

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

**CUSTOMS LEGISLATION (WORLD TRADE ORGANIZATION  
AMENDMENTS) BILL 1994**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry, Science and Technology,  
Senator the Honourable Peter Cook)



## **CUSTOMS LEGISLATION (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1994**

### OUTLINE

This Bill is one of a package of Bills that make changes to Australian law to enable Australia to meet its obligations under agreements negotiated in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).

This Bill will amend the *Customs Act 1901* and the *Anti-Dumping Authority Act 1988* to bring Australia's anti-dumping and countervailing regimes into conformity with the standards and principles arising from the Uruguay Round agreements.

While the fundamental elements of dumping and subsidy investigations remain unchanged the Agreements now provide much greater guidance and prescriptive direction in the conduct of an investigation. The Bill will amend the relevant Acts to incorporate the broader technical and operational matters as required by the agreements.

A summary of the main points follows.

- A major change is in regard to an expansion of the options for assessing dumping margins. Under the current legislation, dumping margins are normally based on a comparison of individual export prices to Australia with individual domestic selling prices (normal values) in the country of export. While this option will be retained the *Customs Act 1901* will now allow for the comparison of a weighted average of export prices to a weighted average of normal values. An option will also exist for comparing individual export prices with a weighted average based normal value.
- Where the overseas domestic market is found to be unsuitable for assessing the normal value of goods for comparison purposes, the margin of dumping is normally determined by comparison with a price of the like product when exported to an appropriate third country or with the cost to make and sell (plus profit). Some guidance has also been provided on the selection of an "appropriate" third country if a comparison is to be conducted on that basis and considerable detail is provided on the assessment of data for establishing a normal value on a constructed basis.
- The concept of allowing for the cumulation of the effects of imports from various countries subject to investigation will now be formalised.
- The Minister will now be required to reject an application, or terminate an investigation, where dumping margins (or levels of subsidisation) are de minimis or there are negligible volumes of dumped (or subsidised) imports. Quantified thresholds for each of these concepts have been included.

The terms of the agreements will also lead to a formalisation and expansion of the public file system which is intended to provide interested parties with the

opportunity to comment on information available to the investigating authorities. There will be a corresponding emphasis on parties providing non-confidential versions of submissions and the possibility to disregard information if a non-confidential summary is not provided. Parties which are not directly involved in the particular investigation will also receive increased detail via a broader range of public notifications. While these provisions will impose additional obligations both on the administrators and interested parties, they should result in a process that is more transparent and open.

In terms of application for measures, there is a requirement that the applicant has support by a major proportion, as defined, of the total Australian industry before an investigation can be initiated. The coverage of an investigation has also been formally extended to end users, consumer organisations and trade/business associations in the exporting and importing countries.

There are a number of changes to the provisions covering price undertakings including the option for the exporter to request, or the investigating authorities to decide, that the investigation be completed if an undertaking is accepted. Additionally there is a requirement to advise the exporter of reasons for any decision not to accept an undertaking.

The area of duty imposition has also been expanded and provides an emphasis on the imposition of measures on a company specific basis with clear provision for a residual rate for other exporters from the nominated country. Guidelines are provided for the determination of interim dumping duty for exporters not covered by company specific measures and on the conduct of reviews to determine company specific measures for new exporters. This should provide more complete coverage while ensuring that measures are directed more precisely at the source of the dumped imports.

An extension of the maximum time limits for holding dumping securities, following a positive preliminary finding, has also been incorporated allowing such securities to be held for six months (the corresponding provision for countervailing securities remains at four months).

There is now comprehensive guidance on identifying the forms of subsidies granted by foreign governments which may be subject to countervailing investigations and measures. Additionally specific guidelines have been provided for calculating levels of subsidisation.

Another major aspect of the agreements is the inclusion of provisions for preferential treatment for developing countries in countervailing investigations. These provisions are essentially incorporated via less stringent benchmarks for establishing de minimis subsidy levels and negligible volumes of exports for termination purposes.

**Financial Impact Statement**

There are no identified financial implications to the Commonwealth as a consequence of this Bill.

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**NOTES ON CLAUSES**

**PART 1 - PRELIMINARY**

**Clause 1 - Short title etc.**

1. This is a machinery clause which provides for this Act to be cited as the *Customs Legislation (World Trade Organisation Amendments) Act 1994*.

**Clause 2 - Commencement**

2. Clause 2 sets out the commencement dates of this Act as follows:

Subclause 2(1) provides that sections 1, 2 and 3 commence on the day on which this Act receives the Royal Assent;

Subclause 2(2) provides that Parts 2 and 3 of this Act commence on the day on which the World Trade Organization Agreement enters into force for Australia; and

Subclause 2(3) provides that for the purposes of subsection (2), the day on which the World Trade Organization Agreement enters into force for Australia is taken to be the day declared by the Governor-General by Proclamation under the *Copyright (World Trade Organization Amendments) Act 1994* to be the day on which that Agreement enters into force for Australia.

