

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**CUSTOMS LEGISLATION (ANTI-DUMPING AMENDMENTS)
BILL 1992**

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

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

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 4 November 1992

(Minister for Small Business, Construction and Customs)

A BILL

FOR

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

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 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.

10 (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

5

Principal Act

3. In this Part, “**Principal Act**” means the *Customs Act 1901*¹.

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: 10

“**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 15

(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: 25

(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 30

(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 35

(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: 40

(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:

- (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: 15

Non-injurious price

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

- (a) if the goods are the subject of, or of an application for, a
dumping duty notice under subsection 269TG(1) or (2)—to
prevent the injury, or a recurrence of the injury, or to remove
the hindrance, referred to in paragraph 269TG(1)(b) or (2)(b);
or 20
- (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 25
- (c) if the goods are the subject of, or of an application for, a
countervailing duty notice under subsection 269TJ(1) or (2)—
to prevent the injury, or a recurrence of the injury, or to remove
the hindrance, referred to in paragraph 269TJ(1)(b) or (2)(b);
or 30
- (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).” 35

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”. 40

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)";
- 5 (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: 5

“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 10

(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: 15
20

(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.”. 25

Countervailing duties

13. Section 269TJ of the Principal Act is amended by adding at the end the following subsections: 30

“(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: 35

(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 40

- (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 the 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: 5

(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." 10

Insertion of new Divisions

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

"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. 20

"(2) An application for an assessment of duty under subsection (1) may only be made if: 25

(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. 30

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: 35

(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 40

5 (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:

10 (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

15 (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:

20 (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*;

25 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.

30 **Consideration of duty assessment applications**

35 “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).

40 “(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: 5

- (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 10
- (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. 15

“(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: 20

- (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 25
- (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. 30

“(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: 35
- (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 40
- (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:

- 5 (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

10 (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:

- 15 (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.

20 “(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:
25 (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:

- 30 (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
35 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

40 “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. 5

“(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. 10

“(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: 15

- (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 20
- (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; 25

then: 25

- (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 30
- (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 35

“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; 40

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

“(2) If:

- 5 (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;
10 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:

- 15 (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

20 “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
25 (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:

- 30 (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
35 (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.

40 “(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. 5

“(2) The notice must invite interested parties to make submissions within a period of 40 days after the day of publication of the notice. 10

“(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: 15

- (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. 20

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*: 25

- (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 30
- (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. 35

“(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: 40

- (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

18. In this Part, “Principal Act” means the *Anti-Dumping Authority Act 1988*.

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

Section 16

**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”.

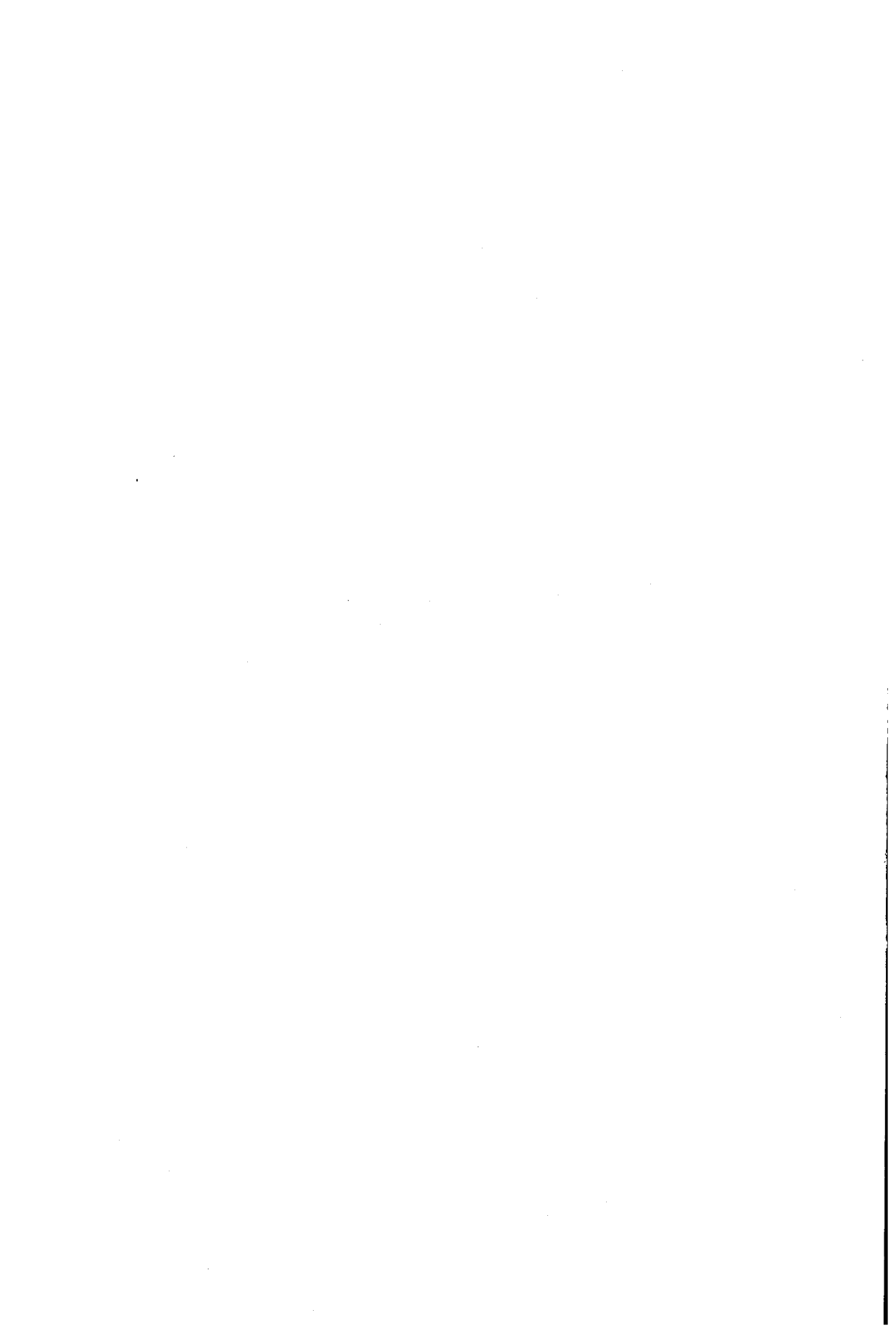
Paragraph 269TN(8)(b):

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.







9 780644 415644