INFORMATION ON IMPLEMENTATION AND
ADMINISTRATION OF THE AGREEMENT

Legislation of Australia
Supplement

The following communication has been received from the Permanent Mission of Australia regarding recent amendments to the Australian Customs Regulations and to the Customs Act 1901.

I wish to advise of recent legislative changes which have resulted in amendments to Australia's Anti-Dumping and Countervailing 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 Code signatories, one copy of each of the following legislation, Statutory Rules 1991 No. 139 amending the Customs Regulations and Customs Amendment Act (No. 82 of 1991).

The purpose of the amendment to the Statutory Rules is to reduce by 40 days the processing time by the Australian Customs Service (ACS) of formal Anti-Dumping and Subsidization applications by Australian Industry, thereby enabling a reduction in allowable ACS processing time from 175 days to 135 days.

The purpose of the relevant amendments to the Customs Act 1901 which are detailed at sections 7 to 9 in Customs Amendment Act (No. 82 of 1991) is to:

(i) Expand the definition of an Australian Industry to cover injury suffered by vertically integrated agricultural and horticultural industries as a result of dumping or subsidization of processed products. Where vertical integration does not exist, agricultural and horticultural producers will not be considered part of the "Industry Producing Like Goods" and injury to them cannot be taken into account.
(ii) To provide for the calculation of a full dumping margin at the preliminary finding stage of a dumping or subsidization inquiry.

(iii) To ensure that each dumping or countervailing measure which may be in place for a particular product applies for 3 years (except in the case of a successful request for revocation), and, the time for this sunset provision runs from the date on which each dumping or countervailing notice or undertaking was published, rather than for the date the first such notice or undertaking in respect of such goods may have been published.

To further assist Code signatories, a copy of the Minister's Second Reading Speech to the Australian Parliament, a copy of the Explanatory Memorandum provided to members of the House of Representatives and a copy of Australian Customs Notice No. 91/113 of 10 July 1991 is also provided.
I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the Customs Act 1901.

Dated 19 June 1991

BILL HAYDEN
Governor-General

By His Excellency's Command,

JOHN N. BUTTON
Minister of State for Industry, Technology and Commerce

1. Amendment

1.1 The Customs Regulations are amended as set out in these Regulations.

2. Application

2.1 The amendments of the Customs Regulations made by these Regulations apply in relation to applications lodged on or after 1 March 1991.

3. New Regulations 183AA and 183AB

3.1 After Regulation 183, insert:

Anti-dumping: time for consideration of applications under sub-section 269TB(1) or (2) of the Act

"183AA. (1) For the purposes of sub-section 269TC (1) of the Act, the prescribed period in relation to an application by a person under sub-section 269TB (1) of the Act for publication of a dumping duty notice or a countervailing duty notice is the period ending 35 days after lodgement of the application.

"(2) For the purposes of sub-section 269TC (2) of the Act, the prescribed period in relation to an application by the government of a country under sub-section 269TB (2) of the Act for publication of a dumping duty notice or a countervailing duty notice is the period ending 35 days after lodgement of the application.
Anti-dumping: time for making preliminary finding under section 269TD of the Act

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

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

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

(a) the complexity, or novelty, of the issues to be considered;
(b) the variety of goods to be considered;
(c) the number of persons whose activities must be investigated;
(d) the difficulty of obtaining evidence."
Customs Amendment Act 1991

No. 82 of 1991

An Act to Amend the Customs Act 1901

(Assented to 26 June 1991)

The Parliament of Australia enacts:

Short title etc.

1. (1) This Act may be cited as the Customs Amendment Act 1991;

(2) In this Act, "Principal Act" means the Customs Act 1901. 1

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 4 of the Principal Act is amended by omitting paragraph (a) of the definition of "Division 1B Judge" in sub-section (1) and substituting the following paragraph:

"(a) a Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory, or of the Family Court of Australia, in relation to whom a consent under sub-section 219RA (1) and a nomination under sub-section 219RA (2) are in force; or".

