The following papers relating to the amendments to Australia's anti-dumping and countervailing legislation which passed through Parliament late last year has been received from the Permanent Mission of Australia on 16 April 1993.

- Press Release by the Minister for Small Business, Construction & Customs, 4 November 1992, relating to the review of Australia's anti-dumping system;

- Customs Legislation (Anti-Dumping Amendments) Act 1992 (No. 207 of 1992);
  - together with the Second Reading speech by the Minister and the Explanatory Memorandum for the introduction of the above legislation

- Customs Tariff (Anti-Dumping) Amendment Act 1992 (No. 206 of 1992);
  - together with the Second Reading speech by the Minister and the Explanatory Memorandum for the introduction of the above legislation
FOR IMMEDIATE RELEASE 4 NOVEMBER 1992

NEW SYSTEM FOR DUMPING AND COUNTERVAILING DUTIES

The Minister for Small Business, Construction and Customs, Mr David Beddall today introduced legislation into the House of Representatives for a new system for applying dumping and countervailing duties.

This legislation puts in place the final elements of the Government's package announced on 5 December 1991, following a review of anti-dumping policy and administrative arrangements.

Goods are said to be dumped when the export price to Australia is less than the normal value of the goods in the country of export.

Anti-dumping action is taken only if it is established, as a result of inquiries undertaken by the Australian Customs Service and the Anti-Dumping Authority, that goods have been dumped and that the dumping is causing or threatening material injury to the Australian industry producing similar goods.

"Under existing arrangements, the dumping duty imposed represents the difference between the actual export price and the normal value. Dumping duty is not payable where the dumping margin is eliminated by raising the export price to the level of the normal value as determined by inquiry," Mr Beddall said.

"The Government will replace this process with one similar to that used by the US and EC. This provides a mechanism whereby an interim duty will be collected on each importation of goods subject to anti-dumping measures."

The interim duty will be based on the difference between the normal value and the export price, as determined by the Minister at the inquiry, and will be payable even if the export price increases. Where the actual export price falls below the export price determined at the inquiry the difference between these prices will also be collected.
To take account of GATT requirements, under the new system an importer can apply for repayment of any interim duty paid in excess of the actual duty liability.

Applications for repayment can be lodged after each six months period of importation. To reduce the possibility of applications being lodged for only those consignments where it is known that a repayment is likely, an application will be required to cover all consignments during that six month period. Repayment will only be made if the total interim duty paid for the period exceeds the total actual duty liability.

The new arrangements also provide the right for an affected party to seek review of the interim duty to be paid on future shipments. Requests for review can be made 12 months or more after the interim duty has been imposed or 12 months after the Minister last reviewed that rate. However, the Minister will be able, where he considers it appropriate, to request Customs to undertake a review at any time.

Mr Beddall said that essentially similar arrangements would apply to countervailing duties levied to prevent material injury to Australian industry being caused by subsidies paid by foreign governments.

"The Government believes the new arrangements will be effective and efficient. They will also more closely align Australia's practice with that of other major users of anti-dumping systems," Mr Beddall said.

"The Government is confident that the new arrangements strike an equitable balance between the interests of importers and local industry, while taking into consideration Australia's international obligations."

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CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) BILL 1992

SECOND READING SPEECH


THE PROPOSED AMENDMENTS CONTAINED IN THIS PACKAGE REPRESENT THE FINAL CHANGE TO AUSTRALIA’S ANTI-DUMPING AND COUNTERVAILING PROVISIONS WHICH WERE ANNOUNCED BY THE GOVERNMENT ON 5 DECEMBER 1991 FOLLOWING A REVIEW OF ANTI-DUMPING POLICY AND ADMINISTRATIVE ARRANGEMENTS.

LAST SITTINGS, AS PART OF ACT NO. 89 OF 1992 THIS PARLIAMENT PASSED LEGISLATION WHICH:

REDUCED THE TOTAL TIME ALLOWED FOR THE PROCESSING OF ANTI-DUMPING AND COUNTERVAILING APPLICATIONS TO THE PRELIMINARY FINDING STAGE TO A MAXIMUM OF 125 DAYS, OR FOR MORE COMPLEX CASES, A MAXIMUM OF 145 DAYS;
EXTENDED, TO FIVE YEARS, THE PERIOD FOR WHICH ANTI-DUMPING AND COUNTERVAILING MEASURES REMAIN IN PLACE;

MADE PROVISION FOR A REVIEW TO BE UNDERTAKEN BY THE ANTI-DUMPING AUTHORITY FOLLOWING A REQUEST BY AN INTERESTED PARTY AS TO WHETHER MEASURES SHOULD CONTINUE AFTER THE FIVE YEAR EXPIRY DATE;

EXTENDED THE LIFE OF THE ANTI-DUMPING AUTHORITY TO AUGUST 2001; AND

INTRODUCED A NUMBER OF TECHNICAL CHANGES TO FACILITATE THE PROCESSING OF APPLICATIONS.

GOODS ARE SAID TO BE DUMPED IF THE EXPORT PRICE OF THE PRODUCT IS LESS THAN THE "NORMAL VALUE", THAT IS, THE COMPARABLE PRICE FOR THE LIKE PRODUCT IN THE DOMESTIC MARKET OF THE EXPORTING COUNTRY.

ANTI-DUMPING ACTION IS TAKEN ONLY IF IT IS ESTABLISHED AS A RESULT OF INQUIRIES UNDERTAKEN BY CUSTOMS AND THE ANTI-DUMPING AUTHORITY THAT GOODS HAVE BEEN DUMPED AND THAT THE DUMPING IS CAUSING OR THREATENING MATERIAL INJURY TO AN AUSTRALIAN INDUSTRY.

THE GOVERNMENT STRONGLY BELIEVES THAT EFFECTIVE AND TIMELY ANTI-DUMPING AND COUNTERVAILING MEASURES ARE NECESSARY TO
PROTECT AUSTRALIAN INDUSTRY FROM MATERIAL INJURY CAUSED BY DUMPED OR SUBSIDISED IMPORTS.

AT THE SAME TIME, THE GOVERNMENT IS DETERMINED NOT TO ALLOW THE ANTI-DUMPING AND COUNTERVAILING SYSTEM TO BE USED AS A DE-FACTO MEANS OF INDUSTRY PROTECTION.

AUSTRALIA'S ANTI-DUMPING SYSTEM IS NOW ONE OF THE FASTEST AND FAIREST IN THE WORLD. THERE IS SCOPE, HOWEVER, TO IMPROVE ITS EFFECTIVENESS BY ALTERING THE MANNER IN WHICH DUTIES ARE IMPOSED AND COLLECTED.

IN BROAD TERMS THE PRESENT LEGISLATION IMPOSES A DUMPING DUTY WHICH REPRESENTS THE DIFFERENCE BETWEEN THE EXPORT PRICE AND THE NORMAL VALUE OF THE GOODS, OR WHERE THE MINISTER SO DIRECTS, A LESSER AMOUNT SUFFICIENT TO REMOVE THE INJURY.

UNDER THE PRESENT REGIME, DUTY IS NOT PAYABLE WHERE THE DUMPING MARGIN IS PURPORTEDLY ELIMINATED BY RAISING THE ACTUAL EXPORT PRICE TO THE LEVEL OF THE NORMAL VALUE DETERMINED AT THE INQUIRY. THE GOVERNMENT CONSIDERS THAT A MORE EFFECTIVE WAY TO APPLY DUTIES AND STRENGTHEN THE OVERALL OPERATION OF THE ANTI-DUMPING AND COUNTERVAILING SYSTEM CAN BE ACHIEVED WITH AN APPROACH SIMILAR TO THAT USED BY THE US AND THE EUROPEAN COMMUNITY.

THE PROPOSALS PUT FORWARD IN THIS PACKAGE PROVIDE A MECHANISM WHEREBY AN INTERIM DUTY WILL BE IMPOSED ON EACH IMPORTATION OF GOODS SUBJECT TO ANTI-DUMPING OR COUNTERVAILING MEASURES.

THAT BILL ALSO PROVIDES THAT THE INTERIM COUNTERVAILING DUTY WILL BE DETERMINED ON THE BASIS OF THE AMOUNT OF THE SUBSIDY IDENTIFIED BY THE INQUIRIES.

IN EITHER CASE, AND CONSISTENT WITH BOTH OUR CURRENT LAW AND AUSTRALIA'S OBLIGATIONS AS A SIGNATORY TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE (THE GATT), THE NEW TAXING REGIME WILL CONTINUE TO REQUIRE THE MINISTER TO CONSIDER THE DESIRABILITY OF IMPOSING A LESSER RATE OF DUTY WHERE THIS IS SUFFICIENT TO REMOVE INJURY.

WITH THE INTRODUCTION OF AN INTERIM DUTY SYSTEM IN THE CUSTOMS TARIFF (ANTI-DUMPING) BILL, THIS BILL PROPOSES TWO MEANS BY WHICH SUBSEQUENT ADJUSTMENTS OF DUTY LIABILITY CAN BE EFFECTED.
THE FIRST SUCH MECHANISM IS A REPAYMENT OR REIMBURSEMENT FACILITY, WHEREBY INTERIM DUTY COLLECTED IN EXCESS OF THE ACTUAL DUMPING MARGIN (IN THE CASE OF DUMPING DUTIES) OR THE ACTUAL SUBSIDY (IN THE CASE OF COUNTERVAILING DUTIES) CAN BE REPAID.

TO REDUCE THE POSSIBILITY OF APPLICATIONS BEING LODGED ON A SELECTIVE BASIS FOR THOSE CONSIGNMENTS WHERE IT IS KNOWN THAT A REPAYMENT IS LIKELY, THIS BILL REQUIRES THAT ANY APPLICATION COVER ALL CONSIGNMENTS DURING A 6 MONTH PERIOD. DUTY WILL NOT BE REPAID UNLESS THE TOTAL INTERIM DUTY PAID EXCEEDS THE TOTAL ACTUAL DUTY LIABILITY FOR THE PERIOD.

IF NO APPLICATION HAS BEEN RECEIVED WITHIN 6 MONTHS OF THE END OF THE RELEVANT IMPORTATION PERIOD THE INTERIM DUTY PAID WILL BE TAKEN TO BE THE FINAL DUTY PAYABLE.

THE SECOND MECHANISM TO ENABLE SUBSEQUENT ADJUSTMENTS OF THE DUTY LIABILITY ON GOODS THE SUBJECT OF A DUMPING OR COUNTERVAILING NOTICE IS INTRODUCED IN THE BILL VIA A REVIEW FACILITY UNDER WHICH INTERESTED PARTIES MAY SEEK A REVIEW OF THE INTERIM DUTY TO BE PAID ON FUTURE SHIPMENTS.

THE BILL PROPOSES THAT A REQUEST FOR SUCH A REVIEW MAY ONLY BE MADE 12 MONTHS AFTER THE INTERIM DUTY HAS BEEN IMPOSED OR 12 MONTHS AFTER THE LAST REVIEW OF THE RATE. HOWEVER, THE MINISTER MAY, WHERE IT IS CONSIDERED APPROPRIATE, REQUEST AT ANY OTHER TIME THAT A REVIEW OF THE DUTY RATE BE UNDERTAKEN.
THE BILL DETAILS THE TYPE OF INFORMATION REQUIRED IN SUPPORT OF A REQUEST FOR A REVIEW TOGETHER WITH PROVISIONS ALLOWING INTERESTED PARTIES TO MAKE SUBMISSIONS. IT ALSO PLACES STRICT TIME LIMITS ON THE REVIEW CONSISTENT WITH THE OTHER TIME LIMITS APPLYING THROUGHOUT THE DUMPING PROCESS.

THE GOVERNMENT IS CONFIDENT THAT THE PROPOSED NEW SYSTEM STRIKES AN EQUITABLE BALANCE BETWEEN THE INTERESTS OF IMPORTERS AND LOCAL INDUSTRY, WHILE CONFORMING WITH AUSTRALIA’S OBLIGATIONS UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT).

FINANCIAL IMPACT STATEMENT

THE PROPOSED AMENDMENTS CONTAINED IN THIS BILL ARE EXPECTED TO RESULT IN ADDITIONAL SALARY AND ADMINISTRATIVE COSTS TOTALLING $0.4M IN 1992-93 AND $0.75M IN 1993-94 AND 1994-95, IN PRESENT DOLLAR VALUES.

I COMMEND THE BILL TO THE HOUSE AND PRESENT ITS EXPLANATORY MEMORANDUM.
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry, Technology and Commerce, Senator the Honourable John N. Button)
CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) BILL 1992

OUTLINE

This Bill proposes to amend Part XVB of the Customs Act 1901 and the Anti-Dumping Authority Act 1988 as part of the legislative package announced by the Government in December 1991 to introduce a new system for the imposition and collection of dumping and countervailing duties. This Bill provides the mechanism for the determination of interim and final duties, as well as introducing the two means by which subsequent adjustments of duty liability can be effected, while the other Bill in the package, the Customs Tariff (Anti-Dumping) Amendment Bill (No. 2) 1992 introduces the new taxing regime for the imposition and collection of both interim and final dumping and countervailing duties.

At present dumping duties are imposed by the Minister under the Customs Tariff (Anti-Dumping) Act 1975 if he or she is satisfied that goods exported to Australia have been dumped (i.e., their export price is less than their normal value), and that dumping is causing or threatening material injury to an Australian industry or hindering the establishment of an Australian industry. Likewise, countervailing duties may be imposed if the Minister is satisfied that goods exported to Australia have had financial assistance, for example a subsidy, bounty, reduction or remission of freight, and, because of that financial assistance, material injury to an Australian industry is caused or threatened.

Under the present regime, dumping duty is not payable where the dumping margin is purportedly eliminated by an exporter raising the export price of the goods to the level of their normal value. This Bill proposes to alter that approach, and to strengthen the overall operation of the anti-dumping regime, by adopting a position similar to that used by other signatories to the General Agreement on Tariffs and Trade; that is, to impose an "up-front" duty regardless of the actual export price or subsidy paid on the particular goods, and then provide a facility for the importer to have his or her actual duty liability assessed by the Minister at a later stage with the possibility of having any excess "up-front" duty repaid.

The main proposals contained in this Bill which implement this new scheme relate to:

1) the introduction of a mandatory obligation to include in a dumping duty notice or countervailing duty notice the factors relevant to the determination of duty payable under the Customs Tariff (Anti-Dumping) Act 1975, i.e., in the case of dumping duties, the normal value, export price, and non-injurious price of goods of that kind, and, in the case of countervailing duties, the amount of financial assistance by way of subsidy, bounty, or the like, and the non-injurious price of goods of that kind (clauses 11, 12, 13 and 14 refer).

