On the instruction of the Australian Government, I have the honour to inform you 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, the following documents:

One copy of the legislation approved by the Australian Parliament for each of the following:
- Anti-Dumping Authority Act 1988
- Customs legislation (Anti-Dumping) Amendment Act 1988
- Customs Tariff (Anti-Dumping) Amendment Act 1988

Also attached are copies of explanatory memoranda for each of the following:
- Anti-Dumping Authority Bill 1988
- Customs legislation (Anti-Dumping Amendments) Bill 1988

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/Suppl.2.
These three Acts form a legislative package, amending Australia's anti-dumping legislation by:

- establishing an Anti-Dumping Authority to advise the Minister as to whether dumping or countervailing duties should be imposed on specific imports and to review and make reports to the Government on anti-dumping matters;

- amending the Customs Tariff (Anti-Dumping) Act 1975, so as to restrict the duration of dumping notices and undertakings made under the Act to a maximum of three years, and to clarify various technical provisions of the Act;

- amending the Customs Act 1901 by prescribing the manner in which, the Australian Customs Service is to conduct the preliminary investigation of dumping complaints; and

- amending the Industries Assistance Commission Act 1973 to remove that body as a body of review of dumping matters. That function will now be performed by the Anti-Dumping Authority.


Effective anti-dumping and countervailing arrangements are necessary to protect Australian industry from clearly unfair trading practices. This is in accordance with Australia's rights and obligations as a signatory to the General Agreement on Tariffs and Trade and the GATT "Codes" concerning anti-dumping measures and countervailing duties. Consistent with the GATT Codes however, these actions need to be balanced between providing a means for effective relief from the disruptive effects that dumped or subsidized goods may have on domestic producers and ensuring that the measures do not constitute an unjustifiable impediment to international trade.

The functions of each Act can be briefly described as follows:

**Anti-Dumping Authority Act 1988**

This establishes an independent authority, which will recommend to the Minister whether grounds exist as to whether definitive dumping or countervailing duties should be imposed, and to provide the Minister with advice on anti-dumping issues in general.

Anti-dumping decisions require judgements to be made involving a mix of economic and commercial considerations. The Government considers that these judgements can best be made by a small independent statutory authority whose staff will include commercial and economic specialists. The Government believes that the authority will bring a broader perspective
to the determination of such issues as material injury and causal link. The sensitivity of dumping complaints also requires a body operating at arm's length from the day to day administration of industry assistance by the Department of Industry, Technology and Commerce and the Australian Customs Service.

Accordingly, the Anti-Dumping Authority will:

- advise the Minister as to whether or not dumping or countervailing duties should be imposed on goods - clause 7;

- recommend whether the Minister should revoke a notice issued under the Customs Tariff (Anti-Dumping) Act 1975, or release exporters from undertakings made pursuant to the Act - clause 7;

- review preliminary anti-dumping decisions of the Comptroller - clause 8; and

- prepare and give reports to the Minister on anti-dumping matters - clause 9.

In exercising these responsibilities, clause 10 requires the Authority to have regard to the Government's intention that anti-dumping duties are not used as a substitute means of providing assistance to import competing industry in Australia, nor to shield industry from the need to adjust to changing economic conditions. The Authority is also to have regard to Australia's obligations under the GATT Codes.

Consistent with its intention that anti-dumping and countervailing measures do not become a substitute form of ongoing assistance, the Government has also decided that anti-dumping and countervailing measures will lapse after three years. This means that all measures in respect of a particular commodity will expire at the same three-year time limit, irrespective of the duration of measures relating to individual countries of export. The sunset provision will also apply to voluntary undertakings which have been given by exporters or Governments of the exporting countries so as to resolve satisfactorily dumping or countervailing complaints. The sunset clause will not prevent industry from seeking to renew anti-dumping or countervailing action. It will mean, however, that injury and other aspects required to justify such action will be fully re-tested after three years of continuous application before anti-dumping or countervailing measures can be reimposed.

Clause 9 of the Act permits the Government or the Authority to initiate anti-dumping enquiries where facts produced by interests indirectly concerned with a dumping issue can justify such action. Clause 29 requires an annual report of the Authority to be tabled in the Parliament. The report will include coverage of the Authority's operations during the year, the operation and development of guidelines, the Authority's approach to its assessments and important issues that have arisen in relation to anti-dumping action generally. This will introduce more openness to the consideration of anti-dumping issues.
Customs legislation (Anti-Dumping Amendments) Act 1988

This Act establishes the procedures to be adopted by the Australian Customs Service, which will be to examine each dumping complaint and conduct preliminary investigations, including overseas enquiries. The result of these investigations will then form the basis of information upon which the Anti-Dumping Authority may commence its enquiry. The Act contains specific provisions to make it clear than an application for imposition of dumping or countervailing duties may be made by any person on behalf of the relevant Australian industry affected or likely to be affected by the dumping or subsidization (Section 269 TB refers).

It will also be possible for complaints to be made before allegedly dumped or subsidized goods have arrived in Australia where there is adequate knowledge that imports of dumped or subsidized goods are to arrive in volumes which will cause injury to an Australian industry. The Act also imposes, for the first time, statutory time limits within which the Customs Service must determine its investigations. Where a person complains that an act of injurious dumping or subsidization has occurred or is likely to occur, the Act provides that the Customs Service will have a maximum of 55 days to determine whether the facts alleged in the application constitute sufficient prima facie evidence to warrant commencement of an investigation. If a prima facie case is established, the Customs Service then has a maximum of 120 days to make a preliminary finding as to whether dumping or countervailing duties should be imposed.

Where such preliminary findings are positive, the Comptroller-General of Customs may decide to impose securities as provisional measures in respect of any dumping or countervailing duty that may become payable, and he then must refer the matter to the Anti-Dumping Authority within seven days for its independent examination and report to the Minister. It should also be noted that decisions by the Comptroller-General of Customs that no prima facie case has been established, or a preliminary finding that duties should not be imposed, are subject to merit review by the independent Anti-Dumping Authority.

Customs Tariff (Anti-Dumping) Amendment Act 1988

This Act amends the Customs Tariff (Anti-Dumping) Act 1975 by inserting a statutory definition of "like goods" as contained in Article 2.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, (Anti-Dumping Code). Clause 9 to 12 of the Act provides for the publication of the normal value of goods. Clause 13 provides that duties and undertakings will be current only for a period of three years, adopting the Gruen recommendation that dumping measures and the like should remain current only for a limited period. An industry which has benefited from short term relief under this legislation must in future rejustify the necessity for continued relief.
The Act finally makes various amendments to existing provisions to ensure that relief under the Act is available only if dumping or subsidization damages an Australian industry producing like goods to the goods that have been dumped; not Australian industry generally. It should be noted, however, that there has been no change to Section 13 of the Act, relating to the retrospective application of dumping duty on imported goods following the publication of a dumping notice.

New Dumping Investigation Procedures

Under the new procedures, all new dumping and subsidy complaints received by the Australian Customs Service (ACS) from 6 June 1988 will be initially examined for adequacy of documentation within 15 days of receipt and prima facie evidence will be assessed within 55 days of receipt. An inadequately documented complaint will be rejected with a statement of reasons for its rejection.

Once a complaint has been accepted, the ACS will formally notify initiation of investigations and will reach a preliminary finding within a maximum of 120 days from the date of initiation.

The ACS will then carry out a full investigation of the dumping subsidy complaint, claimed injury and any causal link before reaching its preliminary finding. This will include verification overseas of information supplied by foreign manufacturers and exporters and discussions with overseas governments.

The investigation following a positive preliminary finding will be a review of the situation in the light of further submissions received from interested parties. This second stage will be the responsibility of the Dumping Authority following its establishment.

The first stage of the investigation process will be carried out within a maximum of 120 days and the second within a further 120 days. Present guidelines are 55 to 120 days respectively.

The Anti-Dumping Authority

The role of the Anti-Dumping Authority when established will be to recommend to the Minister whether anti-dumping or countervailing action should be taken. It is also to develop guidelines, in particular relating to material injury, causal link and the use of sub-section 5(9) of the Customs Tariff (Anti-Dumping) Act 1975. In coming to conclusions on particular cases, it will rely on factual information provided by the ACS which will continue to receive dumping/subsidy complaints and carry out enquiries into normal values, export prices and injury caused to an industry.

The revised ACS Dumping and Subsidization Manual has not been issued at this time. A copy of this revised manual will be forwarded when it becomes available.
Anti-Dumping Authority Act 1988

No. 72 of 1988

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Anti-Dumping Authority Act 1988

No. 72 of 1988

An Act to establish an Anti-Dumping Authority, and for related purposes

[Assented to 24 June 1988]

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

PART I—PRELIMINARY

Short title

5 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:
10 “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;

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

"Comptroller" means the Comptroller-General of Customs;

"countervailing duty notice" means a notice published by the Minister under subsection 10 (1) or (2) or 11 (1) or (2) of the Anti-Dumping Act;

"dumping duty notice" means a notice published by the Minister under subsection 8 (1) or (2) or 9 (1) or (2) of the Anti-Dumping Act;

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

"like goods", in relation to goods under consideration, has the same meaning as it has for the purposes of the Anti-Dumping Act;

"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.

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

Establishment

4. An Anti-Dumping Authority is established.
Anti-Dumping Authority No. 72, 1988

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 8 (2A) or 10 (2A) of the Anti-Dumping Act;

(b) to recommend to the Minister under section 7 whether the Minister should, under section 20 of the Anti-Dumping Act, revoke a notice under that Act or release a person from an undertaking given under that Act;

(c) to review under section 8 negative prima facie decisions and negative preliminary findings; 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 to 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 under the Anti-Dumping Act;
(e) recommending (where applicable) whether the Minister ought to give to the exporter of the goods a notice under subsection 8 (2A) or 10 (2A) of that Act; 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, under section 20 of the Anti-Dumping Act, revoke a notice under that Act or release a person from an undertaking given under that Act, 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) shall:

(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—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 that Act—the person who gave the undertaking.