4. Before section 219S of the Principal Act the following section is inserted in Sub-division C of Division 1B of Part XII:

Certain judges and magistrates eligible to give orders under this sub-division

"219RA. (1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Family Court of Australia may, by writing, consent to be nominated by the Minister under sub-section (2).

(2) The Minister may, by writing, nominate a Judge of a court referred to in sub-section (1) in relation to whom a consent is in force under that sub-section to be a Division 1B Judge."
Repeal of section 219AB

5. Section 219AB of the Principal Act is repealed.

6. Section 219ZL of the Principal Act is repealed and the following section is substituted:

Protection of judge or magistrate

"219ZL. (1) A Judge of the Federal Court of Australia, of the Supreme Court of the Australian Capital Territory or of the Family Court of Australia has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

"(2) A Judge of the Supreme Court of a State, or a Judge of the Supreme Court of the Northern Territory who is not a Judge referred to in sub-section (1), has, in performing a function of, or connected with, issuing a warrant or giving an order under this Part, the same protection and immunity as if he or she were performing that function as that Supreme Court or as a member of that Supreme Court.

"(3) A Magistrate performing a function of, or connected with, issuing a warrant or giving an order under this Part has the same protection and immunity as if he or she were performing that function as a Magistrates Court or as a member of a Magistrates Court."

Interpretation

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

(a) by inserting in sub-section (1) the following definitions:

"'agricultural operations' means:

(a) the cultivation or gathering in of crops; or

(b) the rearing of livestock; or

(c) the conduct of forestry operations;

and includes;

(d) viticulture, horticulture or apiculture; or

(e) hunting or trapping carried on for the purpose of a business:

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

"fishing operations" means:
(a) the taking, catching or capturing of fish; or

(b) the farming of fish; or

(c) pearling operations;

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

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

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

(b) by omitting sub-section (4) and substituting the following sub-sections:

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

(a) there is an Australian industry in respect of those like goods; and

(b) subject to sub-section (4A), the industry consists of that person or those persons.

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

"(4B) For the purposes of sub-section (4A), processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Comptroller is satisfied that:

(a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and

(b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods; and

(c) either:

(i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or
(ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be, constituted by the cost to the producer of those goods of the raw agricultural goods.

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

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

8. Section 269TE of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

(1) Where the Comptroller:

(a) in making a decision under section 269TC to accept or reject an application in relation to the goods the subject of the application; or

(b) in making a preliminary finding under section 269TD in relation to those goods;

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

(c) must determine the matter in like manner as if he or she was the Minister; and

(d) must have regard to the same considerations (other than the considerations referred to in sub-section 8(5A), 9(5A), 10(5A) or 11(5A) of that Act, whichever is appropriate) to which the Minister would be required to have regard under that Act if the Minister were determining the matter."

Periods during which certain notices and undertakings to remain in force

9. (1) Section 269TM of the Principal Act is amended:

(a) by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:

"(1) Where a notice is published after this section commences under a relevant notification provision in respect of goods of a particular kind, that notice expires 3 years after the day on which it is published unless it is revoked before the end of that period."
"(2) Where an undertaking is entered into after this section commences under a relevant undertaking provision in respect of goods of a particular kind, that undertaking expires 3 years after the day on which it was entered into unless provision is made for its earlier expiration."

(b) by omitting sub-section (6).

(2) Where a notice was published under a relevant notification provision of the Principal Act before this section commences, sub-sections 269TM (1) and (3) of the Principal Act as in force immediately before this section commences continue in force in relation to that notice as if the amendments made by paragraph (1)(a) of this section had not been made.

(3) Where an undertaking was entered into under a relevant undertaking provision of the Principal Act before this section commences, sub-sections 269TM (2) and (3) of the Principal Act as in force immediately before this section commences continue in force in relation to that undertaking as if the amendments made by paragraph (1)(a) of this section had not been made.