This disclosure obligation is subject to a standard confidentiality exception, so that where information is provided in confidence, disclosure can be limited on a "need to know" basis; and
ii) the introduction of two mechanisms to enable subsequent adjustments of the dumping duty or countervailing duty payable, via

a) firstly, a repayment mechanism in new Division 4 of Part XVB. This will ensure consistency with the General Agreement on Tariffs and Trade (GATT) requirement that where duty is collected in excess of the actual dumping margin, there is to be a facility for importers to be repaid that excess. This will be achieved by the importer applying to have his or her actual duty liability calculated according to the normal value and export price for each consignment of goods, the subject of a dumping or countervailing duty notice, which is imported in a particular 6 month period (clause 15, new sections 269V and 269W refer). If this results in the total interim duty collected being in excess of the total actual duty liability for all imports of relevant goods during that 6 month period, then the importer will be entitled to be repaid this excess (clause 15, new sections 269X and 269V refer). An importer will have no right to seek a repayment for a particular 6 monthly period until the actual expiration of that period, and then will only have the right to apply for a repayment provided the application is made not more than 6 months after the end of that particular 6 monthly period (clause 15, new subsections 269V(2) and 269V(4) refer). Where an application is made in time, a negative repayment decision by Customs will be reviewable by the Anti-Dumping Authority (clause 15, new subsection 269X(7) and clause 19 refer), and

b) secondly, a review facility whereby the Minister can review the rate of interim duty at any time, or an importer, exporter or a member of the Australian industry can request the Minister, by application to Customs, to review the rate of interim dumping or countervailing duty in place and substitute another rate of duty. This request can only be made 12 months after the date the original duty notice was published, or 12 months after the Minister last reviewed the rate of duty, and, where such a request is made within the prescribed limits, a strictly time-limited review of the factors relevant to the determination of duty payable under the Customs Tariff (Anti-Dumping) Act 1975 will be undertaken (Clause 15, new sections 269Z, ZA, ZB, ZC and ZD refer).

Financial Impact Statement

The measures contained in this Bill (and the corresponding amendments to the Customs Tariff (Anti-Dumping) Amendment Bill (No. 2) 1992) relating to the introduction of the new system for the imposition and collection of anti-dumping and countervailing duties, are expected to result in additional salary and administrative costs totalling $0.4m in 1992-93 and $0.75m in 1993-94 and 1994-95, in present dollar values.
CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS) BILL 1992

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Short title etc.

Clause 1 provides for the Act to be cited as the Customs Legislation (Anti-Dumping Amendments) Act 1992.

Commencement

Clause 2 provides for the Act to commence on the following days:

Subclause (1) provides for clauses 1 and 2 to commence on the day on which the Act receives the Royal Assent. These are machinery provisions relating to the short title and commencement of the Act.

Subclause (2) provides for a retrospective 10 July 1992 commencement of clause 8. That clause amends the Customs Act 1901.

This provision is a technical amendment consequential on the anti-dumping amendments effected by Act No. 89 of 1992, which commenced by Proclamation on 10 July 1992.

Subclause (3) provides for a Proclamation commencement of the remaining provisions of the Act which introduce a new system for the imposition and collection of dumping and countervailing duties by determining the method of final assessment of duty liability and providing for review of interim duty rates.

The amendments are intended to commence in January 1993, primarily to allow administrative procedures for the new regime to be implemented and to ensure industry awareness of the new requirements.

The Proclamation commencement is subject to the standard "sunset" provision in Acts which are expressed to commence by Proclamation; namely, that if the relevant provisions are not proclaimed within a period of six months after the date on which the Act receives the Royal Assent, the provisions are deemed to commence on the first day after that period (subclause (4)).
PART 2 - AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

Clause 3 identifies the Customs Act 1901 as the Principal Act being amended by this Part.

Interpretation

Clause 4 amends certain definitions in section 269T of the Principal Act and inserts some new definitions in that section as follows:

1. omits the present definitions of "countervailing duty" and "dumping duty" and inserts new definitions which make clear that countervailing duty and dumping duty do not include interim countervailing duty and interim dumping duty (paragraph 4(a));

2. inserts a definition of "affected party" in relation to an application for review of the rate of interim duty (paragraph 4(b))

   - the parties included in the definition are the only parties who can make application for a review of the rate of interim dumping duty;

3. inserts a definition of "importation period" which has the effect of splitting up the 5 year period for which a particular notice is in force into 11 periods; 1 period is the time covered by the relevant notice under subsection 269TG(1), TH(1), TJ(1) or TK(1), and the other 10 are each 6 month periods beginning on the day of publication of the relevant notice under subsection 269TG(2), TH(2), TJ(2) or TK(2) (paragraph 4(b));

4. inserts a definition of "interim countervailing duty" and "interim dumping duty" by referring to the provisions in the Customs Tariff (Anti-Dumping) Act 1975 (the Anti-Dumping Act) which impose the interim duties (paragraph 4(b)); and

5. inserts definitions of "prospective notice" and "retrospective notice" to clarify the quite distinct roles of the notices under subsections 269TG(1), TH(1), TJ(1) and TK(1) as compared with the notices under subsections 269TG(2), TH(2), TJ(2) and TK(2). The former group apply to goods imported into Australia prior to the date of publication of the notices, and the latter group refer to goods imported into Australia after the date of publication of the
Paragraph 4(c) inserts two new subsections into the Principal Act as follows:

- **new subsection 269T(4D)** which specifies the "variable factors relevant to the determination of duty payable under the Anti-Dumping Act". These variable factors are the factors relating to the calculation of dumping duty or countervailing duty, that is, the factors which the Minister must ascertain for each particular consignment of goods within a particular importation period to determine the actual duty payable for that period; and

- **new subsection 269T(4E)** which specifies the "variable factors relevant to the determination of interim duty payable on goods". These variable factors are the factors which the Minister must include in the relevant 269TG, 269TH, 269TJ or 269TK notices.

**Insertion of new section**

Clause 5 introduces a **new section 269TACA** into the Principal Act. This section inserts the concept of a "non-injurious price" into the Principal Act. The non-injurious price is a key concept for the imposition of dumping and countervailing duties (subsections 8(5A), 9(5A), 10(3C) and 11(5) of the Anti-Dumping Act refer) in that, pursuant to Australia’s GATT obligations, the Minister must have regard to the desirability of imposing a lesser amount of duty than the full margin of dumping or the full amount of subsidy if that lesser duty would be sufficient to remove the injury to the Australian industry or industry of the third country as the case may be. One of the reforms of the new scheme is that the notice published under the relevant section (i.e., section 269TG, 269TH, 269TJ or 269TK) will include the non-injurious price, or the price at which injury, the threat of injury or the recurrence of the injury would be prevented.

**Repeal of section**

Clause 6 repeals section 269TAD of the Principal Act.

Section 269TAD provided a mechanism whereby the Minister could reascertain the normal value relating to a notice under section 269TG or 269TH. Given the extensive review mechanism provided for in the new Division 5 of the Principal Act, which includes a reascertainment of the normal value, section 269TAD is redundant.
Ascertainment of equivalent amount in Australian currency

Clause 7 is a minor amendment consequential on the introduction of the new interim duty regime. The purpose of section 269TAH is to ensure that the equivalent amount in Australian currency of an amount in another country's currency is to be determined in accordance with a fair rate of exchange. This fair rate of exchange must be reflected for both the imposition of duty payable and interim duty payable.

Consideration of application

Clause 8 is a minor technical amendment consequential upon changes introduced by Act No. 89 of 1992, which commenced on 10 July 1992.

Preliminary finding

Clause 9 is a minor amendment consequential on the introduction of the new interim duty regime. It reflects the new scenario whereby securities are taken pursuant to section 42 of the Principal Act in respect of any interim duty that may become payable and not duty that may become payable.

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

Clause 10 amends section 269TE of the Principal Act consequential upon the amendments to the Anti-Dumping Act, to ensure that where the Comptroller puts on provisional measures at the conclusion of a positive preliminary finding under section 269TD, he or she need not to have regard to the non-injurious price; that is, the provisional measures must be put on at the full margin of dumping or subsidisation.

Clauses 11, 12, 13 and 14 of this Act amend sections 269TG, 269TH, 269TJ and 269TK respectively to provide for two substantive reforms as follows:

- the Minister must publish in the relevant notices the variable factors relevant to the determination of interim duty (as defined in new subsection 269T(4E)). This will include a statement of the non-injurious price, which previously has not been publicly notified in the relevant notice; and

- the publication is subject to a new confidentiality provision. Where the Minister does not include the variable factors because of this provision, the Comptroller can provide that information on a "need to know" basis.
Dumping duties

Clause 11 amends section 269TG of the Principal Act to provide for the above reforms as follows:

Paragraph 11(a) amends subsection 269TG(3) to provide that the notices published under subsections 269TG(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant normal value, export price and non-injurious price.

This reform, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TG(1) notice and the subsection 269TG(2) notice) can be quite different. The subsection 269TG(1) notice should include a statement of what was the normal value, export price and non-injurious price for goods already exported to Australia, and the subsection 269TG(2) notice should include a statement of what would be the normal value, export price and non-injurious price for goods exported to Australia in the future.

Paragraph 11(b) inserts new subsection 269TG(3A) into the Principal Act to provide a standard confidentiality limitation upon the Minister’s obligation to publish the factors referred to in new subsection 269TG(3). Where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person’s business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TG(3A)(a)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TG(3A)(b) permits the Comptroller to notify that confidential value or price upon request.

The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the normal value would not receive information with regard to the non-injurious price.
Third country dumping duties

Clause 12 amends section 269TH of the Principal Act to provide for the above reforms as follows:

paragraph 12(a) amends subsection 269TH(3) to provide that the notices published under subsections 269TH(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant normal value, export price and non-injurious price.

This reform, like clause 11, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TH(1) notice and the subsection 269TH(2) notice) can be quite different. The subsection 269TH(1) notice should include a statement of what was the normal value, export price and non-injurious price for goods already exported to Australia, and the subsection 269TH(2) notice should include a statement of what would be the normal value, export price and non-injurious price for goods exported to Australia in the future.

Paragraph 12(b) inserts new subsection 269TH(4) into the Principal Act to provide the standard confidentiality limitation upon the Minister's obligation to publish the factors referred to in new subsection 269TC(3). Similar to the reforms contained in paragraph 11(b) where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person's business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TH(4)(a)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TH(4)(b) permits the Comptroller to notify that confidential value or price upon request.

The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the normal value would not receive information with regard to the non-injurious price.
Countervailing duties

Clause 13

amends section 269TJ of the Principal Act to provide for the reforms mentioned above as follows:

paragraph 13(a) inserts a new subsection 269TJ(11) to provide that the notices published under subsections 269TJ(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant subsidy and non-injurious price.

This reform, like clauses 11 and 12, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TJ(1) notice and the subsection 269TJ(2) notice) can be quite different. The subsection 269TJ(1) notice should include a statement of what was the relevant subsidy and non-injurious price for goods already exported to Australia, and the subsection 269TJ(2) notice should include a statement of what would be the relevant subsidy and non-injurious price for goods exported to Australia in the future.

Paragraph 13(b) inserts new subsection 269TJ(12) into the Principal Act to provide the standard confidentiality limitation upon the Minister's obligation to publish the factors referred to in new subsection 269TJ(3). Where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person's business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TJ(12)(c)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TJ(12)(d) permits the Comptroller to notify that confidential amount or price upon request.

The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the relevant subsidy would not receive information with regard to the non-injurious price.
Third country countervailing duties

Clause 14 amends section 269TK of the Principal Act to provide for the reforms mentioned above as follows:

paragraph 14(a) introduces a new subsection 269TK(5) to provide that the notices published under subsections 269TJ(1) and (2) include a statement of the amounts that the Minister ascertains to be the relevant subsidy and non-injurious price.

This reform, apart from ensuring the variable factors are included in the notice where possible, also makes clear that the values established for the two notices (i.e., the subsection 269TK(1) notice and the subsection 269TK(2) notice) can be quite different. The subsection 269TK(1) notice should include a statement of what was the relevant subsidy and non-injurious price for goods already exported to Australia, and the subsection 269TK(2) notice should include a statement of what would be the relevant subsidy and non-injurious price for goods exported to Australia in the future.

Paragraph 14(b) inserts new subsection 269TK(6) into the Principal Act to provide the standard confidentiality limitation upon the Minister’s obligation to publish the factors referred to in new subsection 269TK(5). Where any person provides information to assist the Minister to ascertain the factors and claims that either the information is confidential or that the inclusion of it in a public notice would adversely affect the person’s business or commercial interests, then the Minister is not required to include that particular value or price in the notice (new paragraph 269TK(6)(c)). To ensure that a person who needs this information to complete an application for duty assessment under new Division 5 can receive it, new paragraph 269TK(6)(d) permits the Comptroller to notify that confidential amount or price upon request.

The class of people whom the Comptroller may notify is limited to affected parties as defined in section 269T of the Principal Act. The Comptroller would then only notify the relevant information to that party; i.e., a person enquiring about the relevant subsidy would not receive information with regard to the non-injurious price.
**Insertion of new Divisions**

**Clause 15** inserts two new Divisions into Part XVB of the Principal Act which introduce the two new mechanisms by which adjustments can be effected to the interim dumping or countervailing duty paid pursuant to a dumping or countervailing notice.

- **New Division 4** introduces a repayment mechanism whereby duty collected in excess of the actual dumping margin (in the case of dumping duties) or the actual subsidy (in the case of countervailing duties) can be repaid. The Division introduces 4 new sections which prescribe the administrative requirements of a duty assessment/repayment application, including the time limits which govern the process, the decisions and review rights which are available, and the final recommendations to the Minister which flow from those decisions.

- **New Division 5** introduces a review facility whereby an importer, exporter or a member of the Australian industry can request the Minister, by application to Customs, to review the factors relevant to the determination of the duty payable on goods (in the case of dumping duty, the normal value, export price, and non-injurious price of goods of that kind, and in the case of countervailing duty, the amount of subsidy, bounty or the like, and the non-injurious price of goods of that kind). The Division introduces 5 new sections which prescribe the administrative requirements of review applications, including the time limits which govern the process, and the decisions and recommendations to the Minister which flow from those decisions.

**Division 4 - Dumping duty or countervailing duty assessment**

**Importers may apply for duty assessment in certain circumstances**

**New section 269V** prescribes the formal requirements to be observed by an importer wishing to apply for a repayment of excess dumping or countervailing duty which he or she has paid, including the time before which an application cannot be made, and then, the time limits within which an application must be made.

**New subsection (1)** provides the formal right to a repayment of excess dumping or countervailing duty which has been paid over the preceding 6
month importation period. It proceeds on the GATT Anti-Dumping Code ground (Article 8.3 refers) that if subsequent to the application of anti-dumping duty, it is found that the duty collected exceeds the actual dumping margin (or, in the case of countervailing duties, the actual subsidy), the amount paid in excess is to be reimbursed as quickly as possible.