(5) Where notice is given under section 23 of an inquiry that is to be held for the purpose of giving to the Minister a report under this section, the Authority shall in that notice, and by any other means it considers
appropriate in the circumstances, invite submissions from the public on matters relevant to the recommendations that might be made in the report.

(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 40 days of the issuing by the Authority of the last invitation for submissions from the public, but may disregard any submissions received more than 40 days after the issuing of that last invitation.

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.
Anti-Dumping Authority No. 72, 1988

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 under the Anti-Dumping Act, the Authority shall determine the matter in like manner as if it was the Minister and having regard to the same considerations as the considerations to which the Minister would be required, under that Act, 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 section 8, 9, 10 or 11 of the Anti-Dumping Act.
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 reappointment.

(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.
Anti-Dumping Authority No. 72, 1988

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. The Minister may grant to the member leave of absence on such terms and conditions as to remuneration or otherwise as the Minister determines.

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;
Anti-Dumping Authority No. 72, 1988

(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.

(7) Where the member is an eligible employee for the purposes of the Superannuation Act 1976 and is removed from office under subsection (5) on the ground of physical or mental incapacity, the member shall be deemed, for the purposes of that Act, to have been retired on the ground of invalidity on the day on which the suspension from office took effect.

(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.

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.

Notice of inquiries

23. Before the Authority commences to hold an inquiry, it shall give reasonable notice in each State, in the Australian Capital Territory and in the Northern Territory, by advertisement published in the Gazette and in a newspaper circulating in the State or Territory, as the case may be, of its
intention to hold the inquiry, of the subject of the inquiry and of the time when the inquiry is to be commenced.

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.
Anti-Dumping Authority No. 72, 1988

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.
Anti-Dumping Authority No. 72, 1988

(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
Anti-Dumping Authority  No. 72, 1988

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 at the expiration of 5 years after the day on which it commences.

(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.

[Minister's second reading speech made in—
House of Representatives on 28 April 1988
Senate on 24 May 1988]
Customs Legislation (Anti-Dumping Amendments) Act 1988

No. 76 of 1988

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Customs Legislation (Anti-Dumping Amendments) Act 1988

No. 76 of 1988

An Act to amend the Customs Act 1901 and the Industries Assistance Commission Act 1973, and for related purposes

[Assented to 24 June 1988]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Customs Legislation (Anti-Dumping Amendments) Act 1988.

Commencement

2. This Act commences on the commencement of the Anti-Dumping Authority Act 1988.
Customs Legislation (Anti-Dumping Amendments) No. 76, 1988

PART II—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

3. In this Part, "Principal Act" means the Customs Act 1901.

Right to require security

4. Section 42 of the Principal Act is amended by adding at the end of subsection (1B):

"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."

Cancellation of bonds

5. Section 45 of the Principal Act is amended:

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

"(2) A security taken in respect of any 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 of the security."

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

"(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 duty that may be payable in respect of them; subsection (2) does not apply in relation to that security."

6. Section 269T of the Principal Act is repealed and the following sections are substituted:

Interpretation

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

'Anti-Dumping Act' means the Customs Tariff (Anti-Dumping) Act 1975;"
'approved form' means a form approved by the Comptroller in writing;
'Authority' means the Anti-Dumping Authority established by section 4 of the Anti-Dumping Authority Act 1988;
'countervailing duty' means duty payable on goods under section 10 (other than duties so payable by virtue of a declaration under subsection 10 (2B), (2C) or (2D)) or under section 11 of the Anti-Dumping Act;
'countervailing duty notice' means a notice published by the Minister under subsection 10 (1) or (2) or 11 (1) or (2) of the Anti-Dumping Act;
'dumping duty' means a duty 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 8 (1) or (2) or 9 (1) or (2) of the Anti-Dumping Act;
'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) the Government of the country from which the goods the subject of the application have been or are likely to be exported or of any country that has exported or is likely to export to Australia like goods;
'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.

"(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."
"(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, there shall be taken to be an Australian industry in respect of goods of a particular kind if there is a person who produces like goods in Australia or there are 2 or more such persons.

"(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.

"(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.

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 a direction is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901."
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 Comptroller, 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;

(b) there is, in a third country, a producer or manufacturer of like goods who exports such goods 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 Comptroller, request that the Minister publish that notice in respect of the goods in the consignment.

"(3) An application under subsection (1) or (2) shall:

(a) be in accordance with an approved form;

(b) include such information relating to:

(i) the matters referred to in paragraphs (a) and (b) of that subsection; and

(ii) the matters which the applicant believes constitute reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice to which the application relates;

as is required by the form; and

(c) be signed and witnessed in the manner indicated in the form.
Consideration of application

"269TC. (1) The Comptroller shall, before the expiration of a period of 55 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after lodgment of an application by a person under subsection 269TB (1) in respect of the goods the subject of the application, examine the application and, if the Comptroller is not satisfied:

(a) that the application complies with subsection 269TB (3);
(b) that there is, or is likely to be established, an Australian industry in respect of like goods; and
(c) that the matters that are set out in the application as constituting reasonable grounds for the publication of the dumping duty notice or the countervailing duty notice in respect of the goods the subject of the application would, if established, constitute reasonable grounds for the publication of such a notice, or 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, before the expiration of a period of 55 days, or, if another period is prescribed by the regulations for the purpose, before the expiration of that other period, after lodgment of an application by the government of a country under subsection 269TB (2) in respect of the goods the subject of the application, examine the application and, if the Comptroller is not satisfied:

(a) that the application complies with subsection 269TB (3);
(b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; and
(c) that the matters that are set out in the application as constituting reasonable grounds for the publication of the dumping duty notice or the countervailing duty notice in respect of the goods the subject of the application would, if established, constitute reasonable grounds for the publication of such a notice, or 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.

"(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.
Customs Legislation (Anti-Dumping Amendments) No. 76, 1988

"(4) Where the Comptroller does not reject an application in respect of the goods the subject of the application made under subsection 269TB (1) or (2), the Comptroller shall publish a notice in the Gazette and in a newspaper circulating in each State and in the internal Territories:

(a) setting out particulars of those goods;

(b) setting out the identity of the applicant and:

(i) in the case of an application under subsection 269TB (1), the identity of the producer or producers; and

(ii) in the case of an application under subsection 269TB (2), the identity of the producer or manufacturer who exports like goods to Australia;

(c) stating that, within a specified period after the publication of the notice, 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;

(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 dumping duty or countervailing duty that may become payable on the importation of the goods the subject of the application; and

(e) inviting interested parties to lodge, within a specified period after publication of the notice, being a period of 40 days or, if a lesser period is indicated in the notice, that lesser period, submissions with the Comptroller, concerning the publication of the notices sought by the application;

and shall give a copy of that notice to the applicant.

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:
Customs Legislation (Anti-Dumping Amendments)  No. 76, 1988

(a) the Comptroller shall, by notice in writing published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories, declare that he or she has made such a preliminary finding and give a copy of that notice to the applicant;

(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 any dumping duty or countervailing duty that may become payable.

“(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 shall, by notice in writing published in the *Gazette* and in a newspaper circulating in each State and in the internal Territories, declare that he or she has made such a preliminary finding and give a copy of that notice to the applicant.

“(4) A notice informing an applicant that the Comptroller has made 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:

(a) shall state the reasons why the Comptroller has made such a preliminary finding; and

(b) shall inform the applicant of his or her right to refer the finding to the Authority for review of that finding.

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

“269TE. (1) Where the Comptroller, in making a decision under section 269TC to accept or reject an application in relation to the goods the subject of the application or 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 shall determine the matter in like manner as if he or she was the Minister and having regard to the same considerations as the considerations to which the Minister would be required, under that Act, 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 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.

"(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 notice in the Gazette and in a newspaper as required under subsection 269TC (4).

"(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)."

Inquiries in relation to undertakings

7. Section 269U of the Principal Act is amended by omitting from subsection (1) the words preceding paragraph (a) and substituting the following:
"(1) Where the Minister is considering, in relation to goods the subject
of an application under section 269TB:"

Repeal of section 269v
8. Section 269V of the Principal Act is repealed.

PART III—AMENDMENTS OF THE INDUSTRIES ASSISTANCE
COMMISSION ACT 1973

Principal Act
9. In this Part, "Principal Act" means the Industries Assistance

Reference of matters to Commission
10. Section 23 of the Principal Act is amended:
(a) by omitting paragraph (5) (a);
(b) by inserting in paragraph (5) (b) "(other than the Customs Tariff
(Anti-Dumping) Act 1975)" after "Customs Tariff".

NOTES
1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and
36, 1910; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No.
6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45,
1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66,
1954; No. 37, 1957; No. 54, 1959; Nos. 42, and 111, 1960; No. 48, 1963; Nos. 29,
82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and
134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28
and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154,
1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110,
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

2. 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;
and No. 65, 1985.

[Minister's second reading speech made in—
House of Representatives on 28 April 1988
Senate on 24 May 1988]
Customs Tariff (Anti-Dumping) Amendment Act 1988

No. 69 of 1988

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

[Assented to 15 June 1988]

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

Short title etc.

1. (1) This Act may be cited as the Customs Tariff (Anti-Dumping) Amendment Act 1988.

(2) In this Act, "Principal Act" means the Customs Tariff (Anti-Dumping) Act 19751.

Commencement

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

(2) Paragraph 4 (a) and section 5 shall be deemed to have commenced on 15 October 1987.

13699/88 Cat. No. 88 4694 4
(3) The remaining provisions of this Act commence on the commencement of the Anti-Dumping Authority Act 1988.