(4) For the purposes of sub-sections (2) and (3), "relevant notification provision" and "relevant undertaking provision" have the same meaning as they have under section 269TM of the Principal Act.

Note: 1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 9, 1914; 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); No. 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, 15 and 110, 1980; Nos. 45, 64, 67, 152, and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 139, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39 40 and 175, 1985; Nos. 10, 34, and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66, 76, 99, 120 and 121, 1988; Nos. 23, 24, 78, 108 and 174, 189; and Nos. 6, 11, 37, 70 and 79, 1990.

[Minister's second reading speech made in - House of Representatives on 9 May 1991 Senate on 29 May 1991]
This Bill proposes to amend the Customs Act 1901 ("the Act"), to:

(i) implement certain reforms to the current anti-dumping/subsidization régime which were announced by the Government in the 12 March Industry Statement, and

(ii) effect technical drafting changes to the internal body search provisions of the Act to clarify the nature and function of judges' orders made under those provisions.

The proposed amendments to Part XVB of the Act, relating to the anti-dumping and subsidization provisions, focus on three aspects of Australia’s anti-dumping and countervailing system:

Clause 7 of the Bill proposes the inclusion of several new sub-sections modelled on the relevant sections of the United States Tariff Act of 1930, to expand the definition of an Australian industry, and thus effectively allow material injury suffered by vertically integrated agricultural industries as a result of the dumping or subsidization of processed agricultural products to be taken into consideration when determining the material injury caused by the dumping of such processed products;

Clause 8 of the Bill proposes to simplify the determination of provisional dumping measures by providing for the calculation of a full dumping margin at the preliminary finding stage of a dumping or subsidization enquiry; and

Clause 9 of the Bill proposes a modification to the provision in the Act relating to the three-year sunset period for dumping measures, to ensure that any such measures which may be in place for a particular product apply for three years, unless earlier revoked.

In making these changes, the Australian Government retains its commitment to promoting a fair and orderly international trading system under the auspices of the General Agreement on Tariffs and Trade. The Government will, as appropriate, review and if necessary amend Australia's legislative provisions and actions taken under the Act in the light of future developments in the international economic and trading arena, particularly in regard to our continuing obligations under the GATT and the GATT Anti-Dumping Code.

The principal objective of the anti-dumping amendments in this Bill is to provide that where agricultural producers who are vertically integrated
with the processors to whom they sell their products suffer material injury as a result of dumping or subsidization of processed products, the agricultural producers will be included as part of the relevant Australian industry and thus will be taken into consideration in cases involving those imported processed products.

The new provision in Clause 7 of the Bill will apply to those involved in the production of crops (including viticulture, horticulture and apiculture), as well as the rearing of livestock, and the conduct of forestry and fishing operations.

This change recognizes the vulnerability of vertically integrated agricultural producers, who are generally price takers in their markets, with the prices they receive dependent on the prices their buyers are able to command for their processed products. Agricultural producers can, therefore, be materially injured as a result of the impact of dumping or subsidization on the processors to whom they sell their produce.

The new provision in relation to the definition of "industry" has been modelled on existing United States legislation which serves a similar purpose.

It includes strict tests of vertical integration. For a primary producer to be considered part of a processed agricultural product industry, the raw agricultural goods of the primary producer must be devoted substantially or completely to the processed agricultural goods and the processed goods must be derived substantially or completely from the raw agricultural goods. In addition, vertical integration is subject to an economic test requiring either a close relationship between the movement in the prices of the raw agricultural goods and the processed goods, or that the raw agricultural goods constitute a significant proportion of the production cost of the processed agricultural goods.

The second objective of the anti-dumping amendments in this Bill relates to the three-year sunset provision on Anti-Dumping and countervailing measures. This was introduced into the Australian system in 1988 in a safeguard against the use of anti-dumping and countervailing measures as a means of long-term industry protection. The Government continues to regard the sunset provision in Section 269TM of the Act as a valuable aspect of the system.