Under the time limits prescribed in subsection (2), and 269Y(4), an application for a repayment cannot be made until the expiration of the relevant 6 monthly period in which the goods the subject of the application were entered for home consumption (ie. imported and entered for home consumption in the terms of s.68 and 71A of the Principal Act), and, following that time bar, the application must be made within a further 6 months (new subsection (2) paragraph (a) refers); otherwise, the opportunity to seek a repayment is extinguished (new subsection 269Y(4) refers).

new subsection (2) requires that in addition to the time constraint of 6 months before which repayment applications can be made, an application for a duty repayment must be in respect of the total amount of interim duty paid on all imported goods the subject of a particular notice (ie., all importations of relevant goods over the entire relevant 6 monthly importation period), and the applicant must establish that total payment exceeds by a specified amount that which should have been payable (new subsection (2) paragraph (b) refers).

Manner of making application for duty assessment

New section 269W sets out the manner in which an importer must apply to have his or her actual duty liability calculated according to the normal value and export price for each consignment of goods the subject of a dumping or countervailing duty notice which is imported in a particular 6 month period.

The application must be in writing and contain:

a full description of the goods of that kind in each consignment imported during the particular 6 month period (new paragraph 269W(1)(a));

information concerning the amount of interim duty paid on each consignment (new paragraph 269W(1)(b)); and
a statement of the normal value and export price applying to the goods in each consignment in the case of an application for assessment of dumping duty (new paragraph 269(1)(c)) or of the amount of relevant subsidy paid on and the export price of the goods in the case of countervailing duty assessment (new paragraph 269W(1)(d)).

New subsection 269W(1) provides that the application may be lodged with Customs in the standard fashion (hand delivery, pre-paid post or by facsimile), and it is taken to have been lodged when it is first received by an officer of Customs doing duty in relation to applications for review of interim duty, who must then record the day of lodgement on the application (new subsections 269W(2) and(3)).

Consideration of duty assessment applications

New section 269X sets out the formal investigative process for the consideration of a duty assessment application in which the applicant/importer contends that the total interim duty paid on goods over a particular importation period exceeded the total duty payable, and as a result, a repayment of the excess duty paid is appropriate.

New subsection (1) imposes a maximum time limit of 180 days for the investigation and examination by the Australian Customs Service of the applicant's claim for a repayment of excess interim duty paid.

- The recommendation by Customs is dealt with under subsection (5).

New subsection (2) provides the Comptroller with investigative powers to seek information in addition to that provided by the applicant.

New paragraph (2)(a) allows the Comptroller to invite a person he or she considers may be able to supply relevant information to lodge a written submission within a period specified in the invitation.

This is not a means by which the principal processing time limit of 180 days can be avoided, as the date which the Comptroller may set for return of such a submission cannot be later than 150 days after the lodgement of the application.

New paragraph 2(b) allows the Comptroller to similarly seek further information from the
applicant, but now up to the maximum time limit for the making of a decision i.e., 180 days.

New subsections (3) and (4) provide that where the Comptroller uses the investigative power vested by subsection (2), and in fact proposes to have regard to that information, the Comptroller must give the applicant an opportunity to comment on the information.

- This obligation is subject to the standard confidentiality exception if, in the opinion of the Comptroller, the information was provided in confidence and the Comptroller is of the opinion its disclosure to the applicant would adversely affect the business or commercial interests of the supplier.

New subsection (5) provides the obligation on the Comptroller to come to a decision on the evidence provided by the applicant, such other material obtained under subsection (2), and any other material considered relevant, as to the amount of duty payable.

New subsection (6) provides the 3 types of recommendations that the Comptroller can decide to make to the Minister:

1. a recommendation that the Minister order a repayment of overpaid interim duty at least to that amount contended in the application (paragraph (6)(a)); or

2. a recommendation that the Minister order a repayment of overpaid interim duty, but not as much as contended in the application (paragraph (6)(b)); or

3. a recommendation that the Minister order that any duty in excess of the interim duty to be waived (paragraph (6)(c)).

Decisions to make recommendation under paragraphs (6)(b) and (6)(c) are decisions which the applicant may have reviewed by the Authority in the manner specified in clause 19 of this Act.

New subsection (7) provides that the Comptroller must, as soon as practicable, notify the applicant of the decision made, and where the decision is one that can be reviewed by the Authority, inform the applicant of the reasons for the decision and details of their review rights.

New subsection (8) provides that where the Comptroller has made a decision to recommend to
the Minister that the Minister order a repayment of overpaid interim duty at least to that amount contained in the application, then the Comptroller must, within 7 days, recommend to the Minister that such a repayment be made (paragraph (8)(a)). Paragraph 8(b) provides that where the Comptroller has made a decision that can be reviewed by the Authority as outlined above, and the applicant does not exercise the right to seek a review, then the Comptroller must, within 7 days, recommend to the Minister that the Minister give effect to the Comptroller's recommendation.

Duty assessments

New section 269Y empowers the Minister to repay excess interim duty collected in cases where the interim duty collected exceeds the actual duty payable, or to waive unpaid duty in cases where the total interim duty collected is less than the actual duty payable. The relevant provisions detailing these procedures are as follows:

1. as soon as practicable after receiving a recommendation from the Authority (under new subsection 8B(3) of the Anti-Dumping Authority Act 1988, clause 19 of this Act refers) or from the Comptroller (under new subsection 269X(8)), the Minister must ascertain the normal value and export price relating to each consignment (in the case of an application for assessment of dumping duty) or the relevant subsidy and export price (in the case of an application for assessment of countervailing duty) (new paragraph 269Y(1)(a)).

2. Where the Minister decides that the total amount of interim duty collected exceeds the total duty payable then the Minister is to order the repayment of that excess (new paragraph 269Y(1)(b))

   - Where the Minister does so the Commonwealth is liable to make such a repayment (new subsection 269Y(3)).

3. Where the Minister decides that the total amount of interim duty collected falls short of the total duty payable, then the Minister waives the shortfall (new paragraph 269Y(1)(b)).

   - Where the Minister does either of the above then the Minister must inform the applicant by providing a copy of the signed notice (new subsection 269Y(2)).

Where application is not made for a duty
assessment under new section 269V, then the interim duty collected is taken to be the duty payable (new subsection 269Y(4)).

Division 5 - Review of interim duty

Under the new scheme it is proposed to allow an affected party to seek a review of the rate of interim duty imposed by the Minister under the Anti-Dumping Act. The purpose of the review is to ensure that the rate of interim duty in force is an accurate reflection of the level of duty necessary to combat the identified dumping or subsidy. New sections 269Z, 269ZA, 269ZB, 269ZC and 269ZD implement the proposed review scheme as detailed below.

Circumstances in which review may be sought

New section 269Z specifies the conditions precedent to a review of interim duty as follows:

1. there must be a dumping duty notice or a countervailing duty notice published (new paragraph 269Z(1)(a));

2. an affected party must apply to the Comptroller, to request the Minister to review the rate of interim duty;

   "affected party" is defined in paragraph 4(b) of this Act as an importer, exporter or producer of the goods or the Government of the exporting country. The definition is intentionally broad to enable all parties affected by the interim duty to be able to apply to have it reviewed (new paragraph 269Z(1)(b));

3. the affected party must consider it appropriate to review the rate of interim dumping duty because one or more of the normal value, export price or non-injurious price has changed, or that it is appropriate to review the rate of interim countervailing duty because either the relevant subsidy or non-injurious price has changed (new paragraph 269Z(1)(b));

4. the affected party can only make application for review 12 months after the day of publication of the duty notice or 12 months after the day of publication of the result of the last such review (new subsection 269Z(3)); and

5. where the Minister considers it appropriate to vary the rate of interim duty, the Minister can, at any time, request the
Comptroller to review that rate, i.e. the Minister is not subject to the 12 month time bar for applications for review (new subsection 269Z(2)).

Application for review of interim duty by affected party

New section 269ZA specifies how an application for review of interim duty is to be made and what it must contain as follows:

- the application must be in writing (new subsection 269ZA(1));
- the application must contain a description of the kind of goods the subject of notice (new paragraph 269ZA(1)(a));
- the application must contain a statement of which of the normal value, the export price or non-injurious price (in the case of interim dumping duty) or the amount of the relevant subsidy or non-injurious price (in the case of interim countervailing duty) have changed (new paragraph 269ZA(1)(b));
- the application must contain a statement of the amount by which the above factor or factors have changed, and the applicant must supply evidence to establish the new amount or amounts (new paragraph 269ZA(1)(c)); and
- the application may be lodged with Customs in the standard fashion (hand delivery, pre-paid post or facsimile), and it is taken to have been lodged when it is first received by an officer of Customs doing duty in relation to applications for review of interim duty, who must then record the day of lodgement on the application (new subsections 269ZA(2) and(3)).

Consideration of the application for request for review

New section 269ZB outlines the procedure the Comptroller must follow in considering a request for review.

Upon the lodgement of an application from an affected party, or the receipt of the Minister’s request to have the interim rate reviewed, the Comptroller must, within 25 days, make a public notification that it is proposed to review the rate of interim duty (new subsection 269ZB(1)).

The notice must invite interested parties to make submissions (new subsection 269ZB(2)). The opportunity to make submissions extends to a wider group of people than just the affected parties - the intention is for the Comptroller to
receive sufficient information to be able to recommend to the Minister the best possible estimate of the appropriate rate of interim duty.

If submissions are not received by the Comptroller within 40 days of the public announcement of the inquiry then those submissions may be disregarded (new subsection 269ZB(2) and (3)).

After 100 days from the day of publication of the notice the Comptroller must give the Minister a report recommending whether the rate of interim duty should remain the same or be altered, and also provide to the Minister the reasons for the decision (new subsection 269ZB(4)).

It should be noted that the Comptroller is not limited to any particular information in coming to his or her recommendation; the Comptroller may take into account any information which he or she considers relevant.

Minister to consider recommendations

New section 269ZC outlines the process by which the Minister notifies a new rate of interim duty pursuant to a review.

After considering the Comptroller’s recommendation and the reasons for the recommendation, the Minister must publish in the Gazette either the new variable factors relevant to the particular interim duty (new paragraph 269ZC(1)(a)), or a statement that the variable factors are to remain unchanged (new paragraph 269ZC(1)(b)).

If the Gazette notice specifies new variable factors, then the new factors, and therefore the new rate of interim duty, take effect from the day of publication of the Gazette notice.

Similar to the original notice pursuant to sections 269TG, 269TH, 269TJ or 269TK, the notice under subsection 269ZC(1) is subject to the same confidentiality provisions as are the notices under subsections 269TG(3A), 269TH(4), 269TJ(11) or 269TK(6).

Where the Minister publishes a notice under new paragraph 269ZC(1)(a) then the new figures are substituted into the respective notices, i.e. there is no necessity for the Minister to issue a new notice under section 269TG, 269TH, 269TJ or 269TK (new subsection 269ZC(3)).
Effect of review of interim duty on entitlement to seek duty assessment

New section 269ZD ensures that the review process contained in the new Division 5 of Part XVB is completely separate from the duty assessment process contained in the new Division 4 of Part XVB. Any alteration in the rate of interim duty under Division 5 in no way affects the ability of an importer to seek a duty assessment on like goods imported into Australia at the reviewed rate of interim duty.

Further Amendments

Clause 16 provides that the Principal Act is further amended as set out in the Schedule. The Schedule sets out minor consequential amendments to the Principal Act which are a necessary consequence of the introduction of the new system of imposing and collecting dumping and countervailing duties.

The word "interim" is inserted before the word "duty" wherever relevant in Part XVB of the Principal Act to reflect the new system of imposing "interim" and then "final" dumping or countervailing duties, especially in the case where the interim duty is to be collected in lieu of a security becoming payable.

Transitional

Clause 17 Gives effect to the Government’s policy that the proposed new scheme of imposing and collecting interim dumping and countervailing duties pending their final assessment, is to apply to dumping and countervailing duty notices published by the Minister after the commencement of the proposed new scheme.

PART 3 - AMENDMENTS OF THE ANTI-DUMPING AUTHORITY ACT 1988

Principal Act

Clause 18 is a machinery clause which identifies the Anti-Dumping Authority Act 1988 as the Principal Act being amendment by this Part.
Insertion of a new section

Clause 19 inserts a new section 8B into the Principal Act as follows:

Review of a negative preliminary decision under section 269X

New section 8B provides the Anti-Dumping Authority with the power to review a negative preliminary decision of the Comptroller on an application for assessment of final dumping or countervailing duty liability for goods on which interim dumping duty has been paid (Clause 15, new section 269X refers)

The negative preliminary decision is a decision by the Comptroller under new paragraph 269X(6)(b) or new paragraph 269X(6)(c) to repay less duty than that requested by the applicant.

After receiving such an application the Authority must, within 90 days, review the negative preliminary decision and decide whether to confirm the Comptroller's recommendation or to revoke the recommendation and substitute a new recommendation (subclause (1)).

Subclause (2) provides that in conducting a review the Authority may only have regard to the same information to which the Comptroller had regard when making the negative preliminary decision.

Subclause (3) provides that after confirming or revoking and substituting a recommendation, the Authority must as soon as practicable (but not later than 7 days) recommend to the Minister either the confirmed recommendation or the Authority's substituted recommendation.

Transitional

Clause 20 provides that the amendments to the Anti-Dumping Authority Act 1988 will only apply to dumping duty or countervailing duty notices published by the Minister after the commencement of the new system.
Customs Legislation (Anti-Dumping Amendments) Act 1992

No. 207 of 1992

TABLE OF PROVISIONS

PART 1—PRELIMINARY

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Short title</td>
</tr>
<tr>
<td>2.</td>
<td>Commencement</td>
</tr>
</tbody>
</table>

PART 2—AMENDMENTS OF THE CUSTOMS ACT 1901

3. Principal Act
4. Interpretation
5. Insertion of new section:
   269TACA. Non-injurious price
6. Repeal of section
7. Ascertainment of equivalent amount in Australian currency
8. Consideration of application
9. Preliminary findings
10. Comptroller to have regard to same considerations as Minister in certain circumstances
11. Dumping duties
12. Third country dumping duties
13. Countervailing duties
14. Third country countervailing duties
15. Insertion of new Divisions:

Division 4—Dumping duty or countervailing duty assessment

269V. Importers may apply for duty assessment in certain circumstances
269W. Manner of making application for duty assessment
269X. Consideration of duty assessment applications
269Y. Duty assessments
TABLE OF PROVISIONS—continued

Section

Division 5—Review of interim duty

269Z. Circumstances in which review may be sought
269ZA. Application for review of interim duty by affected party
269ZB. Consideration of the application or request for review
269ZC. Minister to consider recommendations
269ZD. Effect of review of interim duty on entitlement to seek duty assessment

16. Further amendments
17. Transitional

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

18. Principal Act
19. Insertion of new section:
   8B. Review of negative preliminary decision under section 269X
20. Transitional

SCHEDULE

CONSEQUENTIAL, MINOR AND TECHNICAL AMENDMENTS
OF THE CUSTOMS ACT 1901
Customs Legislation (Anti-Dumping Amendments) Act 1992

No. 207 of 1992

An Act to amend the Customs Act 1901, and for related purposes

[Assented to 21 December 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title
1. This Act may be cited as the Customs Legislation (Anti-Dumping Amendments) Act 1992.