Repeal of section 3A

3. Section 3A of the Principal Act is repealed.

Interpretation

4. Section 4 of the Principal Act is amended:
   (a) by omitting the definition of "importer" in subsection (1) and substituting the following definition:
      "'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;
      (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;
      (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;
      (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;"
   (b) by inserting in subsection (1) the following definitions:
      "'Anti-Dumping Authority' means the authority of that name established by section 4 of the Anti-Dumping Authority Act 1988;
      'like goods', in relation to goods under consideration, means goods that are identical in all respects of 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;"
   (c) by omitting from subsections (2), (3) and (3A) "Comptroller" (wherever occurring) and substituting "Minister".
Repeal of sections 4AA, 4AB and 4AC

5. Sections 4AA, 4AB and 4AC of the Principal Act are repealed.

Export price

6. Section 4A of the Principal Act is amended by omitting from subsections (1), (2), (3) and (4) "Comptroller" (wherever occurring) and substituting "Minister".

Normal value of goods

7. Section 5 of the Principal Act is amended:

(a) by omitting from sub-subparagraph (2) (c) (ii) (B) "an amount" and substituting "where, in circumstances identified by the regulations, a profit component is required to be taken into account in determining normal value—an amount";

(b) by omitting from subsections (2) and (2A) "Comptroller" (wherever occurring) and substituting "Minister";

(c) by omitting from subparagraph (3) (e) (iii) "an amount" and substituting "where, in circumstances identified by the regulations, a profit component is required to be taken into account in determining normal value—an amount";

(d) by omitting from subsections (3), (3A), (4) and (4A) "Comptroller" (wherever occurring) and substituting "Minister";

(e) by inserting after subsection (4A) the following subsection:

"(4B) A determination of the normal value of goods for the purposes of subsection (4) shall not, except where, in circumstances identified by the regulations, a profit component is required to be taken into account, include any amount to represent the profit on the sale of the goods concerned."

(f) by omitting from subsections (5), (6), (7), (8) and (9) "Comptroller" (wherever occurring) and substituting "Minister".

8. After section 5 of the Principal Act the following section is inserted:

Minister may re-ascertain certain normal values

"5AA. Where the Minister has, for the purpose of publishing a notice under section 8 or 9 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 shall 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."
Dumping duties

9. Section 8 of the Principal Act is amended:
   (a) by inserting in subsections (1) and (2) "producing like goods" after "an Australian industry" (wherever occurring);
   (b) by omitting from subsection (2) "goods of that kind" (wherever occurring) and substituting "like goods";
   (c) by inserting after section (2) the following subsection:
      "(2AA) Where:
      (a) a notice under subsection (1) declares particular goods to be goods to which this section applies; or
      (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which this 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."
   (d) by omitting from subsection (2A) "goods of the same kind as the goods in the consignment" (wherever occurring) and substituting "like goods";
   (e) by omitting from paragraph (2A) (b) "or hindering the establishment of an Australian industry" and substituting "producing like goods or hindering the establishment of such an Australian industry";
   (f) by omitting from subsection (5) "published in the Gazette" and substituting "in writing signed by the Minister";
   (g) by inserting after subsection (5A) the following subsection:
      "(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.";
   (h) by omitting from subsections (7) and (8) "Comptroller" (wherever occurring) and substituting "Minister".

Third country dumping duties

10. Section 9 of the Principal Act is amended:
   (a) by inserting in subsections (1) and (2) "of like goods" after "manufacturer in a third country" (wherever occurring);
   (b) by omitting from subsection (2) "goods of that kind" (wherever occurring) and substituting "like goods";
   (c) by inserting after subsection (2) the following subsection:
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“(2A) Where:
(a) a notice under subsection (1) declares particular goods to be goods to which this section applies; or
(b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which this 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;”;

(d) by omitting from subsection (5) “published in the Gazette” and substituting “in writing signed by the Minister”;  

(e) by inserting after subsection (5A) the following subsection:

“(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.”;

(f) by omitting from subsections (7) and (8) “Comptroller” (wherever occurring) and substituting “Minister”.

Countervailing duties

11. Section 10 of the Principal Act is amended:

(a) by inserting in subsections (1) and (2) “producing like goods” after “an Australian industry” (wherever occurring);

(b) by omitting from subsection (2) “goods of that kind” (wherever occurring) and substituting “like goods”;

(c) by omitting from subsection (2A) “goods of the same kind as the goods in the consignment” (wherever occurring) and substituting “like goods”;

(d) by omitting from paragraph (2A) (b) “or hindering the establishment of an Australian industry” (wherever occurring) and substituting “producing like goods or hindering the establishment of such an Australian industry”;

(e) by omitting from paragraphs (2B) (c) and (2C) (b) “has been or is being caused or is threatened, or the establishment of an industry” and substituting “producing like goods has been or is being caused or is threatened, or the establishment of such an industry”;

(f) by omitting from paragraph (2C) (c) “has been or is being caused or is threatened, or the establishment of an Australian industry” and substituting “producing like goods has been or is being caused or is threatened, or the establishment of such an Australian industry”;

(g) by omitting from paragraph (2D) (c) “has been or is being caused or is threatened, or the establishment of an industry” and substituting
“producing like goods has been or is being caused or is threatened, or the establishment of such an industry”;

(h) by omitting from subsection (5) “published in the Gazette” and substituting “in writing signed by the Minister”;

(j) by inserting after subsection (5A) the following subsection: (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.”;

(k) by omitting from subsections (7), (8) and (9) “Comptroller” (wherever occurring) and substituting “Minister”.

Third country countervailing duties

12. Section 11 of the Principal Act is amended:

(a) by inserting in subsections (1) and (2) “of like goods” after “manufacturer in a third country” (wherever occurring);

(b) by omitting from subsection (2) “goods of that kind” (wherever occurring) and substituting “like goods”;

(c) by omitting from subsection (5) “published in the Gazette” and substituting “in writing signed by the Minister”;

(d) by inserting after subsection (5A) the following subsection: (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.”;

(e) by omitting from subsections (7), (8) and (9) “Comptroller” (wherever occurring) and substituting “Minister”.

13. After section 12 of the Principal Act the following sections are inserted:

Minister to give notice of decision not to impose duty

“12A. 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, applies, the Minister shall, by notice published in the Gazette, state that he or she has so decided.

Period during which certain notices and undertakings to remain in force

“12B. (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 shall, unless sooner revoked:
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(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—expire 3 years after the date on which the first-mentioned notice is published; and

(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—expire 3 years after the date on 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 shall, unless provision is made for its earlier expiration:

(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—expire 3 years after the date that first-mentioned undertaking was entered into; and

(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—expire 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.

“(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

(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 published in the Gazette under a relevant notification provision before the commencement of this section shall, unless sooner revoked, expire:

(a) if it is published before 1 March 1986—on 1 March 1989; and

(b) if it is published on or after 1 March 1986—3 years after the date of its publication;
and subsections (1) and (2) shall have effect as if the specified date of expiration of a notice referred to in paragraph (a) were the day occurring 3 years after the publication of the notice.

“(5) An undertaking entered into under a relevant undertaking provision before the commencement of this section shall, unless sooner released, expire:
(a) if it is entered into before 1 March 1986—on 1 March 1989; and
(b) if it is entered into on or after 1 March 1986—3 years after it is entered into;
and subsections (1) and (2) shall have effect as if the date of expiration of an undertaking specified in paragraph (a) were the day occurring 3 years after the undertaking were entered into.

“(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 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 8 (2), 9 (2), 10 (2), (2B), (2C) or (2D) or 11 (2);
‘relevant undertaking provision’ means subsection 8 (2A) or 10 (2A).”

Repeal of section 15

14. Section 15 of the Principal Act is repealed.

Revocation of notices etc.

15. Section 20 of the Principal Act is amended:
(a) by omitting subsection (1) and substituting the following subsections:
“(1) The Minister may, by notice published in the Gazette, revoke a notice published by the Minister under this Act and shall do so if satisfied that, were the notice not in force, the Minister would not be authorised by this Act to cause the notice to be published.
“(1A) The Minister may, by notice in writing, release a person from an undertaking entered into under this Act.”;

(b) by inserting after subsection (2) the following subsection:
“(2A) A notice releasing a person from an undertaking under subsection (1A) 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.”.
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16. The Principal Act is amended by adding at the end the following section:

Regulations

"22. 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

17. (1) Where:

(a) the Comptroller-General of Customs or a delegate of the Comptroller-General of Customs made a determination, gave or published a notice or direction, or signed or issued any other instrument before the commencement of this section under a power conferred on the Comptroller-General of Customs by section 4, 4A, 5, 8, 9, 10, 11 or 20 of the Principal Act;

(b) that provision of the Principal Act is amended by this Act so as to confer that power on the Minister; and

(c) that determination, notice, direction or other instrument was in force immediately before that commencement;

that determination, notice, direction or other instrument continues in force after that commencement as if it had been duly made, given, published, signed or issued, as the case may be, by the Minister under that provision as so amended.

(2) Where:

(a) the Comptroller-General of Customs gave, before the commencement of this section, a delegation to another person to exercise a power conferred on the Comptroller-General of Customs by section 4, 4A, 5, 8, 9, 10, 11 or 20 of the Principal Act;

(b) that provision of the Principal Act is amended by this Act so as to confer that power on the Minister; and

(c) that delegation was in force immediately before that commencement; the delegation continues in force after that commencement as if it were a delegation duly given by the Minister to that other person under section 19 of the Principal Act as amended by this Act.

(3) Where:

(a) the Comptroller-General of Customs or a delegate of the Comptroller-General of Customs did or refused to do before the commencement of this section any act or thing not mentioned in subsection (1) or (2) under a power conferred on the Comptroller-General of Customs by section 4, 4A, 5 or 20 of the Principal Act; and
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(b) that provision of the Principal Act is amended by this Act so as to confer that power on the Minister;

the Principal Act as amended by this Act applies as if the Minister had duly done or refused to do, as the case may be, that act or thing.

