to have expired, unless sooner revoked, 3 years after the date of its original publication. 30 35

“(5) An undertaking originally entered into on or after 1 March 1986 and before 1 September 1988 under the Anti-Dumping Act, being an undertaking that is to be treated, on and after the commencement of section 9 of the *Customs Tariff (Anti-Dumping) Amendment Act 1989*, by virtue of the operation of that section, as having been entered into under a relevant undertaking provision, is to be taken to have expired, unless sooner released, 3 years after it was originally entered into. 40

“(6) Nothing in this section shall be taken to imply that the Minister may not publish a notice under a relevant notification provision in respect

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of goods of a particular kind or enter into an undertaking in respect of goods of a particular kind upon the expiration of all previous notices published under a relevant notification provision in respect of like goods and of all previous undertakings entered into under a relevant undertaking provision in respect of like goods.

“(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).

10 **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 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 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 Australian industry; or

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- (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. 5

“(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 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 10
- (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 that, in the country of origin or the country of export of the goods, there has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods a subsidy, bounty, reduction or remission of freight or other financial assistance (including financial assistance of the kind referred to in subsection 269TJ (10)). 15  
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“(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 25
- (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 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; 30

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; 35
- (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. 40

“(7) Where:

- (a) the Minister is satisfied that an act or omission of the Government

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of a country that has given an undertaking in accordance with subsection 269TJ (3) is a violation of that undertaking; and

- 5 (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 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:

- 10 (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:  
15 (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:

- 20 (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TJ (3) is a violation of that undertaking; and  
(b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any duty that might  
25 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:

- 30 (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  
35 (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**

40 “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.”

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**Inquiries in relation to undertakings**

**17. Section 269U of the Principal Act is amended:**

- (a) by omitting from paragraph (1) (a) "8 (2A) (a) of the Anti-Dumping Act" and substituting "269TG (4) (a)";
- (b) by omitting from paragraph (1) (b) "10 (2A) (a) of the Anti-Dumping Act" and substituting "269TJ (3) (a)".

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**NOTES**

1. No. 72, 1988.
2. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; and Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66 and 76, 1988; and Nos. 23, 24, 78 and 108, 1989.

[*Minister's second reading speech made in—  
House of Representatives on 5 October 1989  
Senate on 31 October 1989*]