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

(2) Section 8 is taken to have commenced on 10 July 1992.

(3) Subject to subsection (4), the other provisions of this Act commence on a day to be fixed by Proclamation.
(4) If the provisions of this Act referred to in subsection (3) do not commence within the period of 6 months commencing on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

PART 2—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

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

Interpretation

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

(a) by omitting the definitions of “countervailing duty” and “anti-dumping duty” from subsection (1) and substituting the following definitions:

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

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

(b) that is payable on goods under section 11 of the Anti-Dumping Act;

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

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

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

(a) a person who is directly concerned with the exportation to Australia of the goods the subject of the application or who has been directly concerned with the exportation to Australia of like goods; or

(b) a person who is directly concerned with the importation into Australia of the goods the subject of the application or who has been directly concerned with the importation into Australia of like goods; or

(c) a person representing, or representing a portion of, the Australian industry producing like goods; or

(d) the Government of a country from which like goods have been exported to Australia;

‘importation period’, in relation to goods that have been the subject of a dumping duty notice or a countervailing duty notice means:
Customs Legislation (Anti-Dumping Amendment)
No. 207, 1992

(a) in respect of goods covered by a retrospective notice—
the period beginning on the day of entry for home
consumption of the first consignment of goods to which
the retrospective notice applied and ending immediately
before the day of publication of the notice; and

(b) in respect of goods covered by a prospective notice:
(i) the period of 6 months beginning on the day of
publication of the prospective notice; and
(ii) each successive period of 6 months;

'interim countervailing duty' means duty imposed under
subsection 10(3B) or 11(4) of the Anti-Dumping Act;
'interim dumping duty' means duty imposed under subsection
8(5) and, where applicable, paragraph 8(4)(b) of the Anti-
Dumping Act or under subsection 9(5) and, where applicable,
paragraph 9(4)(b) of that Act;
'interim duty' means interim dumping duty or interim
countervailing duty;
'negative preliminary decision' means a decision of the kind
referred to in paragraph 269X(6)(b) or (c);
'positive preliminary decision' means a decision of the kind
referred to in paragraph 269X(6)(a);
'prospective notice' means a notice issued under subsection
269TG(2), 269TH(2), 269TJ(2) or 269TK(2);
'retrospective notice' means a notice issued under subsection
269TG(1), 269TH(1), 269TJ(1) or 269TK(1).

(c) by inserting after subsection (4C) the following subsections:

"(4D) In this Act, a reference to variable factors relevant to
the determination of duty payable under the Anti-Dumping Act
on particular goods the subject of a dumping duty notice or a
countervailing duty notice is a reference:
(a) if the goods are the subject of a dumping duty notice—
to the normal value and export price of the goods; and
(b) if the goods are the subject of a countervailing duty
notice:
(i) to the amount of subsidy, bounty, reduction or
remission of freight or other financial assistance
paid or granted on the production, manufacture,
carriage or export of the goods; and
(ii) to the export price of the goods.

(4E) In this Act, a reference to variable factors relevant to
the determination of interim duty payable on goods the subject
of a dumping duty notice or a countervailing duty notice is a
reference:
Customs Legislation (Anti-Dumping Amendments)  
No. 207, 1992

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

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

(i) to the amount of subsidy, bounty, reduction or remission of freight or other financial assistance paid or granted on the production, manufacture, carriage or export of the goods; and

(ii) to the non-injurious price of the goods; as ascertained, or last ascertained, by the Minister for the purpose of the notice.”.

Insertion of new section

5. After section 269TAC the following section is inserted:

Non-injurious price

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

(a) if the goods are the subject of, or of an application for, a dumping duty notice under subsection 269TG(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hinderance, referred to in paragraph 269TG(1)(b) or (2)(b); or

(b) if the goods are the subject of, or of an application for, a third country dumping duty notice under subsection 269TH(1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TH(1)(b) or (2)(b); or

(c) if the goods are the subject of, or of an application for, a countervailing duty notice under subsection 269TJ(1) or (2)—to prevent the injury, or a recurrence of the injury, or to remove the hinderance, referred to in paragraph 269TJ(1)(b) or (2)(b); or

(d) if the goods are the subject of, or of an application for, a third country countervailing duty notice under subsection 269TK(1) or (2)—to prevent the injury, or a recurrence of the injury, referred to in paragraph 269TK(1)(b) or (2)(b).”.

Repeal of section

6. Section 269TAD of the Principal Act is repealed.

Ascertainment of equivalent amount in Australian currency

7. Section 269TAH of the Principal Act is amended by inserting in subsection (3) “or interim duty” after “duty”.
Consideration of application

8. Section 269TC of the Principal Act is amended:
   (a) by omitting from paragraph (1)(a) "269TB(3)" and substituting "269TB(4)";
   (b) by omitting from paragraph (2)(a) "269TB(3)" and substituting "269TB(4)".

Preliminary findings

9. Section 269TD of the Principal Act is amended by omitting from paragraph (2)(c) "any dumping duty or countervailing" and substituting "interim".

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

10. Section 269TE of the Principal Act is amended by omitting from paragraph (1)(d) "subsection 8(5A), 8(5AA), 9(5A), 10(5A), 10(5AA) or 11(5A)" and substituting "subsection 8(5A), 8(5B), 9(5A), 10(3C), 10(3D) or 11(5)".

Dumping duties

11. Section 269TG of the Principal Act is amended:
   (a) by omitting from subsection (3) all the words after paragraph (b) and substituting the following:
       "the notice must, subject to subsection (3A), include a statement of the respective amounts that the Minister ascertained, at the time of publication of the notice:
       (c) was or would be the normal value of the goods to which the declaration relates; and
       (d) was or would be the export price of those goods; and
       (e) was or would be the non-injurious price of those goods."
   (b) by inserting after subsection (3) the following subsection:
       "(3A) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:
       (a) the Minister is not required to include in the notice a statement of that value or price; but
       (b) upon request the Comptroller may notify that value or price to persons who, in the Comptroller's opinion, would be affected parties in any review of the rate of interim
duty imposed on like goods to the goods to which the declaration relates.”.

Third country dumping duties

12. Section 269TH of the Principal Act is amended:
   (a) by omitting from subsection (3) all the words after paragraph (b) and substituting the following:
   “the notice must, subject to subsection (4), include a statement of the respective amounts that the Minister ascertained at the time of publication of the notice:
   (c) was or would be the normal value of the goods to which the declaration relates; and
   (d) was or would be the export price of those goods; and
   (e) was or would be the non-injurious price of those goods.”;
   (b) by adding at the end the following subsection:
   “(4) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person’s business or commercial interests:
   (a) the Minister is not required to include in the notice a statement of that value or price; but
   (b) upon request the Comptroller may notify that value or price to persons who, in the Comptroller’s opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.”.

Countervailing duties

13. Section 269TJ of the Principal Act is amended by adding at the end the following subsections:

“(11) If a notice under subsection (1) or (2) declares particular goods to be goods to which section 10 of the Anti-Dumping Act applies, the notice must, subject to subsection (12), include a statement setting out:
   (a) the amount of subsidy, bounty, reduction or remission of freight or other financial assistance that the Minister ascertained, at the time of publication of the notice, had been or would be paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods to which the notice relates; and
(b) the amount that the Minister has ascertained, at that time, was or would be the non-injurious price of the goods.

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

(a) the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance referred to in paragraph (11)(a) that is paid or granted in relation to goods to which a declaration under subsection (1) or (2) relates; or

(b) the non-injurious price of any goods to which a declaration under subsection (1) or (2) relates;

claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance or of the amount of that non-injurious price would adversely affect the person’s business or commercial interests:

(c) the Minister is not required to include a statement of that amount or that price in the notice; but

(d) upon request the Comptroller may provide a statement of that amount or that price to persons who, in the Comptroller’s opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to which the declaration relates.”.

Third country countervailing duties

14. Section 269TK of the Principal Act is amended by adding at the end the following subsections:

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

(a) the amount of subsidy, bounty, reduction or remission of freight or other financial assistance that the Minister ascertained, at the time of publication of the notice, had been or would be paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods to which the notice relates; and

(b) the amount that the Minister ascertained, at that time, was or would be the non-injurious price of the goods.

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

(a) the amount of any subsidy, bounty, reduction or remission of freight or other financial assistance paid or granted upon the production, manufacture, carriage or export of goods to which a declaration under subsection (1) or (2) relates; or
(b) the non-injurious price of such goods; claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy, bounty, reduction or remission of freight or other financial assistance or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:

(c) the Minister is not required to include a statement of that amount or that price in the notice; but

(d) upon request the Comptroller may provide a statement of that amount or that price to persons who, in the Comptroller's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.’’

Insertion of new Divisions

15. After Division 3 of Part XVB of the Principal Act the following Divisions are inserted:

‘‘Division 4—Dumping duty or countervailing duty assessment

Importers may apply for duty assessment in certain circumstances

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

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

(a) the application is made not more than 6 months after the end of the particular importation period in which the goods the subject of the application were entered for home consumption; and

(b) the importer contends that the total amount of duty payable in respect of those goods under the Anti-Dumping Act is less, by a specified amount, than the total amount of interim duty that has been paid on those goods under that Act.

Manner of making application for duty assessment

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

(a) a full description of the goods of that kind in each consignment imported during the particular importation period; and

(b) information concerning the amount of interim duty paid on the goods of that kind in each such consignment; and
(c) if an interim dumping duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are the normal value and the export price of goods of that kind in each such consignment and information to establish those amounts; and

(d) if an interim countervailing duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are:

(i) the amount of the subsidy, bounty, reduction or remission of freight or other financial assistance paid or granted on the goods of that kind in each such consignment; and

(ii) the amount of the export price of goods of that kind in each such consignment;

and information to establish those amounts; and

(e) a statement of the amount by which the applicant contends that the total interim duty paid on those goods exceeds the total duty payable under the Anti-Dumping Act.

“(2) An application must be lodged with the Comptroller:

(a) by leaving it at a place that has been allocated for lodgment of duty assessment applications at Customs House in Canberra; or

(b) by posting it by pre-paid post to a postal address notified by Customs in the Gazette; or

(c) by sending it by electronic facsimile to a facsimile number notified by Customs in the Gazette;

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

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

Consideration of duty assessment applications

“269X.(1) The Comptroller must, as soon as practicable after the lodgment of an application for assessment of duty in respect of goods that were entered for home consumption during a particular importation period but not more than 180 days after the lodgment of that application, examine the application and decide what recommendation to make to the Minister under subsection (6).

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

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

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

(a) give the applicant a copy of the information that he or she proposes to take into account unless, in the opinion of the Comptroller, the provision of that information would adversely affect the business or commercial interests of a person supplying the information; and

(b) invite the applicant, within a specified period ending not later than 180 days after the lodgment of the application, to make any further submission the applicant considers appropriate in relation to that information.

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

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

(a) provisionally ascertain, in relation to each consignment of goods to which the application relates, each variable factor relevant to the determination of duty payable on the goods under the Anti-Dumping Act; and

(b) having regard to those variable factors as so provisionally ascertained and, where appropriate, to the non-injurious price of goods of that kind—provisionally calculate, in respect of each such consignment, the amount of duty payable under the Anti-Dumping Act.

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

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

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and

(ii) that the Minister order a repayment of the amount of interim duty overpaid; or
(b) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Anti-Dumping Act but not to the extent contended in the application—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and

(ii) that the Minister order a repayment of the amount of interim duty overpaid; or

(c) if satisfied that the total amount of duty payable under the Anti-Dumping Act on the goods the subject of the application is equal to or exceeds the total of interim duty that was paid on the goods—to recommend to the Minister:

(i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; but

(ii) that the Minister order that any duty in excess of the interim duty paid on those goods be waived.

"(7) As soon as practicable, but not later than 7 days after making a decision under subsection (6), the Comptroller must:

(a) notify the applicant, in writing, of the decision made; and

(b) if the decision is a negative preliminary decision:

(i) inform the applicant of the reasons why the Comptroller made the decision; and

(ii) inform the applicant of the applicant’s right, within 28 days of the day of notification of the decision, to refer the decision to the Authority for review.

"(8) The Comptroller must:

(a) if he or she has made a positive preliminary decision—recommend to the Minister, not later than 7 days after making the decision, that the Minister give effect to that decision; and

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

Duty assessments

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

(a) ascertain, for the purposes of this Act and the Anti-Dumping
Act, the variable factors relevant to the determination of duty payable under the Anti-Dumping Act in respect of each consignment; and

(b) order that the total interim duty overpaid in respect of all consignments to which the application relates be repaid or that the total unpaid duty in excess of the interim duty already paid be waived, as the case requires.

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

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

“(4) If:

(a) one or more consignments of goods of a particular kind that are the subject of a dumping duty notice or a countervailing duty notice are entered for home consumption during an importation period; and

(b) interim duty is paid on those goods under the Anti-Dumping Act; and

(c) application is not made under section 269V of this Act for an assessment of duty payable on those goods under the Anti-Dumping Act;

then:

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

(e) the interim duty paid on those goods is taken to be the duty payable.

“Division 5—Review of interim duty

Circumstances in which review may be sought

“269Z.(1) If:

(a) a dumping duty notice or a countervailing duty notice has been published in respect of goods; and

(b) an affected party considers that it is appropriate to review the rate of interim duty imposed on goods of that kind because one or more of the variable factors relevant to the determination of interim duty has changed;
the affected party may, by application lodged with the Comptroller, request a review of the rate of interim duty.

"(2) If:

(a) a dumping duty notice or a countervailing duty notice has been published in respect of goods; and

(b) the Minister considers that it may be appropriate to vary the rate of interim duty because one or more of the variable factors relevant to the determination of interim duty may have changed;

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

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

(a) the day of publication of the dumping duty notice or countervailing duty notice to which the application relates; or

(b) if a review has, or reviews have, already been undertaken under subsection (1) or (2)—the day on which the Minister published the result of the last such review to be undertaken.