At present, however, new anti-dumping or countervailing measures imposed while a measure is in place against the same product from a different source may only be applied for as long as the existing measure on that product remains in place.

The implications of this are that, where companies engaged in injurious dumping into Australia seek to avoid duties by relocating their operations, any new dumping measures imposed on the relocated source will terminate at the same time as the original measure - no matter how short a
time the new measure has been in place. Given the time, effort and cost involved in pursuing action against dumping, the shortened life of such anti-dumping measures is a disincentive for Australian industry to seek action where companies dumping products move their source to avoid the penalties for dumping.

Clause 9 of the Bill will therefore ensure that, except in the case of a successful request for revocation, all anti-dumping and countervailing measures will be applied for the full three years.

Finally, with regard to the anti-dumping amendments in this Bill, Clause 8 effectively provides that the Australian Customs Service will no longer calculate "non-injurious" free-on-board values for the purpose of setting provisional dumping measures. While that calculation, which attempts to set the price at which a product could be exported to Australia without causing injury to the Australian industry, will continue to be used at the final finding stage for the setting of dumping or countervailing duties, the elimination of it and use instead of the full margin of dumping or subsidization at the preliminary finding stage will simplify the investigation process and will assist with the reduction in the time taken to process anti-dumping and countervailing cases.

The other amendments proposed by this Bill effect technical drafting changes to the new internal body search provisions of Part XII of the Act, and relate in particular to the conferral of power on judges to make the Detention and Internal Search Orders which were part of the Customs (Detention and Search) Act 1990, which was assented to in October last year, and commenced operation on 24 April this year. These amendments, contained in Clauses 3, 4, 5, and 6 of the Bill, are explained in detail in the explanatory memorandum to the Bill.

Financial Impact Statement

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

I commend the Bill to the Senate and present the accompanying explanatory memorandum.
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS AMENDMENT BILL 1991

Explanatory Memorandum

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

CUSTOMS AMENDMENT BILL 1991

Outline

This Bill proposes to amend the Customs Act 1901 ("the Act"), to:

(i) implement certain reforms to the current anti-dumping/subsidization régime which were announced by the Government in the 12 March Industry Statement; and

(ii) effect technical drafting changes to the internal body search provisions of the Act to clarify the nature and function of judges' orders made under those provisions.

In particular, the proposed amendments to Part XVB of the Act, relating to the anti-dumping and subsidization provisions:

(a) provide for the calculation of a full dumping margin at the preliminary finding stage of a dumping or subsidization enquiry (Clause 8);

(b) provide anti-dumping/countervailing remedies for primary producers in the agricultural/horticultural industries affected by dumping or subsidization of imports of processed agricultural products (Clause 7); and

(c) ensure that each dumping or countervailing measure which may be in place for a particular product applies for three years (subject to revocation), and, the time for this sunset provision runs from the date on which each dumping or countervailing notice or undertaking was published, rather than from the date the first such notice or undertaking in respect of such goods may have been published (Clause 9).
The proposed amendments to Part XII of the Act relate to the conferral of power on judges to make orders under the internal body search provisions of the Act (Divisions 1B and 1C of Part XII), and remake those provisions consistent with the formulas that have been recently established for the conferral of non-judicial power on judges as designated persons (Clauses 3 and 4 refer). In addition, the provision which provides for the immunity and protection of judges and magistrates when exercising such non-judicial powers as designated persons has been amended to accord with the form which has been settled and accepted previously for these types of provisions (Clauses 5 and 6 refer).

Financial Impact Statement

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

CUSTOMS AMENDMENT BILL 1991

Notes on Clauses

Short title etc.

Clause 1 provides for the Act to be cited as the Customs Amendment Act 1991, and identifies the Customs Act 1901 as the Principal Act being amended.

Commencement

Clause 2 provides for the Act to commence on the day on which it receives the Royal Assent.