NOTE


[Minister’s second reading speech made in—
House of Representatives on 28 April 1988
Senate on 24 May 1988]
1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ANTI-DUMPING AUTHORITY BILL 1988

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Industry, Technology and Commerce, Senator the Honourable John N. Button

(This explanatory memorandum supersedes the explanatory memorandum tabled with this Bill on 28 April 1988.)
Anti-Dumping Authority Bill 1988

Outline


This Bill establishes an Anti-Dumping Authority of one member (clauses 4 and 13) who, whilst having regard to the same matters to which the Minister is to have regard when imposing dumping duties under the Customs Tariff (Anti-Dumping) Act 1975 is obliged to:

1. recommend to the Minister (within 120 days of receiving a matter from the Comptroller-General of Customs) whether or not duties should be imposed on specified goods pursuant to the Customs Tariff (Anti-Dumping) Act 1975 and, where applicable, whether undertakings as to the conduct of future export trade to Australia should be accepted from exporters under that Act (clause 7);

2. recommend to the Minister whether the Minister should revoke a notice under the Customs Tariff (Anti-Dumping) Act 1975 or release a person from an undertaking given under that Act (clause 7);

3. review (within 60 days of application) negative prima facie decisions and negative preliminary findings of the Comptroller-General of Customs, rejecting applications for the imposition of dumping duty or countervailing duty (clause 8); and

4. report generally to the Minister on anti-dumping matters (clause 9)

To assist the Member, associate members may be appointed (clause 15) and consultants possessing particular professional skills may also be engaged (clause 31).

The requirement to publicly advertise an inquiry into whether dumping duties should be imposed or not (Clause 23), together with the requirement to consider submissions from the public that have been received within 40 days of the announcement of the inquiry (subclause 7(6)) recognises for the first time the rights of end-use consumers to make submissions on the imposition of dumping duties.

The Authority is to expire five years after its creation (clause 35), with a further examination of anti-dumping administration to be made before that time.
Financial Impact Statement

The establishment of the Anti-Dumping Authority will involve a cost of $1.12 million during its first year of operation, and $0.92 million in subsequent years. These figures include the salary costs of the statutory appointee and 16 other staff (including consultants). These resources are to come from appropriations made to elements of the portfolio of the Minister for Industry, Technology and Commerce.
NOTES ON CLAUSES

PART I - PRELIMINARY

Short Title
Clause 1 provides for the citation of this Bill as the Anti-Dumping Authority Act 1988.

Commencement
Clause 2 provides for the Act to commence on a day to be proclaimed.

Interpretation
Clause 3 defines certain words and phrases used in the Act;

- in particular, the Bill defines the following terms:

  "anti-dumping matter" as meaning any matter relating to the imposition of duties under the Customs Tariff (Anti-Dumping) Act 1975, or of the general operation of the Act;

  "Countervailing duty notice" as meaning a notice published under subsections 10(1), 10(2), 11(1) or 11(2) of the Customs Tariff (Anti-Dumping) Act 1975 imposing countervailing duty on the goods specified in the notice, or on like goods to those goods;

  "Dumping duty notice" as meaning a notice published under subsections 8(1), 8(2), 9(1) or 9(2) of the Customs Tariff (Anti-Dumping) Act 1975, imposing dumping duty on the goods specified in the notice, or on like goods to those goods;

  "like goods" as meaning 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.

Subclause 3(2) defines the reference appearing throughout the Act to "goods the subject of an
application under section 269TB of the *Customs Act 1901*:

- the phrase will pick up goods referred to in the application:
  - that have been imported into Australia,
  - that are likely to be so imported, or
  - that are like goods to those referred to in the previous two categories

the phrase highlights the facility in new section 269TB of the *Customs Act* (amended as part of the Anti-Dumping legislation package) that an application may be made in anticipation of injurious imports.

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

**Establishment**

Clause 4 creates the Anti-Dumping Authority.

**Functions**

Clause 5 enumerates the responsibilities of the Authority. The Authority is to:

- recommend to the Minister whether or not duties should be imposed on goods specified in an application for dumping or countervailing duty, pursuant to new section 269TB of the *Customs Act 1901* contained in the *Customs Legislation (Anti-Dumping Amendments) Bill 1988*, that have or may be imported into Australia, or goods that are of a like kind to those goods, pursuant to the *Customs Tariff (Anti-Dumping) Act 1975*, and, where applicable, whether certain undertakings should be required under that Act from exporters as to their conduct of future export trade to Australia (paragraph 5(a)) following a preliminary finding of the Comptroller-General of Customs ("the Comptroller") that there are grounds for the Minister to publish an anti-dumping or countervailing duty notice.

- recommend to the Minister whether to revoke notices imposing duty, or release exporters from undertakings (paragraph 5(b))
review negative prima facie decisions (ie. decisions made by the Comptroller to reject an application for the imposition of dumping or countervailing duties pursuant to the new section 269TC(1) or (2) of the Customs Act 1901 contained in the Customs Legislation (Anti-Dumping Amendments) Bill 1988) or negative preliminary findings (ie. decisions made by the Comptroller that there are no grounds for the Minister to publish a dumping or countervailing duty notice after the Comptroller has conducted a preliminary investigation into the complaints alleged in the application, pursuant to the new section 269TD of the Customs Act 1901, contained in the Customs Legislation (Anti-Dumping Amendments) Bill 1988) (Paragraph 5(c)); and

prepare reports on anti-dumping matters (as defined above) (paragraph 5(d)).

Powers

Clause 6 is a standard provision conferring on the Authority powers that are incidentally required for it to perform the functions specified in clause 5.

Authority to make recommendations on imposition of duties

Clause 7 specifies the procedure to be followed by the Authority when it either receives a preliminary finding of the Comptroller that grounds exist which would enable the Minister to publish a dumping or countervailing duty notice, or the Authority revokes a negative preliminary finding of the Comptroller that such grounds do not exist.

subclause 7(1) provides that the Authority must within 120 days (or other period as prescribed by regulation) hold an inquiry as to whether or not a notice imposing dumping or countervailing notices should be published by the Minister, and after considering, amongst other things, submissions from the public made to the Authority within 40 days of the last public notification of the commencement of any such inquiry, recommend to the Minister whether a dumping or countervailing duty notice can and should be imposed on goods that were the subject of the original application for the imposition of dumping or countervailing duties pursuant to the Customs Tariff (Anti-Dumping) Act 1975, and the extent of any such duties.
subclause 7(2) provides that in a report made by the Authority under subclause 7(1), the recommendations shall, to the extent practicable, relate to like goods imported since the day a preliminary finding that duties could have been imposed on the goods subject to the inquiry was made.

subclauses 7(3) and 7(4) provide that where a person who is concerned with the importation or exportation of goods to which a notice issued under the Customs Tariff (Anti-Dumping) Act 1975 relates, or has made an undertaking to the Minister as to the conduct of future export trade to Australia under that Act the person may apply on an approved form to the Authority requesting it to inquire as to whether the notice or undertaking should be terminated. The Authority is obliged within 120 days (or other period as prescribed) to hold an inquiry and report to the Minister as to whether the relevant notice should be revoked, or the person released from the undertaking.

subclauses 7(5) and 7(6) provide that when the Authority is obliged to conduct an inquiry the Authority is obliged to invite submissions and consider those received within 40 days from the last invitation for submissions from the public, but needn't consider submissions made after that time.

Review of prima facie decisions

Clause 8 specifies the procedure to be followed when the Comptroller rejects a complaint of dumping from an applicant, submitted pursuant to the new section 269TB of the Customs Act 1901, contained in the Customs Legislation (Anti-Dumping Amendments) Bill 1988.

subclause 8(1) provides that where an applicant lodged an application with the Comptroller requesting the Minister to publish a dumping duty notice or countervailing duty notice, imposing duties pursuant to the Customs Tariff (Anti-Dumping) Act 1975, and the Comptroller has rejected the application because:

- the applicant has failed to fulfill all the requirements of the application form;
the Comptroller finds there is no industry in Australia producing goods that are identical or similar to the consignment of goods that gave rise to the anti-dumping application;

the facts contained on the application form do not, in the opinion of the Comptroller, reveal grounds that would justify the Minister publishing a dumping or countervailing duty notice pursuant to the Customs Tariff (Anti-Dumping) Act 1975; (ie. a "negative prima facie finding") the Authority shall, on the application of the disappointed applicant, decide within 60 days to either confirm or revoke the decision of the Comptroller.

should the Authority revoke the decision of the Comptroller, the Comptroller must then commence investigations, and then make a preliminary finding as to whether grounds exist for the publication of a dumping or countervailing duty notice pursuant to the Customs Tariff (Anti-Dumping) Act 1975, according to the provisions of the new section 269TD of the Customs Act 1901, proposed in the Customs Legislation (Anti-Dumping Amendments) Bill 1988.

subclause 8(2) provides that where an application is made requesting the Minister to publish a dumping or countervailing duty notice and the Comptroller subsequently finds, having conducted a preliminary investigation pursuant to the new section 269TD of the Customs Act 1901 (contained in the Customs Legislation (Anti-Dumping Amendments) Bill 1988 that there are not already existing sufficient grounds for the imposition of such duties, or if the goods have not yet been imported, sufficient grounds for publication of a notice will not exist before the arrival of the first consignment of goods under investigation (ie. a "negative preliminary finding") the applicant may refer that finding to the Authority for review. In such circumstances the Authority shall review the finding and within 60 days decide either to confirm or revoke the finding of the Comptroller.
should the Authority revoke the finding of the Comptroller it must then hold an inquiry within 120 days and report to the Minister in accordance with clause 7.

Subclause 8(3) provides that when reviewing the decision of the Comptroller under sub-clause 8(1) or 8(2), the Authority is only to take account of information available to the Comptroller at the time the Comptroller made the decision.

Reports on anti-dumping matters

Clause 9 provides that the Authority may, either at the request of the Minister, or on its own motion, prepare and submit reports to the Minister on "anti-dumping matters", as defined in clause 3 (discussed above).

Matters to which the Authority is to have regard

Clause 10 emphasises that when the Authority acts, it should have regard to the Commonwealth Government's policy in relation to anti-dumping matters and Australia's international obligations under the General Agreement on Tariffs and Trade (GATT).