Application for review of interim duty by affected party

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

(a) a description of the kind of goods to which the dumping duty notice or countervailing duty notice the subject of the application relates; and

(b) a statement of the variable factor or factors relevant to the determination of interim duty that, in the opinion of the applicant, have changed; and

(c) a statement of the amount by which each such factor has changed and information to establish that amount.

"(2) An application may be lodged with Customs:

(a) by leaving it at a place that has been allocated for lodgment of review applications at Customs House in Canberra; or

(b) by posting by pre-paid post to a postal address specified by Customs in the Gazette; or

(c) by sending it by electronic facsimile to a facsimile number specified by Customs in the Gazette;

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

"(3) The day on which an application is taken to have been lodged must be recorded on the application.
Consideration of the application or request for review

"269ZB.(1) As soon as practicable after:
(a) the lodgment of an application under subsection 269Z(1); or
(b) the receipt of a request under subsection 269Z(2);
but not later than 25 days after the lodgment of the application or receipt of the request, the Comptroller must publish a notice in the Gazette and in a newspaper circulating in all States and internal Territories stating that it is proposed to review the rate of interim duty attaching to the goods the subject of the application or request.

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

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

"(4) The Comptroller must, not later than 100 days after the day of publication of the notice, after considering the application for review any submissions made and any other material he or she considers relevant, give the Minister a report recommending:
(a) that the rate of interim duty remain as originally calculated; or
(b) that the rate of interim duty be altered;
and setting out the Comptroller's reasons for so recommending.

Minister to consider recommendations

"269ZC.(1) After considering the recommendation of the Comptroller and the reasons for that recommendation, the Minister must, subject to subsection (2) by notice in writing published in the Gazette:
(a) declare that, with effect from the day of publication of the notice, this Act and the Anti-Dumping Act are taken to have had effect as if the Minister had, in the dumping duty notice or countervailing duty notice, as the case requires, fixed each of the variable factors relevant to the determination of interim duty at the respective amounts specified in the notice; or
(b) declare that, for the purposes of this Act and the Anti-Dumping Act, each of the variable factors relevant to the determination of interim duty is to remain unchanged;
and where the Minister does so, he or she must notify the applicant accordingly.

"(2) If the applicant or any other person who has provided information for the purpose of a review under this Division claims, in writing, that the information is confidential or that the inclusion in a notice under subsection (1) of a particular variable factor relevant to the determination of interim duty would adversely affect the person's business or commercial interests:
(a) the Minister is not required to include in the notice a statement of that factor; but
(b) upon request the Comptroller may notify that factor to persons who, in the opinion of the Comptroller, would be affected parties in any further review of the rate of interim duty.

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

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

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

Further amendments

16. The Principal Act is further amended as set out in the Schedule.

Transitional

17. Despite the amendments of the Principal Act made by this Act, the provisions of the Principal Act as in force immediately before the day of commencement of the provisions referred to in subsection 2(3) of this Act continue to apply:

(a) in relation to dumping duty notices or countervailing duty notices:
   (i) that are published by the Minister before that day; or
   (ii) that are published by the Minister on or after that day but that apply to goods entered for home consumption before that day; and
(b) in relation to all securities taken, and duty imposed, as a result of, or of applications for, those notices; as if those amendments had not been made.

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

Principal Act

Insertion of new section

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

Review of negative preliminary decision under section 269X

“8B.(1) If:

(a) an application is made under section 269V of the Customs Act requesting an assessment of duty on goods entered for home consumption during a particular importation period; and

(b) the Comptroller has made a negative preliminary decision in relation to the application; and

(c) the applicant refers the negative preliminary decision to the Authority for review;

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

(d) confirm the recommendation to which the decision related; or

(e) revoke the recommendation and substitute any other recommendation that the Comptroller might have made;

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

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

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

Transitional

20. Despite the amendments of the Principal Act made by this Act, the provisions of the Principal Act as in force immediately before the day of commencement of the provisions referred to in subsection 2(3) of this Act continue to apply in relation to dumping duty notices or countervailing duty notices:

(a) that are published by the Minister before that day; or

(b) that are published by the Minister on or after that day but that apply to goods entered for home consumption before that day; as if those amendments had not been made.
SCHEDULE

CONSEQUENTIAL, MINOR AND TECHNICAL AMENDMENTS OF THE CUSTOMS ACT 1901

Subsection 9(4):
Omit "10(5) or 11(5)", substitute "10(3B), 10(5) or 11(4)".

Subsection 42(1B):
Insert "interim" before "duty that may be payable".

Subsection 42(1C):
Insert "interim" before "duty that may be payable".

Subsection 45(2):
Insert "interim" before "duty that may become payable".

Subsection 45(3):
Insert "interim" before "duty that may be payable".

Subsection 45(4):
Insert "interim" before "duty that may be payable".

Paragraph 269TC(4)(d):
Omit "dumping duty or countervailing", insert "interim".

Subparagraph 269TG(1)(b)(ii):
Insert "interim" before "duty that may become payable".

Subparagraph 269TH(1)(b)(ii):
Insert "interim" before "duty that may become payable".

Subparagraph 269TJ(1)(b)(ii):
Insert "interim" before "duty that may become payable".

Subparagraph 269TK(1)(b)(ii):
Insert "interim" before "duty that may become payable".

Subsections 269TM(4) and (5):
Omit the subsections.

Subsection 269TN(2):
Insert "interim" before "duty that might become payable".
SCHEDULE—continued

Paragraph 269TN(3)(a):
Insert "interim" before "duty that might be payable".

Paragraph 269TN(5)(a):
Insert "interim" before "duty that might be payable".

Paragraph 269TN(6)(b):
Insert "interim" before "duty that might be payable".

Paragraph 269TN(7)(b):
Insert "interim" before "duty that might be payable".

Paragraph 269TN(8)(b):
Insert "interim" before "duty that might be payable".

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; No. 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 132, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 92, 116, 177 and 180, 1979; Nos. 13, 15 and 110, 1980; Nos. 45, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 108, 115 and 137, 1982; No. 81, 1982 (as amended by No. 39, 1983); Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66 and 76, 1988; Nos. 23, 24, 78, 108 and 174, 1989; Nos. 5, 6, 11, 70, 79 and 111, 1990; Nos. 28, 82, 120 and 123, 1991; and Nos. 34, 89 and 104, 1992.

2. No. 72, 1988, as amended. For previous amendments, see No. 174, 1989; No. 70, 1990; and No. 122, 1991.

[Minister's second reading speech made in—
House of Representatives on 4 November 1992
Senate on 12 November 1992]
CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL
(No. 2) 1992
SECOND READING SPEECH


INTERIM COUNTERVAILING DUTY WILL BE IMPOSED ON THE BASIS OF THE AMOUNT OF THE SUBSIDY IDENTIFIED BY THE INQUIRIES.
IN EITHER CASE, AND CONSISTENT WITH AUSTRALIA’S OBLIGATIONS AS A SIGNATORY TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE (THE GATT), THE MINISTER WILL CONTINUE TO CONSIDER THE DESIRABILITY OF IMPOSING A LESSER RATE OF DUTY WHERE THIS IS SUFFICIENT TO REMOVE INJURY.

FINANCIAL IMPACT STATEMENT

THE PROPOSED AMENDMENTS CONTAINED IN THIS BILL HAVE NO DIRECT FINANCIAL IMPLICATIONS.

I COMMEND THE BILL TO THE HOUSE AND PRESENT ITS EXPLANATORY MEMORANDUM.
1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (NO. 2) 1992

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry, Technology and Commerce, Senator the Honourable John N. Button)
CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (No. 2) 1992

OUTLINE

This Bill proposes to amend the Customs Tariff (Anti-Dumping) Act 1975 as part of the legislative package announced by the Government in December 1991 to introduce a new system for the imposition and collection of anti-dumping and countervailing duties. This Bill introduces the new taxing regime for the imposition and collection of both interim and final dumping and countervailing duties, while the other Bill in the package, the Customs Legislation (Anti-Dumping Amendments) Bill 1992, amends the Customs Act 1901 and the Anti-Dumping Authority Act 1988 to provide the mechanism for the determination of interim and final duties, as well as introducing the two means by which subsequent adjustments of duty liability can be effected.

At present dumping duties are imposed by the Minister under the Customs Tariff (Anti-Dumping) Act 1975 if he or she is satisfied that goods exported to Australia have been dumped (i.e., their export price is less than their normal value), and that dumping is causing or threatening material injury to an Australian industry or hindering the establishment of such an industry. Likewise, countervailing duties may be imposed if the Minister is satisfied that goods exported to Australia have had financial assistance, for example a subsidy, bounty, reduction or remission of freight, and, because of that financial assistance, material injury to an Australian industry is caused or threatened.

Under the present regime, dumping duty is not payable where the dumping margin is purportedly eliminated by an exporter raising the export price of the goods to the level of the normal value. This Bill proposes to alter that approach, and to strengthen the overall operation of the anti-dumping regime, by adopting a position similar to that used by other signatories to the General Agreement on Tariffs and Trade; that is, to impose an "up-front" duty regardless of the export price or the actual subsidy paid on the particular goods, and then provide a facility for the importer to have his or her actual duty liability assessed by the Minister at a later stage with the possibility of having any excess "up-front" duty repaid.

The main proposals contained in this Bill which implement this new scheme relate to:

i) the facility for the Minister, pending a final determination of duty liability, to impose an interim duty on dumped or subsidised products where it is established that the dumping or subsidisation is causing injury to an Australian industry producing like goods. The interim duty concept will apply to the four types of duties imposed under this Act, i.e., dumping duties, third country dumping duties, countervailing duties and third country countervailing duties (Clause 4, new subsection 8(3); clause 5, new subsection 9(3); clause 6, new subsection 10(3); and clause 7, new subsection 11(2), refer).
The interim duty will be an "up front" duty payable on all goods the subject of a duty notice (issued under subsections 269TG(1) or (2), 269TH(1) or (2), 269TJ(1) or (2) or 269TK(1) or (2) of the Customs Act 1901). The amount of interim duty payable will depend upon certain values or prices which are based on evidence presented and a decision taken at the original inquiry stage or subsequently during a review of the interim duty under the new Division 5 of the Customs Act 1901;

ii) the provisions to enable the Minister to impose the interim duty on an ad valorem or specific rate basis (new subsections 8(5), 9(5), 10(3B) and 11(4) respectively, clauses 4, 5, 6 and 7 refer);

iii) the provisions which ensure that in imposing the interim duties, Australia's obligations as a signatory to the General Agreement on Tariffs and Trade are given effect to; in particular, by ensuring that the Minister has regard to the desirability of imposing a duty less than the full margin of dumping or less than the full amount of the subsidy if such lesser duty would be sufficient to remove the injury to the Australian industry (new subsections 8(5A), 9(5A), 10(3C) and 11(5) respectively, clauses 4, 5, 6 and 7 refer); and

iv) the provisions which ensure that an importer's actual duty liability (i.e., the dumping or countervailing duty actually payable) is to be ascertained having regard to the export price and the normal value of the particular imported goods (in the case of dumping duties), or the relevant subsidy actually paid on the particular imported goods (in the case of countervailing duties)(new subsections 8(6), 9(6), 10(3E), 11(7) respectively, clauses 4, 5, 6 and 7 refer).

Financial Impact Statement

The measures contained in this Bill (and the corresponding amendments to the Customs Legislation (Anti-Dumping Amendments) Bill 1992) relating to the introduction of the new system for the imposition and collection of anti-dumping and countervailing duties, are expected to result in additional salary and administrative costs totalling $0.4m in 1992-93 and $0.75m in 1993-94 and 1994-95, in present dollar values.
NOTES ON CLAUSES

Short title etc.
Clause 1 provides for the citation of the Act to be the Customs Tariff (Anti-Dumping) Amendment Act (No. 2) 1992 (subclause 1(1)) and identifies the Customs Tariff (Anti-Dumping Act) 1975 as the Principal Act for the purposes of this Act (subclause 1(2)).

Commencement
Clause 2 provides for the citation and commencement provisions of the Act to commence on Royal Assent, but for the other provisions in the Act to commence on the day on which the provisions which give effect to the proposed new dumping regime in the Customs Legislation (Anti-Dumping Amendments) Act 1992 (the Dumping Legislation Act) commence.

This Act contains the new taxing provisions to give effect to the proposed new dumping regime and therefore these provisions must commence on the same day as the new scheme would commence.

Insertion of new section
Clause 3 inserts an Interpretation section (section 3) into the Principal Act to provide a definition of "relevant subsidy" which is used in clauses 6 and 7. The definition includes the payments or financial assistance specified in subsection 269TJ(1) and (2) of the Customs Act 1901.

Dumping duties
Clause 4 amends section 8 of the Principal Act to provide for the new method of imposing dumping duties. As outlined previously, the new method of imposition involves the following:

the Minister, after being satisfied that goods have been dumped and that the dumping is causing material injury to an Australian industry producing like goods, may, by notice published in the Gazette, declare that section 8 of the Principal Act applies to the dumped goods and like goods exported to Australia in the future (subsection 269TG(1) and (2) of the Customs Act 1901);
the notice must contain the amounts that the Minister ascertains (either in the original notice or after a review pursuant to new Division 5 in Part XVB of the Customs Act 1901) to be the normal value, export price and non-injurious price of goods of that kind, unless the confidentiality provision in new subsection 269TG(3A) (contained in section 11 of the Dumping Legislation Act) applies, in which case the Minister will not make these amounts public but will have still ascertained them;

the interim duty is then collected in accordance with these figures; and

after application to Customs under the provisions of new Division 4 of Part XVB of the Customs Act 1901, introduced by section 15 of the Dumping Legislation Act, for a duty assessment, the Minister ascertains the normal value and export price pertaining to each consignment of goods in the relevant importation period and this may result in the repayment of some of the interim duty in circumstances where the total duty payable for a particular importation period is less than the total amount of interim duty actually collected.

Paragraph 4(a) of this Act omits the present subsections 8(3), 8(4), 8(5), 8(5A), 8(5AA), 8(5B) and 8(6) and introduces new subsections 8(2), 8(3), 8(4), 8(5), 8(5A), 8(5B), 8(5C), 8(5D) and 8(6) which implement the proposed policy as follows:

New subsection 8(2) specifies that the special duty of Customs imposed on goods by virtue of a notice under subsection 269TG(1) or (2) of the Customs Act 1901 is a dumping duty (not an interim dumping duty) and that the amount of the dumping duty is calculated in accordance with new subsection 8(5).

New subsection 8(3) enables the imposition and collection of an interim dumping duty on goods the subject of a notice under section 269TG(1) or (2) of the Customs Act 1901, pending the Minister's final assessment of dumping duty payable on those goods.