Interpretation

Clause 3 amends the definition of "Division 1B Judge" in Sub-section 4(1) of the Principal Act, for the purposes of Sub-division C of Division 1B of Part XII (relating to the detention and internal search of persons suspected of internally concealing narcotics), as follows:

- a new paragraph (a) is substituted for the present paragraph (a) to add judges of the Family Court of Australia to the pool of federal judges available to order the detention, and if necessary, internal search of persons detained under Section 219S of the Principal Act;

- additionally, the new paragraph ensures that those judges, together with their federal court counterparts, are given the choice of accepting the powers and functions conferred on them in their personal capacity by Section 219ZK, via the express reference to the new consent provision proposed in Clause 4 (new Section 219RA).
Clause 4 inserts a new section 219RA into Sub-division C of Division 1B of Part XII of the Act (relating to the detention and internal search of persons suspected of internally concealing narcotics), as follows:

**Certain judges and magistrates eligible to give orders under this Sub-division**

New Section 219RA provides in a form similar to Section 219AA of the Principal Act that federal judges may consent to being nominated by the Minister as "Division 1B Judges". Upon such nomination, such Judges may then make detention orders and internal search orders under the internal search sub-division of the Act (Sub-division C of Division 1B of Part XII).

This follows the formula adopted as a matter of policy in provisions which confer power on federal judges as designated persons, such as Section 219AA of the Principal Act or Section 6D of the Telecommunication (Interception) Act 1979. The essence of these provisions is that where a function is to be exercised by federal judges personally, and not in their capacity as judicial officers, a duty of acceptance cannot be imposed.

**Repeal of Section 219AB**

Clause 5 repeals Section 219AB of the Principal Act as a consequence of its proposed remaking and relocation as new Section 219ZL in Clause 6.

Clause 6 repeals existing Section 219ZL of the Principal Act, and remakes it as follows:

**Protection of judge or magistrate**

New Section 219ZL

- New sub-section (1) effectively duplicates the immunity provision of Section 219AB of the Principal Act, in so far as federal judges are concerned.

- New Sub-sections (2) and (3) effectively repeat the immunity provision for State judges and magistrates, and Northern Territory judges, contained in current Section 219ZL.

**Interpretation**

Clause 7 amends Section 269T of the Principal Act to facilitate the use of anti-dumping or countervailing arrangements by agricultural or horticultural industries affected by the dumping of processed agricultural products, as follows:
paragraph (a) inserts into Sub-section (1) of Section 269T new definitions for the various primary producers to be included in the expanded group of industries which can claim relief from the dumping or subsidization of processed agricultural products;

- a definition of "production costs" has been inserted as a consequence of a reference to that expression in new Sub-paragraph (4B)(c)(ii), being part of the test for determining whether a good is a close processed agricultural good.

The expression has been defined as the sum of the direct labour costs, direct material costs and the factory overhead costs incurred in relation to processed agricultural goods and is intended together with the "physical" tests in new paragraphs (4B)(a) and (4B)(b) to expand the current parameters of what constitutes the Australian industry in relation to good of a particular kind.

- "raw agricultural goods" are defined to be goods directly obtained by the undertaking of any agricultural or fishing operation,

- "agricultural operation" is defined in similar form to the phrase "agriculture" in Section 164 of the Principal Act (relating to the diesel-fuel rebate scheme), and encompasses the rearing of livestock, the conduct of forestry operations, and the growing of grapes and other garden produce (viticulture and horticulture) and the keeping of bees (apiculture).

- "fishing operation" is also defined similar to its definition in Section 164 of the Principal Act.

Paragraph (b) omits Sub-section (4) of Section 269T, which dealt with a definition for the term Australian industry, and inserts four new sub-sections to give effect to the expansion of the definition of an "Australian industry producing like goods", and thus allow primary producers in the agricultural industries access to dumping relief from the dumping or subsidization of imports of processed agricultural products.