One of the criticisms made by Professor Gruen in his report into the Customs Tariff (Anti-Dumping) Act 1975 was that the Act was invoked on occasions to protect Australian industry from overseas competition rather than to prevent the dumping of products on the Australian market. This clause reinforces the intention of the Government that anti-dumping duties are only to be imposed when dumping has occurred, and because of the act of dumping, Australian industry has or may be materially injured.

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

Clause 11 provides in subclause 11(1) that when the Authority is required to make a recommendation as to whether or not a dumping or countervailing notice should be published, the Authority must adopt the same tests and formulae that the Minister is required to use in the Customs Tariff (Anti-Dumping) Act 1975 before the Minister imposes dumping or countervailing duties.

Subclause 11(2) provides that where the Authority is considering an application for dumping relief in
anticipation of an injurious import (one of the situations countenanced by new subsection 269TB(1), of the Customs Act 1901, the Authority shall determine the matter pursuant to the Anti-Dumping Act at the time of the anticipated importation of the goods into Australia.

_subclause 11(3)_ preserves to the Minister the ultimate right to determine whether or not dumping or countervailing duties should be imposed on goods, notwithstanding recommendation made to the Minister by the Authority.

**Minister may give directions to Authority**

Clause 12 allows the Minister to give directions to the Authority as to how it is to carry out its responsibilities under the Act.

- So as to ensure consistency in decision-making a power such as this is required so that the Minister may give guidance on technical matters to both the Authority and the Comptroller (for which a similar provision exists in the Customs Legislation (Anti-Dumping Amendments) Bill 1988).

  - These directions must be advertised publicly in the Gazette and tabled in Parliament (subclause 12(3)) and may be disallowed by either House of Parliament. (Subclause 12(4))

  - _subclause 12(2)_ provides that these directions may only indicate the general principles that are to be followed by the Authority as it conducts inquiries; the Minister is expressly precluded from giving directions to the Authority as to how it will conduct particular inquiries.

**PART III - CONSTITUTION OF AUTHORITY**

**Member of Authority**

Clause 13 provides that the Authority shall consist of one member, to be appointed by the Governor-General for a period of up to five years, or until the Member attains the age of 65 years, on either a full-time or part-time basis and on such terms as are determined in writing by the Minister.
**Acting Member**

Clause 14 permits the Minister to appoint an Acting Member of the Authority during vacancies in the office of Member, or when the Member is unable to perform his or her statutory functions.

- subclause 14(2) is a standard provision which validates actions taken by the Acting Member that may otherwise be invalid by reason of a technical defect in the appointment of the Acting Member.

**Associate members**

Clause 15 permits the appointment of Associate Members to assist the Member in discharging the responsibilities of the Authority. The Associate Member:

- is appointed after consultation with the Member;
- may be appointed for a period of up to twelve months, or to conduct a particular inquiry;
- may be appointed on a full-time or part-time basis;
- holds office on such terms and conditions as are determined in writing by the Minister; and
- is deemed to have the same powers and responsibilities as the Member whilst the appointee is performing the duties of an Associate Member.

**Outside employment**

Clause 16 provides that the Member may not engage in any activity that may result in the Member being paid without the consent of the Minister.

- This includes paid directorships.

**Disclosure of interests**

Clause 17 requires the Member to disclose to the Minister the Member’s pecuniary and business interests.

**Leave of Absence**

Clause 18 allows the Minister to grant the Member leave of absence.
Retirement from office

Clause 19 allows the Governor-General to retire the Member on the grounds of invalidity, with the consent of the Member.

Suspension and removal from office

Clause 20 provides the grounds upon which the Governor-General may either suspend or remove the Member from office. Where the Governor-General suspends the Member from office on the grounds of misbehaviour or physical or mental incapacity the Minister shall cause a statement of the grounds for suspension to be tabled before both Houses within seven sitting days of each House after the suspension, after which the notice is subject to a procedure relating to the disallowance of the suspension.

Subclause 20(5) provides that if after 15 sitting days of a suspension statement being tabled neither House has resolved that the suspended Member be returned to office, the Governor-General may then remove the Member from office.

Subclause 20(6) sets out the grounds upon which the Governor-General may remove the Member from office without having to table a suspension statement.

Remuneration and allowances

Clause 21 Provides that the Member shall be paid the remuneration determined by the Remuneration Tribunal, or, in the absence of such a determination, an amount prescribed by the Regulations.

PART IV - INQUIRIES

General conduct of inquiries

Clause 22 Subclause 22(1) provides that in conducting an inquiry, the Authority may set the procedure to be followed, may act informally, not be bound by the rules of evidence and inform itself in such manner as it sees fit. This highlights the fact that the Authority is merely a fact-finding body, and not a judicial organisation.

Subclause 22(2), however, does give the Authority one "quasi-judicial power", i.e. it permits the
Authority (at its option) to take evidence for the purposes of an inquiry on oath or affirmation.

- This express ability to take evidence on oath or affirmation brings into operation the penalty provisions of the Crimes Act 1914 for the giving of false or misleading information, where such information is indeed given on oath or affirmation (see sections 34 and 35 of the Crimes Act 1914).

Notice of Inquiries

Clause 23 requires the Authority to give reasonable advance notice of the conduct of an inquiry by notification in the Gazette, and by advertisement in a newspaper circulating in each State and internal Territory.

False or misleading evidence or information

Clause 24 is a standard penalty provision for the giving of false or misleading information, documents or evidence to the Authority.

- The penalty prescribed for this offence in subclause 24(1) is the standard pecuniary penalty of $2000 for a natural person and $10,000 for a body corporate.
- Subclause 24(2) provides that the penalty does not apply where a person informs the Authority of the nature of any flawed particulars which may be contained in a particular document produced to the Authority.

Protection of Member

Clause 25 protects the Member when performing his or her duties as the Authority, by conferring on the Member the same protection and immunity as a Justice of the High Court.

Powers of Authority relating to documents produced

Clause 26 indicates what a Member, or a person assisting the Member, may do with books and documents voluntarily forwarded to the Authority.

- Subclause 26(2) specifically permits the person ordinarily entitled to possession of the materials to have access to and make copies of the materials lodged with the Authority at reasonable times.
Person prejudiced in employment because assisting Authority

Clause 27 makes it an offence for an employer to dismiss an employee, or prejudice an employee in his or her employment, or threaten to do same, because the employee has assisted, or intends to assist, the Authority with an inquiry.

The penalty prescribed for this offence is a pecuniary penalty of $1000 for a natural person and $5000 for a body corporate.

PART V - MISCELLANEOUS

Availability of Reports etc. of Authority

Clause 28 imposes an obligation on the Authority to make copies of the reports or notices it has produced freely available to the public.

Subclause 28(2) qualifies the obligation by giving the Authority a discretion to not put into the reports or notices any matters which it is of the opinion would adversely affect the business or commercial interests of any person.

Annual report

Clause 29 is a standard reporting procedure which requires the Authority to give the Minister a report of its activities for the financial year no later than 31 December of that year. Subclause 29(2) requires the Minister to then table a copy of the Report in each House of Parliament no later than 15 sitting days after the Minister has received the report.

 Provision of resources to Authority

Clause 30 subclause 30(1) provides that the Authority is to make arrangements with the Minister for the provision of resources to the Authority for the effective prosecution of its work.

Resources in this regard include both financial and manpower resources.

Subclause 30(2) is intended to preserve the independence of the Authority by ensuring that any staff seconded to it (for instance, from the Department of Industry, Technology and Commerce or the
Australian Customs Service) shall be subject to, and shall perform work in accordance with, the directions of the Authority.

**Engagement of Consultants**

Clause 31 permits the Authority to engage specialists on such terms and conditions as the Authority determines for the purpose of conducting its work.

**Authority may supply information**

Clause 32 permits the Authority to supply information received by it to other persons, subject to the qualification contained in clause 33 (discussed below) regarding confidentiality.

**Confidentiality**

Clause 33 is a standard confidentiality provision which prohibits the supply of information by the Authority, or persons seconded to the Authority, or persons employed as consultants to the Authority, received by those persons in confidence, if the release of that information would constitute a breach of confidence.

subclause 33(2) exempts from the above confidentiality provision the supply of information to the Minister, the two permanent heads and officers of the Department of Industry, Technology and Commerce and the Australian Customs Service designated specifically to assist the Authority.

**Conduct by directors, servants or agents**

Clause 34 is a standard provision that provides, in circumstances where it is necessary to ascribe "intent" or "conduct" to an inanimate body corporate (for example, in the penal provisions of the Bill), that certain classes of natural persons are deemed to have acted, or to have formed the intent of the body corporate.

**Cessation of Act**

Clause 35 is a sunset provision which provides that the Authority will cease operation 5 years after the day it commences.

This sunset provision anticipates the Government's commitment to a further extensive review of the Anti-Dumping system, which is intended to include a reassessment of the role of the Authority.
Regulations

Clause 36 is a standard provision permitting the making of such regulations that are required to be made by the Act, or that are necessary or convenient to be made for the carrying out or giving effect to the Act.
1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) BILL 1988

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Industry, Technology and Commerce, Senator the Honourable John N. Button

(This memorandum supersedes the explanatory memorandum tabled with this Bill on 28 April 1988.)
Customs Legislation (Anti-Dumping Amendments) Bill 1988

Outline


This Bill essentially amends Part XVB of the Customs Act 1901, and has the effect of defining the role of the Australian Customs Service in dumping inquiries to that of conducting preliminary investigations and gathering relevant evidence regarding dumping complaints. The proposed new section 269TD inserted into the Act provides that any positive preliminary finding by the Customs Service that grounds exist for the imposition of dumping duties must be reviewed by the Anti-Dumping Authority, created by the Anti-Dumping Authority Bill 1988. Certain other preliminary decisions or findings of the Customs Service that are adverse to a complainant are also available for independent merit review by the Authority pursuant to the new section 269TF.