New subsection 8(4) specifies that the amount of interim dumping duty payable on goods the subject of a 269TG(1) or (2) notice is the difference between the normal value and the export price of the goods as ascertained by the Minister for the purposes of the 269TG(1) or (2) notice (new paragraph 8(4)(a)). That is, irrespective of the actual export price of the particular goods or
the actual normal value of those goods, the interim dumping duty applicable to goods is in accordance with the figures the Minister has established in the notice.

Example: if the Minister has published a notice under subsection 269TG(2) (i.e. a prospective notice, or a notice which applies to like goods entered for home consumption after the date of publication of the notice) specifying "widgets" (the goods) from "Northland" (the country), and specifies that the normal value (NV) of widgets is $10 and the export price (EP) of widgets is $8, then the interim dumping duty on all future importations subject to these dumping measures of widgets from Northland is $2.

ie. NV = $10
EP = $8
therefore, interim duty = $2

If a widget is imported at $10, that is, if the actual export price (AEP) is $10, then the interim duty applicable is still $2.

this "up front" payment of an interim duty based on historical fact (i.e., the inquiry period leading to the 269TG notice or the period of a review which may have been undertaken) is one of the key reforms in this legislative package to ensure Australian industry is adequately protected against unfair trading practices.

To ensure the proposed scheme is both consistent with Australia's obligations as a signatory to the General Agreement on Tariff and Trade (GATT), and also delivers the necessary protection to the Australian industry, a number of refinements to the basic scheme promulgated by new paragraph 8(4)(a) of the Principal Act are necessary.

New paragraph 8(4)(b) covers the circumstance where the export price of the goods drops to a price below the export price specified in the notice. Where this occurs the effect of new paragraph 8(4)(b) is to lift the actual export price of the goods up to the export price specified in the notice before the interim duty under new paragraph 8(4)(a) is calculated.

Example:

if NV = $10
and EP = $8
but a widget is imported at $4, ie., AEP = $4, then the effect of new subsection 8(4) is that:

Amount of interim duty = $6 (made-up of $4 which is the amount pursuant to new paragraph 8(4)(b) to lift the export price of the particular goods up to the export price of goods of that kind as specified by the Minister in the 269TG(2) notice) + $2 (the difference between the normal value and export price pursuant to new paragraph 8(4)(a) as specified by the Minister in the notice).

New subsection 8(5) ensures that the interim dumping duty component referred to in new paragraph 8(4)(a) is to be levied on an ad valorem basis (ie., x % of the export price) or levied as a price per quantity (eg., $y per tonne or z¢ per can) or as a combination of the two.

The amount referred to in new paragraph 8(4)(b) is not to be collected in such a manner, but is simply to be the amount necessary to raise the export price of a particular consignment up to the export price as specified by the Minister in the notice.

Example: consider a shipment of widgets where NV = $10 per widget and EP = $8 per widget. Suppose that widgets varied in weight and size and so the Minister considers it appropriate to sign a notice under new subsection 8(5) directing that the interim duty is to be collected on the basis of an ad valorem duty of 25% (the proportion of $2 interim duty to $8 export price). The shipment contains 100 widgets and its actual export price is $1000. Therefore the interim dumping duty imposed is $250, (ie., 25% of $1000) notwithstanding that it is fairly clear that the export price of each widget is more than $8 per widget.

In this example, new paragraph 8(4)(b) would not be relevant because the export price of the particular goods is not less than the export price as specified in the notice.

Example: a shipment of widgets contains 100 widgets, but its actual export price is $700. The export price of the shipment should be at least $800 (100 widgets at $8 each), and so the appropriate interim duty must first include an amount of $100 (the amount necessary to raise the actual export price to the export price of the widgets as
ascertained for the purposes of the notice) and then the duty of 25% of the export price as ascertained by the Minister for the purpose of the notice, i.e., 25% of $800, or $200.

Therefore, the total landed price of the consignment of 100 widgets would be:

\[ \begin{align*}
& \text{\$700 (AEP)} \\
& \text{+ \$100 (pursuant to new paragraph 8(4)(b))} \\
& \text{+ \$200 (pursuant to new paragraph 8(5)(a))} \\
& = \text{\$1000, which is equivalent to the normal value of the goods as ascertained by the Minister for the purposes of the notice.}
\end{align*} \]

New subsection 8(5A) provides a further refinement to the proposed scheme to ensure GATT consistency.

Article 8.1 of the GATT Anti-Dumping Code states that it "... is desirable that ... the [dumping] duty be less than the margin [i.e. NV-EP], if such lesser duty would be adequate to remove the injury to the domestic industry." New subsection 8(5A) provides for this by ensuring that the Minister, when deciding how much dumping duty should be imposed, must have regard to the desirability of imposing a lesser amount of duty than the full margin of dumping if that lesser duty would be sufficient to remove the injury to the Australian industry.

This provision introduces the concept of the "non-injurious price", or NIP, into the Principal Act. The NIP is defined exhaustively in new section 269TACA of the Customs Act 1901, introduced by section 5 of the Dumping Legislation Act, and is basically the price at which the goods can be brought into Australia without causing injury to the Australian industry. It needs to be emphasised that the decision to impose a lesser amount of duty is up to the discretion of the Minister - the Minister cannot impose more than the dumping margin, but may impose less if that lesser amount is sufficient to remove the injury.

**Example:** consider the whatsit, where the Minister has ascertained for the purposes of the 269TG(2) notice that:

\[ \begin{align*}
\text{NV} &= \text{\$5} \\
\text{EP} &= \text{\$3} \\
\text{NIP} &= \text{\$4}
\end{align*} \]

that is, if the whatsits were imported at \$4 each, then the injury to the Australian
industry producing whatsits would be removed.

The Minister, in setting the rate of interim duty to be imposed under new subsection 8(5) must have regard to the desirability of setting a lower rate if that lower rate would be sufficient to remove the injury to the Australian industry. Suppose for the present case that the Minister considers it desirable that such a lower rate should be imposed.

In this example, if the whatsits are given a value according to weight then

\[ NV = \$100 \text{ per kg} \]
\[ EP = \$60 \text{ per kg} \]
\[ and \ NIP = \$80 \text{ per kg} \]

The Minister then considers it appropriate that the 8(5) notice should set the interim duty pursuant to paragraph (b) and therefore the Minister determines the interim duty to be $20 per kg.

The combined effect of new subsection 8(4), 8(5) and 8(5A) is that if a 100kg consignment of whatsits were imported at an export price of $15,000 (ie., $150 per kg), then the interim duty payable would be $2000 ($20 per kg).

If, on the other hand, the 100kg consignment of whatsits are imported at an export price of $5000 (ie., $50 per kg) then the interim duty payable on that consignment would be:

\[ $1000 \text{ (amount to lift the export price of the consignment up to the export price equivalent to that in the notice pursuant to paragraph 8(4)(b))} \]
\[ + \$2000 \text{ ($20 per kg, pursuant to paragraph 8(5)(b) and subsection 8(5A))} \]
\[ = \$3000 \]

New subsection 8(5B) places the same limitation upon the Minister as 8(5A) in that where the Minister has published both a dumping duty notice and a countervailing duty notice in respect of the same goods (ie. s269TJA of the Customs Act 1901 applies), the Minister must have regard to the desirability of ensuring that the interim dumping duty added to the interim countervailing duty is not more than is necessary to remove the injury to the Australian industry producing like goods.
subsection 8(5C) is a standard notification provision, in that the notice under new subsection 8(5) must be published in the Gazette unless the Minister considers that such a publication would adversely affect the business or commercial interests of any person.

New subsection 8(5D) allows the notice under new subsection 8(5) to be retrospective to cover the notice published under subsection 269TG(1), but specifies that the period of time covered by the 269TG(1) notice cannot also be a time covered by an earlier 269TG(2) notice - that is, 8(5D) ensures there cannot be two 269TG notices in force in respect of the same goods at the same time.

New subsections 8(3), 8(4), 8(5), 8(5A), 8(5B), 8(5C) and 8(5D) complete the taxing code for the imposition of interim dumping duties. After the interim duty has been imposed and collected, the new Division 4 of Part XVB of the Customs Act 1901 provides a facility whereby an importer can apply to Customs to request the Minister to ascertain the importer's actual duty liability and repay to the importer any excess interim duty collected. The ascertainment of the actual duty liability involves the Minister ascertaining the normal value and export price relating to each particular consignment of goods during a particular importation period, as distinct from the imposition of interim duty which has no regard to the actual normal value or export price (unless paragraph 8(4)(b) is relevant), but uses an "up front" flat rate or ad valorem rate.

New subsection 8(6) specifies the amount of dumping duty payable as follows:

if the Minister did not have reference to the NIP when imposing the interim duty, then the dumping duty payable in respect of particular goods is the difference between the amount that the Minister ascertains to be the export price of the particular goods and the amount that the Minister ascertains to be the normal value of the particular goods (new paragraph 8(6)(a)).

If the Minister did have reference to the NIP when imposing the interim duty, then the dumping duty payable in respect of particular goods is the difference between the amount that the Minister ascertains to be the export price of the particular goods and the lower of the amounts that the Minister ascertains to be the normal value of the particular goods or the non-injurious price of the goods as specified in the 269TG(1) or (2) notices.
For the ascertainment of the dumping duty payable, the relevant NIP is still the NIP specified in the 269TG notice; the Minister does not ascertain a NIP for the particular goods.

Example: consider the importation of widgets, where the Minister specified, for the purpose of the 269TG(2) notice that

\[
\begin{align*}
\text{NV} & = $10 \\
\text{EP} & = $8 \\
\text{NIP} & = $9,
\end{align*}
\]

and therefore the interim dumping duty is $1 per widget.

A particular importation of widgets contained 100 widgets and the actual export price of that consignment was $800. The interim duty imposed is therefore $100.

Pursuant to a duty assessment application, the Minister ascertained that the export price of that particular consignment was $800, but that the normal value of that particular consignment had dropped to $850.

Therefore, the dumping duty payable pursuant to new paragraph 8(5)(b) is the difference between:

i) $800 (the amount that the Minister ascertains to be the export price of the particular shipment); and

ii) $850 (the lower of:

\[
\begin{align*}
\text{a) the normal value of the particular goods as ascertained by the Minister for the purposes of the duty assessment or} \\
\text{b) the NIP as ascertained by the Minister for the purpose of the notice),}
\end{align*}
\]

ie) $50; therefore a repayment of $50 pursuant to paragraph 269Y(1)(b) of the Customs Act 1901 would be due to the importer.

Clause 4(b) is a consequential amendment to subsection 8(7) of the Principal Act. Subsection 8(7) permits the Minister to exempt certain goods from dumping duty; the consequential amendment ensures the Minister is also empowered to exclude those goods from interim dumping duty as well.

Clause 4(c) is a similar consequential amendment to subsection 8(8) of the Principal Act also
reflecting the fact that the exemption from dumping duty also includes an exemption from interim dumping duty.

**Third country dumping duties**

Clause 5 amends section 9 of the Principal Act to provide for the new method of imposing third country dumping duties. Third country duties are imposed where the Minister is satisfied that goods are dumped in Australia and the dumping has caused or threatened material injury to a producer or manufacturer of like goods in a third country (i.e. not the country of export, nor Australia), and the Minister is requested by the Government of the third country to declare that section 9 of the Principal Act applies to the dumped good already exported to Australia, and to like goods imported to Australia in the future. As outlined previously, the new method of imposition of third country dumping duties involves the following:

- the Minister, after being satisfied that goods have been dumped and that the dumping is causing material injury to an industry in a third country producing like goods, may, upon request by the Government of that third country, by notice published in the Gazette, declare that section 9 of the Principal Act applies to the dumped goods and like goods exported to Australia in the future (subsection 269TH(1) and (2) of the Customs Act 1901 refers);
- the notice must contain the amounts that the Minister ascertains (either in the original notice or after a review pursuant to new Division 5 in Part XVB of the Customs Act 1901) to be the normal value, export price and non-injurious price of goods of that kind, unless the confidentiality provision in new subsection 269TH(3) (contained in section 12 of the Dumping Legislation Act) applies, in which case the Minister will not make these amounts public but will have still ascertained them;
- the interim duty is then collected in accordance with these figures, regardless of the actual export price or the actual normal value of the particular shipment; and
- after application to Customs under the provisions of new Division 4 of Part XVB of the Customs Act 1901, introduced by section 15 of the Dumping Legislation Act, for a duty assessment, the Minister ascertains the normal value and export price pertaining to each consignment of goods in
the relevant importation period and this may result in the repayment of some of the interim duty paid in circumstances where the total duty payable for a particular importation period is less than the total amount of interim duty actually collected.

Paragraph 5(a) of this Act omits the present subsections 9(3), 9(4), 9(5), 9(5A), 9(5B) and 9(6) and introduces new subsections 9(2), 9(3), 9(4), 9(5), 9(5A), 9(5B), 9(5C), and 9(6) which implement the proposed policy as follows:

New subsection 9(2) specifies that the special duty of Customs imposed on goods by virtue of a notice under subsection 269TH(1) or (2) of the Customs Act 1901 is a third country dumping duty (not an interim third country dumping duty) and that the amount of the third country dumping duty is calculated in accordance with new subsection 9(6).

New subsection 9(3) enables the imposition and collection of an interim third country dumping duty on goods the subject of a notice under section 269TH(1) or (2) of the Customs Act 1901, pending the Minister’s final assessment of third country dumping duty payable on those goods.

New subsection 9(4) specifies that the amount of interim third country dumping duty payable on goods the subject of a 269TH(1) or (2) notice is the difference between the normal value and the export price of the goods as ascertained by the Minister for the purposes of the 269TH(1) or (2) notice (new paragraph 9(4)(a)). That is, irrespective of the actual export price of the particular goods or the actual normal value of those goods, the interim third country dumping duty applicable to goods is in accordance with the figures the Minister has established in the notice.

To ensure the proposed scheme is both consistent with Australia’s obligation’s as a signatory to the GATT, and also delivers the necessary protection to the third country’s industry, a number of refinements to the basic scheme promulgated by new paragraph 9(4)(a) of the Principal Act are necessary.

New paragraph 9(4)(b) covers the circumstance where the export price of the goods drops to a price below the export price specified in the notice. Where this occurs the effect of new paragraph 9(4)(b) is to lift the actual export price of the goods up to the export price.
specified in the notice before the interim duty under new paragraph 9(4)(a) is calculated.

New subsection 9(5) ensures that the interim third country dumping duty component referred to in new paragraph 9(4)(a) is to be levied on an ad valorem basis (i.e., x % of the export price) or levied as a price per quantity (e.g., $y per tonne or z¢ per can) or as a combination of the two.

The amount referred to in new paragraph 9(4)(b) is not to be collected in such a manner, but is simply to be the amount necessary to raise the export price of a particular consignment up to the export price as specified by the Minister in the notice.

New subsection 9(5A) provides a further refinement to the proposed scheme to ensure GATT consistency.