Primary producers (and other interested parties such as unions) may currently lodge a dumping complaint based on material injury to a processing industry as a result of a dumped or subsidized imported processed agricultural product (Section 269TB of the Principal Act refers), but the current legislation does not provide anti-dumping or countervailing remedies on the basis of material injury to the upstream (agricultural) industry from the dumping of that imported processed agricultural product. This
is because the current legislation requires that the Australian industry materially injured by the dumping must be an industry that producers "like goods" to those imported goods being complained about.

A "like good" or product is defined in the Principal Act (Section 269T) as a product which is identical, i.e. alike in all respects to the product under consideration, or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration. This definition severely limits the application of dumping or countervailing duties where the upstream (e.g. agricultural) industries (rather than the food processors) are the ones suffering material injury from imports of processed agricultural products.

The four new sub-sections propose to address the above limitation as follows:

new sub-section (4) repeats the current Sub-section 269(4) definition of what is to be regarded as an Australian industry, with the important proviso that the sub-section is now subject to new Sub-section 4A, which effectively expands the definition of an "industry producing like goods":

new sub-section (4A) provides that where the "imported" goods (i.e. the goods the subject of complaint) are processed agricultural goods, then for the purposes of the definition of an Australian industry producing like goods to those imported processed agricultural goods, the Australian industry consists not only of the person or persons producing the processed agricultural good, but also the person or persons producing the raw material (defined as the goods directly obtained from agricultural or fishing operations) from which the processed goods are derived.

For the expanded industry definition to apply in new Sub-section (4A), the Comptroller must be satisfied that the processed agricultural good derived from the raw agricultural good is closely related, as defined in new Sub-section 4B.

That sub-section requires that:

- the raw material (the agricultural good, for example, apples) is devoted completely or substantially to the processed agricultural good (for example, apple concentrate, or apple juice, or canned apples) (paragraph a) and;
- the processed agricultural good (for example, apple juice), is derived substantially or completely from the raw agricultural good (in this case, apples (paragraph (b); and
there is a close economic relationship between the raw agricultural good and the processed agricultural good, evidenced by either a close relationship between the price of each (Sub-paragraph c(i)) or the fact that a significant part of the production cost of the latter is constituted by the cost to the producer of the former (Sub-paragraph c(ii)).

"Production cost" is now defined in Sub-section 269T(i) as outlined previously in the Notes on Clauses to the amendments to that sub-section.

New Sub-section (4c) provides the Comptroller with a power to construct the production cost of processed agricultural goods where sufficient information has not been furnished or is not available to ascertain that cost. The insertion of this power is intended to overcome the difficulties which an upstream (agricultural) industry would otherwise face in bringing a dumping complaint where the processing industry for any reason chooses not to divulge information relating to the cost of producing the processed agricultural good despite the actual or potential damage to the upstream supplier.

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

Clause 8 amends Section 269TE of the Principal Act by omitting Sub-section (1) and substituting a new Sub-section (1), to provide an exception to the obligation currently imposed upon the Comptroller-General to consider dumping complaints subject to the same statutory requirements as the Minister.

The exception noted in new paragraph (d) will help give effect to the Government's decision to shorten the time taken to process dumping complaints.

The new paragraph will no longer require preliminary dumping investigations conducted by the Australian Customs Service to be determined on the basis that, where dumping is found, the level of the dumping margin should only be that which is necessary to remove the injury being suffered by the Australian industry as a result of the dumped or subsidized import. The ACS will now only apply the full dumping margin (that is, the difference between the normal value of the goods in the country of export, and the export price of the dumped product).

In coming to a final decision on whether or not to impose dumping duties, the Minister is required by Sub-section 8(5A), of the Customs Tariff (Anti-Dumping) Act 1975 to have regard to the desirability of ensuring that the amount of dumping duty is not greater than is necessary to prevent the injury or a recurrence of the injury. This is consistent with Article 8.1 of the GATT Anti-Dumping Code).
The proposed amendment will not alter this requirement at the final stage of a dumping inquiry (i.e. when the Anti-Dumping Authority makes its final recommendation to the Minister under the Anti-Dumping Authority Act, and when the Minister exercises his power under Sections 8, 9, 10 or 11 of the Customs Tariff (anti-Dumping) Act 1975 to impose dumping or countervailing duties).