The Bill also imposes for the first time in legislation strict time limits within which the Customs Service must conclude its preliminary investigations. New section 269TC will provide that:

- within 70 days of receiving an application complaining of dumping, the Customs Service must determine whether the application contains grounds that would, if established, permit the Minister to impose dumping duty under the Anti-Dumping Act, and whether an Australian industry produces or may be established to produce, goods of a like kind to those under investigation;

- if a prima facie dumping complaint is made out, the Customs Service must undertake a dumping inquiry inviting submissions from interested parties, and within 180 days make a preliminary finding as to whether or not it considers dumping to have occurred (new subsection 269TC).

Clause 4 of the Bill makes clear that the Customs Service may only require or take provisional dumping securities after it has made a preliminary finding that grounds exist for the imposition of dumping duties under the Anti-Dumping Act. This will put beyond doubt Australia's GATT obligation to only take provisional measures to protect a local industry after a preliminary finding of dumping has been made.
In Part III of the Bill, a consequential amendment is made to the Industries Assistance Commission Act 1973, to remove its review and recommendatory role in anti-dumping matters, on the ground that this is now to be performed by the Anti-Dumping Authority.

Financial Impact Statement

The proposed amendments in this Bill have no direct financial implications.
NOTES ON CLAUSES

PART I - PRELIMINARY

Short Title
Clause 1 provides for the citation of this Act as the Customs Legislation (Anti-Dumping Amendments) Act 1988.

Commencement
Clause 2 provides for the Act to commence on the day that the Anti-Dumping Authority Act 1988 commences operation, which is a day to be fixed by Proclamation. It is expected that day will be 1 September 1988.

PART II - AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act
Clause 3 identifies the Customs Act 1901 as the Principal Act for the purposes of this Part.

Right to require security
Clause 4 amends subsection 42(1B) of the Principal Act to restrict the general right of the Australian Customs Service to require and take securities on goods subject to Customs control when such securities are required or taken in respect of any duty that may become payable on such goods under the Customs Tariff (Anti-Dumping) Act 1975.

The amendment provides that securities may only be required or taken under the Act after the Comptroller-General of Customs has made a preliminary finding pursuant to the proposed new section 269TD of the Principal Act (discussed below) that there are sufficient grounds for the imposition of dumping duties or countervailing duties in respect of the goods referred to in the section 269TB application (which includes like goods that may be imported into Australia).

The amendment gives effect to Article 10 of the General Agreement on Tariffs and Trade (GATT), which provides that provisional measures may only be taken to protect an
industry after a preliminary finding of dumping has been made.

Cancellation of Bonds

Clause 5 amends Section 45 of the Principal Act as follows:

- subsection (2) is redrafted to make clear that a security taken as a provisional measure under the Customs Tariff (Anti-Dumping) Act 1975 (ie. before the publication of a dumping or countervailing duty notice by the Minister), must be cancelled before the expiration of 4 months (or, in certain circumstances, 6 months subsection (3) after the date of the security;

- this provision gives effect to the requirement of Article 10(3) of the GATT, which expressly limits the period for which provisional dumping securities can be held;

- a new subsection (4) is added to put beyond doubt that the limitation on the duration of a security which is taken as a provisional measure in respect of a duty that may become payable in respect of goods of a particular kind (which includes, in the case of an 8(2), 9(2), 10(2) or 11(2) notice, "like goods", as defined in Section 4 of the Act) does not apply where a dumping notice which covers those goods is actually in place;

- in this instance, the security is taken not as a provisional measure, but rather, as a means of ensuring the payment of a duty of customs owing on the goods. As such, there is no time limit within which the security must be cancelled, similar to the position for general Customs securities.

Clause 6 repeals the existing interpretation section to Part XVB of the Principal Act, which contains special provisions relating to anti-dumping matters, and adds the following seven new sections to the Part. The new sections highlight the role of the Customs Service in receiving dumping complaints, and its responsibility for all action (within strict time limits) up to a preliminary finding stage, after which time, the Anti-Dumping Authority (created by one of the other Bills in this package) will conduct its independent examination of the dumping complaint (again within strict time limits)
and make recommendations to the Minister as to whether or not dumping or countervailing duties should be imposed on the goods referred to in the section 269TB application.

Interpretation

New section 269T defines certain words and phrases used in this Part.

In particular, subclause(1):

- "countervailing duty" is defined as a duty under section 10 of the Customs Tariff (Anti-Dumping) Act 1975, but specifically excludes duties imposed pursuant to subsections 10(2B), 10(2C) and 10(2D) of that Act, which are imposed in retaliation for the imposition of countervailing duty on Australian-produced products by other nations.

  retaliatory duties are expressly excluded from this process because they are punitive in nature against the actions of another country.

- "interested party" is defined, (for the purpose of making submissions to a dumping enquiry notified pursuant to paragraph 269TC(4)(e)), as the applicant seeking the dumping protection; a person representing the industry or part thereof in Australia producing, or likely to produce like goods; importers or exporters of the particular goods in question, or of like goods, or of any such goods likely to be so imported or exported; and the Government of the country which has exported the goods or is likely to export such goods or any government of a country which may export or be likely to export like goods; and

- "like goods" are defined as being goods that are either identical to the goods under consideration, or have characteristics (both functional and physical) that closely resemble the goods under consideration.

  this definition adopts the meaning of the term as used in the GATT Anti-Dumping Code (Article 2);

subclauses 2 and 3 define the proportion of a manufactured good that must be produced in Australia before it can be deemed to have been "produced" in Australia;

it is a necessary pre-condition for initiating a dumping complaint that there is an Australian industry producing, or likely to be established to produce like goods to those imported goods which it is alleged are being dumped (ie. new paragraph 269TB(1)(b)).
subclause 4 provides that where there is only one person producing goods of a particular kind in Australia, that person may be considered to be an Australian "industry"

. this is again relevant for the purposes of new paragraph 269TB(1)(b), as above;

subclause 5 defines the reference appearing throughout the new sections to "goods the subject of an application under section 269TB" -

. the phrase will pick up goods referred to in the application;
  - that have been imported into Australia,
  - that are likely to be so imported, or
  - that are like goods to those referred to in the previous two categories that may be imported.

. the phrase highlights the facility in new section 269TB that a dumping complaint may be initiated in anticipation of injurious imports.

subclause (6) provides for a special definition of "days" for the purposes of this Part, so that Sundays and Public Holidays are counted in the calculations of the various time limits prescribed by new sections 269TC and 269TD;

. But for this definition, the general definition of "days" in section 4 of the Act would apply, with the effect that Sundays and Public Holidays would not be counted for the purposes of the prescribed time limits. This result would unnecessarily lengthen the strictly limited periods which are prescribed for the various preliminary stages of a dumping inquiry;

. The general operation of section 36 of the Acts Interpretation Act 1901 is, however, preserved. That section provides that where the last day of a prescribed period falls on a Saturday, Sunday, or a Public or Bank Holiday, the thing which is required to be done may be done on the next day which is not a Saturday, Sunday, etc.

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

New section 269TA allows the Minister to give directions to the Comptroller as to how the Comptroller is to carry out his responsibilities under this Part of the Act.
To ensure consistency in decision-making a power such as this is required so that the Minister may give guidance to both the Comptroller and the Authority (for which a similar provision exists in the Anti-Dumping Authority Bill 1988) in technical matters;

- The aim is to ensure that both are guided by the industry policy objectives of the Government;

- Such directions however are expressly required to be general in nature, dealing with the general principles of anti-dumping matters, and not with particular consignments of goods or like goods to goods in a particular consignment.

These directions must be advertised publicly in the Gazette and tabled in Parliament (subsection (3)), and may be disallowed by either House of Parliament (subsection (4))

Application for action under the Anti-Dumping Act

New section 269TB prescribes the procedure by which a person may apply for the imposition of dumping or countervailing duties on particular goods that have been imported into Australia, or on goods that are likely to be imported into Australia, or on like goods (as defined) to those goods that may be imported into Australia;

In the case of applications requesting dumping or countervailing relief where (subsection (1)):

- a consignment of goods has been imported into Australia, or is likely to be so imported, or where there are like goods that may be imported, and

- there is or there may be established an Australian industry producing like goods, and

- the complainant believes that there are or may be reasonable grounds for the Minister to legally impose dumping or countervailing duties under the Customs Tariff (Anti-Dumping) Act 1975 on that consignment of goods,

the complainant may, via an application lodged with the Comptroller, made on an approved form (i.e. a form approved by the Comptroller in writing), and complying with new subsection 269TB(3), request the Minister to impose dumping or countervailing duties in respect of those goods.
The complainant may be any person. Thus, for instance, employees or their representatives might initiate an action in respect of an Australian industry which may be affected by the dumping or subsidisation where the industry itself might be inhibited from doing so.

- the new subsection also anticipates the possibility of initiating a dumping complaint in anticipation of injurious imports, for instance, where there is knowledge that imports of dumped or subsidised goods are to arrive in volumes which will cause injury to an Australian industry.

In the case of "third party" dumping or countervailing duties (i.e. where the "dumping" of goods on the Australian market by another country prejudices the industry of a third country which has an established market share in Australia), where (subsection (2)):

- a consignment of goods produced in another country has been imported, or where there are like goods that may be imported, and;

- there is in a third country an industry manufacturing like goods to those goods, and that country exports the like goods to Australia; and

- the Government of that third country believes that there are or may be reasonable grounds for the Minister to legally impose dumping or countervailing duties on that consignment of goods,

the Government may, via an application lodged with the Comptroller, made on an approved form (i.e. a form approved by the Comptroller in writing), and complying with new subsection 269TB(3), request the Minister to impose dumping or countervailing duties in respect of those goods.