Article 8.1 of the GATT Anti-Dumping Code states that it "... is desirable that ... the [dumping] duty be less than the margin [i.e. NV-EP], if such lesser duty would be adequate to remove the injury to the domestic industry." New subsection 9(5A) provides this by ensuring that the Minister, when deciding how much third country dumping duty should be imposed, must have regard to the desirability of imposing a lesser amount of duty than the full margin of dumping if that lesser duty would be sufficient to remove the injury to the third country's industry.

New subsection 9(5B) is a standard notification provision, in that the notice under new subsection 9(5) must be published in the Gazette unless the Minister considers that such a publication would adversely affect the business or commercial interests of any person.

New subsection 9(5C) allows the notice under new subsection 9(5) to be retrospective to cover the notice published under subsection 269TH(1), but specifies that the period of time covered by the 269TH(1) notice cannot also be a time covered by an earlier 269TH(2) notice - that is, 9(5C) ensures there cannot be two 269TH notices in force in respect of the same goods at the same time.

New subsections 9(3), 9(4), 9(5), 9(5A), 9(5B) and 9(5C) complete the taxing code for the imposition of interim third country dumping duties. After the interim duty has been imposed and collected, the new Division 4 of Part XVB of the Customs Act 1901 provides a facility whereby an importer can apply to Customs to request the Minister to ascertain the importer's actual duty
liability and repay to the importer any excess interim duty collected. The ascertainment of the actual duty liability involves the Minister ascertaining the normal value and export price relating to each particular consignment of goods during a particular importation period, as distinct from the imposition of interim duty which has no regard to the actual normal value or export price (unless paragraph 9(4)(b) is relevant), but uses an "up front" flat rate or ad valorem rate.

New subsection 9(6) specifies the amount of third country dumping duty payable as follows:

If the Minister did not have reference to the NIP when imposing the interim duty, then the third country dumping duty payable in respect of particular goods is the difference between the amount that the Minister ascertains to be the export price of the particular goods and the amount that the Minister ascertains to be the normal value of the particular goods (new paragraph 9(6)(a)).

If the Minister did have reference to the NIP when imposing the interim duty, then the third country dumping duty payable in respect of particular goods is the difference between the amount that the Minister ascertains to be the export price of the particular goods and the lower of the amount that the Minister ascertains to be the normal value of the particular goods or the non-injurious price of the goods as specified in the 269TH(1) or (2) notices.

For the ascertainment of the third country dumping duty payable, the relevant NIP is still the NIP specified in the 269TH notice; the Minister does not ascertain a NIP for the particular goods.

Clause 5(b) is a consequential amendment to subsection 9(7) of the Principal Act. Subsection 9(7) permits the Minister to exempt certain goods from third country dumping duty; the consequential amendment ensures the Minister is also empowered to exclude those goods from interim third country dumping duty as well.

Clause 5(c) is a similar consequential amendment to subsection 9(8) of the Principal Act, also reflecting the fact that the exemption from third country dumping duty also includes an exemption from interim third country dumping duty.
Countervailing duties

Clause 6 amends section 10 of the Principal Act to provide for the new method of imposing countervailing duties. As outlined previously, the new method of imposition involves the following:

- after being satisfied that goods have had a relevant subsidy paid on them and because of the relevant subsidy material injury has been caused to an Australian industry producing like goods, the Minister may, by notice published in the Gazette, declare that section 10 of the Principal Act applies to the subsidised goods already exported to Australia (subsection 269TJ(1) of the Customs Act 1901 refers) and to like goods exported to Australia in the future (subsection 269TJ(2) the Customs Act 1901 refers);

the notice pursuant to new subsection 269TJ(11) (introduced by section 13 of the Dumping Legislation Act) must contain the amounts that the Minister ascertains (either in the original notice or after a review pursuant to new Division 5 in Part XVB of the Customs Act 1901) to be the relevant subsidy and non-injurious price of goods of that kind, unless the confidentiality provision in new subsection 269TJ(12) (contained in section 13 of the Dumping Legislation Act) apply, in which case the Minister will not make these amounts public but will have still ascertained them;

the interim duty is then collected in accordance with these figures, regardless of the actual amount of subsidy paid on the goods in the particular shipment; and

- after application to Customs under the provisions of new Division 4 of Part XVB of the Customs Act 1901, introduced by section 15 of the Dumping Legislation Act, for a duty assessment, the Minister ascertains the relevant subsidy and the export price pertaining to each consignment of goods in the relevant importation period and this may result in the repayment of some of the interim duty paid in circumstances where the total duty payable for a particular importation period is less than the total amount of interim duty actually collected.

Paragraph 6(a) of this Act omits the present subsection 10(3) and introduces new subsections 10(1), 10(2), 10(3), 10(3A), 10(3B), 10(3C), 10(3D),
and 10(3E) which implement the proposed policy as follows:

new subsection 10(1) specifies that the special duty of Customs imposed on goods by virtue of a notice under subsection 269TJ(1) or (2) of the Customs Act 1901 is a countervailing duty (not an interim countervailing duty).

New subsection 10(2) specifies the separate methods by which the countervailing duty on goods is calculated. If the duty is imposed by virtue of a notice under section 269TJ(1) or (2) or the Customs Act 1901, then the duty is calculated in accordance with new subsection 10(3E). If, however, the duty is imposed by virtue of a notice under section 269TJ(4),(5) or (6), then the duty is calculated in accordance with the present subsection 10(5).

This dichotomy reflects the policy that the new scheme is not to apply to a duty imposed by virtue of a notice under section 269TJ(4),(5) or (6). These provision provide for the implementation of duties which are not strict countervailing duties and so it is not considered appropriate to convert them to the new scheme.

New subsection 10(3) enables the imposition and collection of an interim countervailing duty on goods the subject of a notice under section 269TJ(1) or (2) of the Customs Act 1901, pending the Minister's final assessment of countervailing duty payable on those goods.

New subsection 10(3A) specifies that the amount of interim countervailing duty payable on goods the subject of a 269TJ(1) or (2) notice is the amount of the relevant subsidy paid on the goods as ascertained by the Minister for the purposes of the 269TJ(1) or (2) notice. That is, irrespective of the actual subsidy paid on those goods the interim countervailing duty applicable to goods is in accordance with the figures the Minister has established in the notice.

Example: if the Minister has published a notice under subsection 269TJ(2) of the Customs Act 1901 (ie. a prospective notice, or a notice applying to goods entered for home consumption after the date of publication of the notice) specifying that a subsidy of $10 per widget has been paid on the export of widgets from Northland, then the interim countervailing duty on all future importations of widgets for the purpose of the notice is $10.
Similar to the new dumping and third country dumping regimes, in ensuring this scheme is both consistent with the GATT and delivers the necessary assistance to the Australian industry there are a number of refinements necessary.

New subsection 10(3B), similar to new subsection 8(5), ensures that the interim countervailing duty is to be levied on an ad valorem basis or levied as a price per quantity or as a combination of the two.

New subsection 10(3C) provides a refinement to the proposed scheme to ensure GATT consistency.

Article 4.1 of the GATT Subsidies Code states that it "... is desirable that ... the [countervailing] duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry". New subsection 10(3) provides this by ensuring that the Minister, when deciding how much countervailing duty should be imposed, must have regard to the desirability of imposing a lesser amount of duty than the full amount of subsidy if that lesser duty would be sufficient to remove the injury to the Australian industry.

It should be noted that the decision to impose a lesser amount of duty is at the discretion of the Minister - the Minister cannot impose more than the amount of subsidy, but may impose less if that lesser amount would be sufficient to remove the injury.

Example: the Minister, pursuant to subsection 269TJ(2) of the Customs Act 1901, ascertains that the subsidy in relation to widgets from Northland is $10 and the non-injurious price is $50, that is, if the widgets were imported at $50 each, then the injury to the Australian industry producing widgets would be removed.

Pursuant to new subsection 10(3C) the Minister must have regard to the desirability of imposing less than the full subsidy if that lesser amount would remove the injury. Suppose for the present example the Minister considers it desirable that such a lesser rate be imposed.

Suppose there are 3 importations of widgets from Northland, with the following export prices:

The interim countervailing duty appropriate for each importation would be:

Importation 1 = $10 (the full amount of subsidy since EP + Subsidy is less than the NIP)

Importation 2 = $5 (that part of the amount of the subsidy necessary to bring the EP up to the NIP)

Importation 3 = $0 (importation 3 is imported at the NIP).

It is clear from the above example that there is a distinct difference between the interim dumping duty and the interim countervailing duty schemes. In setting the rate for the interim dumping duty, regard may be had to the NIP, but once the rate is set, that rate is to apply until it is reviewed regardless of whether the export price of a particular shipment exceeds the NIP. In the case of interim countervailing duty however, regard must be had to each shipment in determining whether the subsidy added to the export price would exceed the NIP. The reason for this distinction is that the export price is not ascertained by the Minister for the purpose of the countervailing duty notice - the only relevant considerations are whether a subsidy has been paid and, because of that subsidy, whether material injury has been caused to the Australian industry.

New subsection 10(3D) is a mirror provision to new subsection 8(5B) and places the same obligation upon the Minister as 10(3C), in that where the Minister has published both a countervailing duty notice and a dumping duty notice in respect of the same goods (i.e. s269TJA of the Customs Act 1901 applies), the Minister must have regard to the desirability of ensuring that the interim countervailing duty added to the interim dumping duty is not more than is necessary to remove the injury to the Australian industry producing like goods.

New subsections 10(3), 10(3A), 10(3B), 10(3C) and 10(3D) complete the taxing code for the imposition of interim countervailing duties. After the interim duty has been imposed and collected, the new Division 4 of Part XVIB of the Customs Act 1901 provides a facility whereby the
importer can apply to Customs to request the Minister to ascertain the importer’s actual duty liability and repay to the importer any excess interim duty collected. The calculation of the actual duty liability involves the Minister ascertaining the relevant subsidy and export price relating to each particular consignment of goods during a particular importation period.

New subsection 10(3E) specifies the amount of countervailing duty payable as follows:

If the Minister did not have reference to the NIP when imposing the interim duty, then the countervailing duty payable in respect of particular goods is the relevant subsidy paid on the particular goods (new paragraph 10(3E)(a)).

If the Minister did have reference to the NIP when imposing the interim duty, then the countervailing duty payable in respect of particular goods is the difference between the amount that the Minister ascertains to be the export price of the particular goods and the lower of

i) the NIP or

ii) the sum of the export price of the particular goods and the amount of subsidy relating to the particular goods.

Similar to the ascertainment of dumping duty payable, the NIP for the ascertainment of countervailing duty actually payable is the NIP specified in the 269TV notice; the Minister does not ascertain a NIP for the particular goods.

Example: the Minister ascertains that the subsidy in relation to widgets from Northland is $10, and the NIP is $50.

An importation of 100 widgets arrived in Australia, with an export price of $30 each, and so each widget attracted an interim countervailing duty of $10 (the level of the subsidy) ie. $1000 total interim countervailing duty.

Pursuant to a duty assessment application, the Minister ascertained that the export price of the particular consignment was actually $2000 and not $3000 as stated on the import entry. The amount of subsidy paid on each widget, however, was ascertained to be $5 and not $10.
Therefore, the countervailing duty payable is the difference between

$2000 (the amount the Minister ascertains to be the export price of the particular goods); and

$2500 (the sum of the export price of the particular goods and the relevant subsidy paid on the particular goods)

ie. $500; therefore a repayment of $500 interim duty pursuant to paragraph 269Y(1)(b) of the Customs Act 1901 would be due to the importer.

Paragraphs 6(b), 6(c), 6(d) and 6(e) of the Act amend the Principal Act to provide for the taxing provisions where the Minister declares subsection 269TJ(4), (5) or (6) of the Customs Act 1901 to apply. As outlined previously, these duties are not to be part of the new scheme; therefore amendments to the Principal Act are necessary to ensure they remain part of the present scheme.

Paragraph 6(b) amends subsection 10(4) of the Principal Act to reflect the fact that countervailing duties imposed by the Minister by virtue of a notice under subsection 269TJ(4), (5) or (6) of the Customs Act 1901 are calculated in accordance with subsection 10(4) of the Principal Act.

Paragraph 6(c) amends paragraph 10(4)(a) of the Principal Act to remove the reference to subsection 269TJ(1) and (2) of the Customs Act 1901; countervailing duties by virtue of a notice under these provisions are calculated in accordance with new subsection 10(3E). The effect of this is that the countervailing duty in respect of goods by virtue of a notice under subsection 269TJ(4) is an amount equal to the relevant subsidy in respect of those goods. It should be noted that there is no limitation on this provision for the Minister to have regard to desirability of imposing a lesser amount of duty - the appropriate duty is the full amount of the relevant subsidy.

Paragraph 6(d) provides for a minor technical amendment to change the reference to a "declaration" in paragraph 10(4)(b) to a reference to a "notice" to ensure consistency with the other provisions introduced by this Act.

Paragraph 6(e) is another minor technical amendment to paragraph 10(4)(b) of the Principal Act to change the reference to "a sum" to "an
amount”; again, to ensure consistency with other provisions introduced by this Act.

Paragraph 6(f) amends subsection 10(5) of the Principal Act to specify that it only applies to countervailing duties imposed under subsection 10(4) of the Principal Act.

Paragraph 6(g) omits subsection 10(5A) and 10(5AA) from the Principal Act. The policies reflected by these provisions are now in new subsections 10(3C) and 10(3D) respectively.

Paragraph 6(h) amends the standard notification provision in subsection 10(5B) to ensure it refers to the notice specifying how the interim countervailing duty imposed under new subsection 10(3B) is to be collected, as well as the countervailing duty imposed under subsection 10(5).

Paragraph 6(i) inserts two new subsections as follows:

new subsection 10(6) allows the notice under new subsection 10(3B) and subsection 10(5) to be retrospective to cover the period of time covered by a notice published under subsection 269TJ(1) of the Customs Act 1901, but specifies that the period of time covered by the 269TJ(1) notice cannot also be a time covered by an earlier 269TJ(2) notice — that is, new subsection 10(6) ensures there cannot be two 269TJ notices in force in respect of the same goods at the same time; and

new subsection 10(7) amends the present subsection 10(7) to ensure it conforms with the new drafting style adopted in this Act; i.e., the term "relevant subsidy" is used to replace the expanded statement of what the relevant subsidy is, and the reference to a "declaration" under subsection 269TJ(1),(2) or (4) is replaced with a reference to a "notice" under subsection 269TJ(1),(2) or (4).