Periods during which certain notices and undertakings to remain in force

Clause 9 amends Section 269TM of the Principal Act, relating to the three year sunset period for dumping or countervailing notices, or undertakings, as follows:

Sub-clause (1)

Paragraph (a) omits Sub-sections (1), (2), and (3) of the Principal Act and inserts two new sub-sections to provide that dumping or countervailing notices (new Sub-section (1), or undertakings (new Sub-section (2)) apply for three years (subject to revocation), and, the time for this sunset provision runs from the date on which each dumping or countervailing notice or undertaking was published, rather than from the date the first such notice or undertaking in respect of such goods may have been published.

Under the current provisions, although dumping or countervailing action may be taken against different source countries in respect of the same product at different times, these actions all lapse three years after the first measure was introduced. Importers frequently change their source country as anti-dumping action is taken. However, as the sunset date gets close, industry cannot justify the cost of mounting a dumping case when a dumping measure which may result will only be in place for a short time. To remove this disadvantage to Australian industry, the new provisions will ensure that each measure applies for three years (subject to revocation) without regard to other measures which may already be in place for the same product.

Paragraph (b) omits Sub-section 6, which is consequential on the amendments noted above. Because the new sub-sections make clear that notices or undertakings each have a maximum three year life, Sub-section (6) is no longer necessary.

Sub-clauses 2, 3 and 4

Sub-clauses (2), (3) and (4) are standard savings provisions, which preserve the current provisions concerning the three-year sunset provision for notices (Sub-clause 2) or undertakings (Sub-clause 3) made prior to the Royal Assent commencement of the new provisions in this Act.
Amending legislation has been passed, formally enacting the changes to the Anti-Dumping and Countervailing System announced in the Government's Industry Statement dated 12 March 1991. Details of the changes were contained in ACN No. 91/40 dated 13 March.

The Customs Amendment Act 1991 (Act No. 82) which was assented to on 26 June 1991 contains the following revised provisions:

1. Sub-section 269T(1)
   - providing new definitions on primary production

2. Sub-sections 269T(4), (4A), (4B) and (4C)
   - providing access to anti-dumping/countervailing remedies for primary producers in agricultural/horticultural industries affected by dumping or subsidization of imports of processed agricultural products.

3. Sub-section 269TE(1)
   - providing an exception to the obligation previously imposed on the Comptroller-General to consider the margin necessary to remove injury, usually referred to as the NIFOB.

The exception will now allow for the calculation of a full dumping margin at the preliminary finding stage of an inquiry. The ADA, in its review of the Customs preliminary finding, will address the NIFOB issue when recommending final measures that might be imposed.

4. Section 269TM
   - amends the sunset provisions to ensure anti-dumping actions are kept in place for a full three years wherever they are warranted.

Statutory Rule 1991 No. 139 amending the Customs Regulations was approved by the Governor General in Executive Council on 19 June 1991 and gazetted on 26 June 1991 in Gazette No. S.171.
The new Regulations, 183AA and 183AB, set the revised procedural time-frames as follows:

. to establish a prima facie case of dumping - 35 days; and
. to reach a preliminary finding - 100 days.

The reduction in the time available for Customs to examine applications for anti-dumping/countervailing action and reach a preliminary finding will require all parties involved to comply with strict deadlines for the receipt of submissions. To assist applicants and other interested parties, Customs has extended its shopfront activity through the establishment of a Business Liaison Unit in the Dumping Component. The unit is available to provide advice and information on the legislative and administrative requirements of dumping matters.

Any enquiries regarding this Notice should be directed to Mr John Hansen, Dumping, Canberra. Phone (06) 275 6025.

F.I. Kelly
Comptroller-General
Canberra Act 2600

10 July 1991

(C91/2476)