Consideration of Application

New section 269TC prescribes the manner and specifies the time within which the Comptroller must consider an application requesting the imposition of dumping or countervailing duties on goods the subject of a 269TB application (as defined in 269T(5));

- When considering a complaint made by a person, subsection (1) requires the Comptroller to consider within 70 days (or such other period as may be prescribed), whether or not:
  - the application complies with the formalities of the approved form;
  - there is an Australian industry producing like goods; or there is likely to be established an Australian industry producing like goods; and
there are matters set out in the application which, if established, would constitute reasonable grounds for imposing dumping or countervailing duties;

When considering dumping complaints made by a third country, subsection (2) requires the Comptroller to consider within 70 days (or such other period as may be prescribed), whether or not:

- the application complies with the formalities of the approved form;
- there is a producer in a third country producing like goods to the goods complained of, and the country exports those goods to Australia; and
- there are matters set out in the application which, if established, would constitute reasonable grounds for imposing dumping or countervailing duties;

In either of the above cases, if the Comptroller rejects an application, subsection (3) requires the Comptroller to send a notice to the applicant giving the reasons for the rejection, as well as informing the applicant of the applicant's right to have the matter reviewed by the Anti-Dumping Authority.

If, however, the Comptroller does not reject the application, subsection (4) requires the Comptroller to publish in both the Gazette and in a newspaper circulating in each State and in the internal Territories, a notice containing:

- the particulars of the goods the subject of the section 269TB application;
- the identity of the complainant, and the identity of the relevant producers or third country producers;
- a statement declaring that within 180 days (or such other period as may be prescribed), the Comptroller will make a preliminary finding as to whether or not dumping duties should be imposed on the goods the subject of the application;
- a statement advising that a preliminary finding that dumping may have occurred could result in the imposition of provisional measures including, amongst other things, the taking of securities on the importation of the goods the subject of the application; and
- an invitation to "interested parties" (as defined in section 269T) to lodge within 40 days (or such lesser
period as may be indicated in the Gazette notice) a
submission with the Comptroller concerning the
imposition of the duty sought by the application;

paragraph 269 TC(4)(e) provides that the maximum
statutory time for inviting interested parties to
make submissions concerning the imposition of
dumping duties may be altered by the Comptroller in
the Gazette notice. As securities may only be
imposed after the Comptroller has made a
preliminary finding with regard to the relevant
dumping complaint (see clause 4), in certain
circumstances (ie. where the material injury
threatened is severe) it may be in the interests of
parties to expedite the consideration of a
preliminary finding. It is noted notwithstanding
this facility however, that the ultimate
recommendation as to whether dumping has occurred
is still made by the Anti-Dumping Authority.

Preliminary Findings

New section 269TD sets out the procedure for what is to occur at
the conclusion of the preliminary dumping inquiry notified in
subsection 269TC(4); ie the preliminary finding stage. After
considering the application and any submissions made by interested
parties under section 269TC, and any other information that may
have been collected by the Australian Customs Service that is
considered relevant (subsection (1));

if the Comptroller finds that dumping duties should be
imposed, subsection (2) provides that the Comptroller must
notify the applicant of the decision, notify in the Gazette
and in a newspaper circulating in each of the States and the
internal Territories that such a decision has been made
(paragraph (1)(a)), refer the matter to the Anti-Dumping
Authority within 7 days for a review of the decision on its
merits (paragraph (1)(b)), and, if considered necessary, take
securities pursuant to section 42 of the Principal Act upon
the importation of goods referred to in the application in
respect of any dumping or countervailing duty that may
become payable;

if the Comptroller finds that dumping or countervailing
duties should not be imposed, subsections (3) and (4) require
the Comptroller to declare that a preliminary finding that
grounds do not exist for the imposition of dumping or
countervailing duties has been made, and he must publicise
that decision in the Gazette and in a newspaper circulating
in each of the States and the internal Territories, as well
as notify the unsuccessful applicant, giving the reasons for
the decision, and advising the applicant of his or her right
to have the decision reviewed on its merits by the Anti-
Dumping Authority.
It should be noted that the decision of the Comptroller is not the recommendation which goes to the Minister on whether the Minister should make the decision whether to impose dumping or countervailing duties. Rather, the Comptroller merely makes a preliminary determination; all recommendations by the Comptroller as to the imposition or otherwise of duties can or must be reviewed by the independent Anti-Dumping Authority.

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

New section 269TE provides that when the Comptroller is required to make a recommendation as to whether or not dumping or countervailing duties are to be imposed on goods, the Comptroller must adopt the same tests and formulas that the Minister is required to use in the Customs Tariff (Anti-Dumping) Act 1975 before the Minister imposes dumping or countervailing duties (subsection (1)).

subsection (2) provides that where the Comptroller is considering an application for dumping relief in anticipation of an injurious import (one of the situations countenanced by new subsection 269TB(1)), the Comptroller shall determine the matter pursuant to the Anti-Dumping Act at the time of the anticipated importation of the goods into Australia.

Reviews by Authority

New section 269TF outlines the role of the Anti-Dumping Authority in reviewing decisions of the Comptroller:

where a person has had an application rejected by the Comptroller pursuant to subsections 269TC(1) and (2), (i.e. a negative prima facie decision) or where the Comptroller has made a preliminary finding that there are not sufficient grounds to impose dumping or countervailing duties pursuant to subsection 269TD(1) (i.e. a negative preliminary finding) that person may apply to the Authority, on a form approved by the Authority for the purpose within a time prescribed by the Regulations, for a review of that decision (subsection (1));

A decision made by the Comptroller to reject an application pursuant to section 269TC may either be confirmed or revoked by the Authority. Should the decision of the Comptroller be revoked by the Authority, the Authority’s decision shall be substituted for the decision of the Comptroller, and the Comptroller shall be obliged to perform the responsibilities prescribed in subsection 269TC(4), i.e. commence the preliminary dumping inquiry (subsection (2));

The Authority may also review the preliminary finding of the Comptroller. In this case the Authority may come to its own decision, and if it decides there are grounds for the imposition of dumping duties it shall conduct the formal 120
day dumping inquiry under section 7 of the Anti-Dumping Authority Act; the Comptroller may also exercise from the date the Authority revokes the Comptroller's preliminary finding, the powers in 269TD(2)(c), ie. the power to take securities upon the importation of goods referred to in the application in respect of any dumping or countervailing duty that may become payable (subsection (3)) in respect of goods the subject of a section 269TB application;

- this is a technical drafting change to pick up the expanded range of goods referred to in 269T(5).

Inquiries in relation to undertakings

Clause 7 provides that inquiries as to whether or not the Minister should accept an undertaking from an exporter not to export goods to Australia below a specified price may be made.

Repeal of section 269V

Clause 8 repeals section 269V of the Principal Act, relating to the way information had to be supplied in "dumping inquiries", as it is no longer relevant to the new dumping inquiry procedure. Now, for both preliminary inquiries by Customs and formal inquiries by the Anti-Dumping Authority, the manner in which information is required to be given is prescribed on the relevant approved form.

PART III - AMENDMENTS TO THE INDUSTRIES ASSISTANCE COMMISSION ACT 1973

Principal Act

Clause 9 identifies the Industries Assistance Commission Act 1973 as the Principal Act for the purposes of this Part.

Reference of Matters to Commission

Clause 10 amends section 23 of the Principal Act by removing the Industries Assistance Commission as a recommendatory and review body on dumping matters.

- That function is now performed by the Anti-Dumping Authority.
1988

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Industry, Technology and Commerce, Senator the Honourable John N. Button

(This explanatory memorandum supersedes the explanatory memorandum tabled with this Bill on 28 April 1988.)
Customs Tariff (Anti-Dumping) Amendment Bill 1988

Outline


In particular, the Bill:

- defines the term "like goods" used in the legislation, by adopting the definition of the term as used in the GATT (clause 4);

- allows for the publication of the normal value of goods as a guide to the Australian community (unless such publication will prejudice the business or commercial interests of a person) (clauses 9(c) and 10(c)) and provide a facility for those normal values to be re-ascertained (clause 8);

- limits, in situations where the Minister directs that dumping or countervailing duty in respect of goods is to be an amount which is not greater than is necessary to prevent injury to the Australian industry producing like goods, the Minister's obligation to publish that information so that the business or commercial interests of a person are not prejudiced (clauses 9(g), 10(e), 11(f), and 12(d)); and

- limits the period of a dumping notice or undertaking made under the Anti-Dumping Act to three years from the date of issuing the notice or the acceptance of an undertaking (with appropriate transitional provisions for notices already in existence) (clause 13), thus requiring industries which have benefited from protection under the Anti-Dumping Act and which still consider that short-term relief is required, to re-justify their claims for protection after three years. (Under existing provisions notices remain in force until revoked by the Minister.)

The Bill also makes various amendments to the existing legislation to make clear that the Act can only be invoked if the act of dumping injures an industry manufacturing like goods to the goods allegedly "dumped", and not just Australian industry generally (clauses 9(a) and (e), 10(a), 11(a),(d),(e), (f) and (g) and 12(a)).

Financial Impact Statement

The proposed amendments in this Bill have no direct financial implications.
NOTES ON CLAUSES

Short Title etc.

Clause 1 provides for the citation of this Bill as the Customs Tariff (Anti-Dumping) Amendment Act 1988 (subclause 1(1)), and identifies the Customs Tariff (Anti-Dumping) Act 1975 as the Principal Act being amended by this Bill (subclause 1(2)).

Commencement

Clause 2 provides that:

- clauses 1 and 2 will come into operation on the day of Royal Assent of this Bill; and
- paragraph 4(a) and clause 5 are deemed to have commenced on 15 October 1987, the day on which the sea installations legislative package commenced operation.
- the remainder of the Bill will come into operation on the same day the Anti-Dumping Authority Bill 1988 commences operation, which will be a date to be proclaimed.

Repeal of section 3A

Clause 3 repeals section 3A of the Principal Act.

- this section currently vests the Comptroller-General of Customs with the general administration of the Act. As this Bill transfers the remaining powers held by the Comptroller-General under the Principal Act to the Minister (to enable the Anti-Dumping Authority’s involvement in the process) this section is unnecessary.