Paragraph 6(j) provides for a minor consequential amendment to subsection 10(7A) to replace "declaration" with "notice", consistent with the provisions inserted by this Act.
Paragraph 6(k) is a consequential amendment to subsection 10(8) of the Principal Act. Subsection 10(8) permits the Minister to exempt certain goods from countervailing duty; the consequential amendment ensures the Minister is also empowered to exclude these goods from interim countervailing duty as well.

Paragraph 6(l) is a similar consequential amendment to subsection 10(9) of the Principal Act, also reflecting the fact that the exemption from countervailing duty also includes an exemption from interim countervailing duty.

**Third country countervailing duties**

Clause 7 amends section 11 of the Principal Act to provide for the new method of imposing third country countervailing duties. Third country countervailing duties are imposed where the Minister is satisfied that goods have had financial assistance in the form of a relevant subsidy, and because of the subsidy, material injury to a producer or manufacturer of like goods in a third country has been caused or threatened. In such a case the Minister may be requested by the Government of that third country to declare that section 11 of the Principal Act applies to the subsidised goods already exported to Australia, and to like goods exported to Australia in the future. As outlined previously, the new method of imposition of third country countervailing duties involves the following:

- after being satisfied that goods exported to Australia have had a relevant subsidy paid on them and because of the relevant subsidy, material injury has been caused to a third country's industry producing like goods, the Minister may, by notice published in the Gazette, declare that section 11 of the Principal Act applies to the subsidised goods already exported to Australia (subsection 269TK(1) of the **Customs Act 1901** refers) and to like goods exported to Australia in the future (subsection 269TK(2) the **Customs Act 1901** refers);

- the notice pursuant to new subsection 269TK(5) (introduced by section 14 of the **Dumping Legislation Act**) must contain the amounts that the Minister ascertains (either in the original notice or after a review pursuant to new Division 5 in Part XVB of the **Customs Act 1901**) to be the relevant subsidy and non-injurious price of goods of that kind, unless the confidentiality provision in new subsection 269TK(6) (contained in section 14 of the **Dumping
Legislation Act) apply, in which case the Minister will not make these amounts public but will have still ascertained them;

the interim duty is then collected in accordance with these figures, regardless of the actual amount of subsidy paid on the goods in the particular shipment; and

after application to Customs under the provisions of new Division 4 of Part XVB of the Customs Act 1901, introduced by section 15 of the Dumping Legislation Act, for a duty assessment, the Minister ascertains the relevant subsidy and the export price pertaining to each consignment of goods in the relevant importation period and this may result in the repayment of some of the interim duty paid in circumstances where the total duty payable for a particular importation period is less than the total amount of interim duty actually collected.

Paragraph 7(a) of this Act omits the present subsections 11(3), 11(4), 11(5), 11(5A), 11(5B), 11(6) and 11(7) and introduces new subsections 11(1), 11(2), 11(3), 11(4), 11(5), 11(6), 11(7), 11(7A) and 11(7B) which implement the proposed policy as follows:

new subsection 11(1) specifies that the special duty of Customs imposed on goods by virtue of a notice under subsection 269TK(1) or (2) of the Customs Act 1901 is a third country countervailing duty (not an interim third country countervailing duty).

new subsection 11(2) enables the imposition and collection of an interim third country countervailing duty on goods the subject of a notice under section 269TK(1) or (2) of the Customs Act 1901, pending the Minister's final assessment of third country countervailing duty payable on those goods.

new subsection 11(3) specifies that the amount of interim third country countervailing duty payable on goods the subject of a 269TK(1) or (2) notice is the amount of the relevant subsidy paid on the goods as ascertained by the Minister for the purposes of the 269TK(1) or (2) notice. That is, irrespective of the actual subsidy paid on those goods the interim third country countervailing duty applicable to goods is in accordance with the figures the Minister has established in the notice.

Similar to the new dumping and countervailing
regimes, in ensuring this scheme is both consistent with the GATT and delivers the necessary assistance to the Australian industry there are a number of refinements necessary.

New subsection 11(4) ensures that the interim third country countervailing duty is to be levied on an ad valorem basis or levied as a price per quantity or as a combination of the two.

New subsection 11(5) provides a refinement to the proposed scheme to ensure GATT consistency.

Article 4.1 of the GATT Subsidies Code states that it "... is desirable that ... the [countervailing] duty be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury". New subsection 11(3) provides this by ensuring that the Minister, when deciding how much third country countervailing duty should be imposed, must have regard to the desirability of imposing a lesser amount of duty than the full amount of subsidy if that lesser duty would be sufficient to remove the injury to the third country's industry.

It should be noted that the decision to impose a lesser amount of duty is at the discretion of the Minister - the Minister cannot impose more than the amount of subsidy, but may impose less if that lesser amount would be sufficient to remove the injury.

New subsection 11(6) is the standard notification provision to ensure the notice signed under 11(4) is published in the Gazette unless the Minister considers that the notice would adversely affect the business or commercial interests of any person.

New subsection 11(7) specifies the amount of third country countervailing duty payable as follows:

if the Minister did not have reference to the NIP when imposing the interim duty, then the third country countervailing duty payable in respect of particular goods is the relevant subsidy paid on the goods (new paragraph 11(7)(a)).

If the Minister did have reference to the NIP when imposing the interim duty, then the third country countervailing duty payable in respect of particular goods is the difference between the amount that the Minister ascertains to be the export price of the particular goods
and the lower of the NIP or the sum of the export price and the subsidy relating to the particular goods.

Similar to the ascertainment of dumping duty payable, the NIP for the ascertainment of third country countervailing duty actually payable is the NIP specified in the 269TK notice; the Minister does not ascertain a NIP for the particular goods.

New subsection 11(7A) allows the notice under new subsection 11(4) to be retrospective to cover the notice published under subsection 269TK(1), but specifies that the period of time covered by the 269TK(1) notice cannot be a time covered by an earlier 269TK(2) notice - that is, 11(7A) ensures that there cannot be two 269TK notices in force in respect of the same goods at the same time.

New subsection 11(7B) specifies that where the Minister cannot get adequate information to ascertain the level of subsidy for the purposes of subsection 269TK(1) or (2), the Minister can determine the level of subsidy.

Paragraph 7(b) is a consequential amendment to subsection 11(8) of the Principal Act. Subsection 11(8) permits the Minister to exempt certain goods from third country countervailing duty; the consequential amendment ensures the Minister is also empowered to exclude those goods from interim third country countervailing duty.

Paragraph 7(c) is a similar consequential amendment to subsection 11(9) of the Principal Act, also reflecting the fact that the exemption from third country countervailing duty includes an exemption from interim third country countervailing duty.

**Transitional Clause 8**

gives effect to the policy that the proposed new scheme of imposing and collecting interim dumping and countervailing duties pending their final assessment, is to apply to dumping or countervailing duty notices published by the Minister after the commencement of the proposed new scheme.
Customs Tariff (Anti-Dumping) Amendment Act (No. 2) 1992

No. 206 of 1992

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

[Assented to 21 December 1992]

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the Customs Tariff (Anti-Dumping) Amendment Act (No. 2) 1992.

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

Commencement

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

(2) The remaining provisions of this Act commence on the day the provisions referred to in subsection 2(3) of the Customs Legislation (Anti-Dumping Amendments) Act 1992 commence.
Insertion of new section

3. After section 2 of the Principal Act the following section is inserted:

Interpretation

“3. In this Act:
'relevant subsidy', in relation to goods, means a subsidy, bounty, reduction or remission of freight or other financial assistance that has been paid or granted, directly or indirectly, upon the production, manufacture, carriage or export of the goods.”.

Dumping duties

4. Section 8 of the Principal Act is amended:
(a) by omitting subsections (3), (4), (5), (5A), (5AA), (5B) and (6) and substituting the following subsections:

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

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

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

(a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and

(b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the amount by which the latter export price exceeds the former.

“(5) The Minister must, by signed notice, direct that the element of interim dumping duty referred to in paragraph (4)(a) in respect of particular goods be ascertained:
(a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater: or
(b) by reference to a measure of the quantity of those particular goods: or
(c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods;
and the notice has effect accordingly.

"(5A) The Minister must, in exercising his or her powers under subsection (5) in respect of particular goods the subject of a notice under subsection 269TG(1) or (2), if the non-injurious price of goods of that kind as ascertained or last ascertained by the Minister for the purposes of the notice is less than the normal value of goods of that kind as so ascertained, or last so ascertained, have regard to the desirability of fixing a lesser amount of duty such that the sum of:
(a) the export price of goods of that kind as so ascertained or last so ascertained; and (b) that lesser duty;
does not exceed that non-injurious price.

"(5B) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TG of that Act and a notice under section 269TJ of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (5) in relation to interim dumping duty in respect of the goods, have regard to the desirability of fixing the amount of interim dumping duty in respect of the goods such that the sum of:
(a) the export price of those particular goods; and (b) the amount of the interim dumping duty as so fixed; and (c) the amount of interim countervailing duty as fixed under section 10;
does not exceed the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of those notices.

"(5C) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the Gazette unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.
"(5D) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

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

(a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or

(b) if, in a notice under subsection (5), the Minister determines that the whole or a part of the interim dumping duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the first-mentioned notice—the difference between:

(i) the amount that the Minister ascertains to be the export price of those particular goods; and

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

(b) by inserting in subsection (7) "interim dumping duty and" before "dumping duty";

(c) by omitting from subsection (8) "the dumping duty" and substituting "interim dumping duty and dumping duty".

Third country dumping duties

5. Section 9 of the Principal Act is amended:

(a) by omitting subsections (3), (4), (5), (5A), (5B) and (6) and substituting the following subsections:

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

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

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

(a) the difference between the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice and the normal value of goods of that kind as so ascertained, or last so ascertained; and

(b) if the export price of those particular goods is lower than the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice—the amount by which the latter export price exceeds the former.

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

(a) as a proportion of the export price of those particular goods or of the export price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the dumping duty notice, whichever is the greater; or

(b) by reference to a measure of the quantity of those particular goods; or

(c) by reference to a combination of a proportion of the kind referred to in paragraph (a) and a measure of the quantity of those particular goods;

and the notice has effect accordingly.

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

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

(b) that lesser duty;

does not exceed that non-injurious price.

"(5B) If the Minister signs a notice under subsection (5), the Minister must cause a copy of that notice to be published in the Gazette unless, in the opinion of the Minister, the publication of that notice would adversely affect the business or commercial interests of any person.
“(5C) A notice under subsection (5) applies to goods entered for home consumption on or after a day specified in the notice, which may be earlier than the day of publication of the notice but may not be a day on which an earlier notice under that subsection applied to the goods.

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

(a) unless paragraph (b) applies—the difference between the amounts that the Minister ascertains to be the export price and the normal value of those particular goods; or

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

(i) the amount that the Minister ascertains to be the export price of those particular goods; and

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

(b) by inserting in subsection (7) “interim third country dumping duty and” before “third country dumping duty”;

(c) by omitting from subsection (8) “the dumping duty” and substituting “interim third country dumping duty and third country dumping duty”.

Countervailing duties

6. Section 10 of the Principal Act is amended:

(a) by omitting subsection (3) and substituting the following subsections:

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

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

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

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

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

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

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

(a) as a proportion of the export price of those particular goods; or

(b) by reference to a measure of the quantity of those particular goods; or

(c) by reference to a combination of a proportion of the export price of those particular goods and a measure of the quantity of those particular goods; and the notice has effect accordingly.

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

(a) the relevant subsidy in respect of goods of that kind as so ascertained, or last so ascertained; and

(b) the export price of those particular goods;

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

“(3D) If, in the circumstances specified in section 269TJA of the Customs Act, both a notice under section 269TJ of that Act and a notice under section 269TG of that Act are published at the same time and in respect of the same goods, the Minister must, in exercising his or her powers under subsection (3B) in relation to interim countervailing duty in respect of the goods, have regard to the desirability of fixing the amount of interim...
countervailing duty in respect of the goods such that the sum of:
(a) the export price of those particular goods: and
(b) the amount of the interim countervailing duty as so fixed:
and
(c) the amount of interim dumping duty as fixed under section 8:
does not exceed the non-injurious price of goods of that kind, as ascertained, or last ascertained, by the Minister for the purpose of those notices.

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

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

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

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

“(a) in the case of goods to which this section applies by virtue of a notice under subsection 269TJ(4) of the Customs Act—an amount equal to the amount of the relevant subsidy in respect of the goods; or”;

(d) by omitting from paragraph (4)(b) “countervailing duty in respect of goods to which this section applies by virtue of a declaration” and substituting “goods to which this section applies by virtue of a notice”;

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Customs Tariff (Anti-Dumping) Amendment (No. 2)
No. 206, 1992

(e) by omitting from paragraph (4)(b) "a sum" and substituting "an amount":

(f) by inserting in subsection (5) "referred to in subsection (4)" after "in respect of goods":

(g) by omitting subsections (5A) and (5AA);

(h) by inserting in subsection (5B) "(3B) or" after "subsection";

(i) by omitting subsections (6) and (7) and substituting the following subsections:

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

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

(j) by omitting from subsection (7A) "a declaration" and substituting "a notice";

(k) by inserting in subsection (8) "interim countervailing duty or" before "countervailing duty";

(l) by inserting in subsection (9) "interim countervailing duty or" before "countervailing duty".

Third country countervailing duties

7. Section 11 of the Principal Act is amended:

(a) by omitting subsections (3), (4), (5), (5A), (5B), (6) and (7) and substituting the following subsections:

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

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

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

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

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

and the notice has effect accordingly.

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

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

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

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

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

(a) unless paragraph (b) applies—the relevant subsidy in respect of those particular goods; or
(b) if, in a notice under subsection (4), the Minister determines that the interim countervailing duty payable on those particular goods is to be ascertained by reference to the non-injurious price of goods of that kind—the difference between:
(i) the amount that the Minister ascertains to be the export price of those particular goods; and
(ii) the lower of the sum of the amounts that the Minister ascertains to be the export price of, and the relevant subsidy in respect of, those particular goods and the non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice under subsection 269TK(1) or (2).

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

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

(b) by inserting in subsection (8) “interim third country countervailing duties” before “third country”;

(c) by inserting in subsection (9) “interim third country countervailing duties” before “third country”.

Transitional

8. Despite the amendments of the Principal Act made by this Act, the provisions of the Principal Act as in force immediately before the day of commencement of the provisions referred to in subsection 2(3) of the Customs Legislation (Anti-Dumping Amendments) Act 1992 continue to apply in relation to duty imposed on goods as a result of dumping duty notices or countervailing duty notices:

(a) that are published by the Minister before that day; or

(b) that are published by the Minister on or after that day but that apply to goods entered for home consumption before that day;

as if those amendments had not been made.

NOTE

Customs Tariff (Anti-Dumping) Amendment (No. 2)
No. 206, 1992

[Minister's second reading speech made in—
House of Representatives on 4 November 1992
Senate on 12 November 1992]