Interpretation

Clause 4 Amends section 4 of the Principal Act. In particular, the clause:

- amends the definition of "importer" contained in the Principal Act by adding new paragraphs (d) and (e) which deem the beneficial owner of goods imported on to sea installations from overseas, or are on board an overseas sea installation
when the installation is installed in an area adjacent to Australia, or the beneficial owner of a sea installation to be an "importer" for the purposes of the Principal Act;

during 1987 the Sea Installations Act 1987 (Act 102, 1987) and the Sea Installations (Miscellaneous Amendments) Act 1987 (Act 104, 1987), amongst other Bills, were passed, enabling Australian laws to apply to sea installations that may be installed in locations adjacent to Australian territory. These amendments are consequential to that package, and have the effect of applying Australian anti-dumping legislation to the beneficial owner of sea installations, or of goods that are taken on board, or are on sea installations;

These amendments are deemed to have commenced on 15 October 1987, the date that the other components of the sea installations legislation commenced operation.

It gives the term "like goods" a statutory definition. The definition now makes clear that the term applies to goods that are either identical to goods contained in the consignment which gave rise to the original dumping enquiry, or are goods that have characteristics (both physical and functional) closely resembling the goods under consideration;

This definition encompasses the definition of "like goods" contained in Article 2.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("GATT"); and

vests responsibility for making certain determinations contained in subsections 4(2), 4(3) and 4(3A) of the Principal Act in the Minister rather than the Comptroller-General.

Repeal of sections 4AA, 4AB and 4AC

Clause 5 repeals the above three sections from the Principal Act.
These sections deal with the application of anti-dumping legislation to offshore installations. With the passage of the sea installation legislation package in 1987, and the amendments to the definition of importer contained in the Principal Act (discussed above), these provisions are no longer necessary.

Export Price

Clause 6 amends section 4A of the Principal Act by vesting in the Minister rather than in the Comptroller-General of Customs the responsibility for making certain determinations under subsections 4A(1), 4A(2), 4A(3) and 4A(4) of that Act, relating to ascertaining the export price of goods.

these amendments are consequential on the establishment of the Anti-Dumping Authority and will now accommodate its participation in the dumping process.

Normal value of goods

Clause 7 amends section 5 of the Principal Act by

vesting responsibility for making determinations with regard to establishing the "normal value" of goods (that is, the price that is, or is constructed to be, the price ordinarily paid for like goods to the goods in question in the country of export) contained in section 5 of the Principal Act in the Minister rather than the Comptroller-General of Customs (paragraphs (b), (d) and (f));

these amendments are consequential on the establishment of the Anti-Dumping Authority and will now accommodate its participation in the dumping process;

adding a head of power for regulations to identify the special circumstances where a profit margin is to be taken into account when constructing the "normal value" of goods (paragraphs (a), (c) and (e));
these amendments will give effect to the Government's policy that in most circumstances, and especially in the absence of any regulations, a zero profit will be imputed in constructing normal values, to prevent unrealistically high constructed prices.

Minister may re-ascertain certain normal values

Clause 8 inserts a new section 5AA to the Principal Act.

Once a case of dumping has been established against particular goods or like goods (as defined), leading to a notice to be issued against those goods under sections 8, 9, 10 or 11 of the Principal Act, the new subclause 5AA(1) permits the Minister to notify in the Gazette variations to the normal value of the goods originally determined when the relevant notice was issued.

- The facility to re-ascertain what is the "normal value" of the goods (a concept discussed below) takes into account, amongst other things, price variations since the imposition of the notice imposing special duties on the goods.

Dumping duties

Clause 9 amends section 8 of the Principal Act, by which dumping duties may be imposed on goods.

- paragraphs 9(a) and 9(e) make clear that dumping duties may only be imposed if an Australian industry producing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not Australian industry generally.

- paragraphs 9(b) and 9(d) make minor technical amendments to various provisions contained in the section, by amending the term "goods of that kind" to read "like goods" (a term now proposed to be defined in the Principal Act by this Bill.)

- paragraph 9(c) provides that notices issued pursuant to section 8 imposing
dumping duty on particular goods, or like goods to the goods under investigation, shall include a statement of the "normal value" ascertained in respect of the goods.

Paragraphs 9(f) and 9(g) introduce a qualification to the Minister's power under subsection 8(5) of the Principal Act (whereby the Minister can Gazette the dumping duty in respect of the goods as an amount which is not greater than is necessary to protect an Australian industry producing like goods from injury) to prevent publication of information which, in the Minister's opinion, would adversely affect the business or commercial interests of any person;

Paragraph 9(h) transfers the power to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister.

Third country dumping duties

Clause 10 amends section 9 of the Principal Act, by which third country dumping duties may be imposed on goods.

Paragraph 10(a) makes clear that third country dumping duties may only be imposed if a third country producer or manufacturer producing or manufacturing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not third country producers or manufacturers generally.

Paragraph 10(b) makes a minor technical amendment to the section, by amending the term "goods of that kind" to read "like goods" (which is the term now proposed to be defined in the Principal Act by this Bill).

Paragraph 10(c) provides that notices issued pursuant to section 9 imposing third country dumping duty on particular goods, or like goods to the goods under
investigation, shall include a statement of the "normal value" ascertained in respect of the goods.

paragraphs 10(d) and 10(e) introduce a qualification to the Minister's power under subsection 9(5) of the Principal Act (whereby the Minister can Gazette the third country dumping duty in respect of the goods as an amount which is not greater than is necessary to protect a third country producer or manufacturer of like goods from injury) to prevent publication of information which, in the Minister's opinion, would adversely affect the business or commercial interests of any person.

paragraph 10(f) transfers the power to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister.

### Countervailing duties

**Clause 11** amends section 10 of the Principal Act, by which countervailing duties may be imposed on goods.

paragraphs 11(a), 11(d), 11(e), 11(f) and 11(g) makes clear that countervailing duties may only be imposed if an Australian industry producing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not Australian industry generally.

paragraphs 11(b) and 11(c) insert the statutory term "like goods" into various provisions contained in section 10.

paragraphs 11(h) and 11(i) introduce a qualification to the Minister's powers under subsection 10(5) of the Principal Act (whereby the Minister can Gazette the countervailing duty in respect of the goods as an amount which is not greater than is necessary to protect an Australian industry producing like goods from injury) to prevent publication of information which, in the Minister's opinion, would adversely affect the business or commercial interests of any person.
paragraph 11(k) transfers the power to determine the amount of subsidy etc. in certain circumstances (subsection 10(7) of the Principal Act) and to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister (subsections 10(8) and 10(9) of the Principal Act).

Third country countervailing duties

Clause 12 amends section 11 of the Principal Act, by which third country countervailing duties may be imposed on goods.

paragraph 12(a) makes clear that countervailing duties may only be imposed if a third country producer or manufacturer producing or manufacturing "like goods" (as defined) is being materially injured, hindered or threatened (as the case may be), and not third country producers or manufacturers generally.

paragraph 12(b) makes a minor technical amendment to the section, by amending the term "goods of that kind" to read "like goods" (a term proposed to be defined in the Principal Act by this Bill).

paragraphs 12(c) and 12(d) introduce a qualification to the Minister's power under subsection 11(5) of the Principal Act (whereby the Minister can Gazette that the third country countervailing duty in respect of the goods as an amount which is not greater than is necessary to protect a third country producer or manufacturer of like goods from injury) to prevent publication of information which, in the Minister's opinion, would adversely affect the business or commercial interests of any person).

paragraph 12(e) transfers the power to determine the amount of subsidy etc. in certain circumstances (subsection 11(7) of the Principal Act) and to exempt goods from the effect of a notice issued pursuant to this section from the Comptroller-General of Customs to the Minister.
Clause 13 inserts new sections 12A and 12B into the Act.

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

The proposed new section 12A requires the Minister to place a notice in the Gazette indicating that the Minister, having considered a recommendation from the Anti-Dumping Authority, has decided not to impose duties pursuant to the Principal Act.

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

The proposed new subsections 12B(1), (2) and (3) provide that a notice imposing duties, or any "undertakings" (a concept discussed below) made pursuant to the provisions of the Principal Act after the commencement of this Bill will only remain in force for a maximum period of three years, (if no notice has been previously issued for like goods) or, if a previous notice has been issued with regards to like goods, all notices will expire three years after the date the first notice was published.

The new subsections 12B(4) and 12B(5) provide that notices issued pursuant to "relevant notification provisions" (as defined by subclause 12B(7)) shall expire:

- if the notice was published, or the undertaking was given prior to 1 March 1986 - on 1 March 1989; or

- if the notice was published or undertaking given on or after 1 March 1986, and before the commencement of this Act - 3 years after the notice was published, or undertaking given.

These "sunset provisions" accept the comments of Professor Gruen in his Review of the Customs Tariff (Anti-Dumping) Act 1975 that the anti-dumping system was to be seen predominantly as "emergency" protection against
predatory acts of dumping or subsidisation and not as a continuing source of tariff protection for particular Australian industries against foreign competition.

Repeal of section 15

Clause 14 repeals section 15 of the Principal Act.

section 15 permits the Minister to refer to the Industries Assistance Commission various questions regarding the existence or otherwise of facts that would enable the Minister to make decisions pursuant to anti-dumping legislation. These questions are now to be considered by the Anti-Dumping Authority, to be established by the Anti-Dumping Authority Bill 1988.

Revocation of notices etc.

Clause 15 amends section 20 of the Principal Act by adding

new subsections 1A and 2A to permit the Minister to release an exporter from an undertaking given pursuant to the Act.

Regulations

Clause 16 inserts a new Section 22 into the Principal Act, which is a standard regulation making power, to permit the making of regulations that are required to be made, or that are necessary or convenient to be made, for the carrying out or giving effect to the Act.

Transitional

Clause 17 is a standard savings provision deeming certain decisions and delegations of power made by the Comptroller-General of Customs under powers that have been transferred to the Minister by this Act to have been made by the Minister.