**Clause 3 - Application**

3. This clause provides that this Act applies in respect of the specified applications made under the *Customs Act 1901* and the *Anti-Dumping Authority Act 1988* that are made on or after the day on which the Agreement Establishing the World Trade Organisation enters into force for Australia.

**PART 2 - AMENDMENTS OF THE CUSTOMS ACT 1901**

**Clause 4 - Principal Act**

4. This is a machinery clause which provides that the "Principal Act" in this Part means the *Customs Act 1901*.

**Clause 5 - Right to require security**

5. This clause amends section 42 of the Principal Act by omitting subsection 42(1C) and substituting new subsections 42(1C) and (1D).

6. New subsection 42(1C) is a consequential amendment allowing Customs to require and take securities for any interim duty that may be payable where an undertaking is accepted. New subsection 42(1D) is also a consequential amendment allowing Customs to require and take securities pending the completion of a review of an application under new subsection 269ZB(1) since under new section 269ZH no interim duty may be collected after lodgment of that application (see note on clause 28 below).

#### **Clause 6 - Cancellation of bonds**

7. This clause amends section 45 of the Principal Act with respect to the cancellation of bonds.

8. Paragraph 6(a) clarifies that the date referred to in subsection 45(2) is the date the security is taken and not required. Paragraphs 6(b) and (c) extend the "prescribed period" in paragraph 45(3)(a) from 4 months to 6 months and 6 months to 9 months respectively to reflect Article 7.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Dumping Agreement"). This will enable provisional measures in relation to dumping duty to be in place for 6 months or, where requested by the exporter, 9 months.

#### **Clause 7 - Definitions**

9. This clause sets out the amendments to definitions in section 269T of the Principal Act as follows:

10. Paragraph 7(a) amends the definition of "interested party" in subsection 269T(1) by including:

- in new paragraph 269T(1)(d) any 'upstream' person who is or is likely to be directly concerned with the production or manufacture of the goods that have been or likely to be exported to Australia;
- in new paragraph 269T(1)(e), a trade organization a majority of whose members are, or are likely to be, directly concerned with the production or manufacture of goods the subject of the application or like goods, with their importation or exportation into Australia, or with both of those activities. This inclusion reflects Article 6.11 of the Dumping Agreement and Article 12.9 of the *Agreement on Subsidies and Countervailing Measures* ("Subsidy Agreement"); and
- in new paragraph 269T(1)(f) the Government of the country of export or origin of the goods the subject of the application or like goods that have been or are likely to be exported to Australia.

11. Paragraph 7(b) inserts new definitions of words and expressions for the purposes of the Principal Act. It defines:

*"Agreement on Agriculture"* as the Agreement so named and set out in Annex 1A to the World Trade Organization Agreement;

*"Agreement on Subsidies and Countervailing Measures"* as the Agreement so named and set out in Annex 1A to the World Trade Organization Agreement;

*"allowable exemption or remission"* as the exemption of exported goods from duties or taxes borne by like goods destined for domestic consumption or the remission of such duties in accordance with Article XVI of the General Agreement on Tariffs and Trade ("GATT") and provisions of Annexes I, II, and III of the Subsidy Agreement. This exemption and remission is an exception to sub-paragraph (a)(vii) of the definition of "subsidy" (see below);

*"application"* as an application for the publication of a dumping or countervailing duty notice;

*"countervailable subsidy"* as a subsidy, that is for the purposes of section 269TAAC of the Principal Act, a countervailable subsidy. This definition is a drafting change inserted for ease of reading and understanding of the Principal Act;

*"country of export"* as a country outside Australia, from which goods are exported to Australia, whether or not it is the country where those goods are produced or manufactured. It is noted that the word *"country"* is already defined in subsection 4(1) of the Principal Act. The expression *"country of export"* is used in the Dumping Agreement and Subsidy Agreement to refer to the country which merely exports goods in contrast to the country which produces or manufactures the goods;

*"country of origin"* as a country which produces or manufactures the goods exported to Australia irrespective of whether it is a country of export. The expression *"country of origin"* is used in the Dumping Agreement and Subsidy Agreement to refer to the country which produces or manufactures goods in contrast to the country which merely exports the goods;

*"dumped goods"* as any goods exported to Australia that the Minister has determined under section 269TACB, have been dumped. This definition is a drafting change inserted for ease of reading and understanding of the Principal Act;

*"General Agreement on Tariffs and Trade 1994"* as the Agreement by that name whose parts are described in Annex 1A to the World Trade Organization Agreement;

*"investigation period"* in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods imported into Australia as a period specified by the Comptroller for the purposes of paragraph 269TC(4)(bf) to be the period over which importations of like goods will be examined in order to determine what sort of preliminary finding to make under section 269TD. The expression *"investigation period"* is used throughout the Dumping Agreement and Subsidy Agreement to denote the period over which the exportations of alleged dumped and subsidised goods are examined to determine whether the goods were dumped or subsidised.

- "*member country*" as a country that is, in its own right, a member of the World Trade Organization established by the World Trade Organization Agreement;
- "*new exporter*" as an exporter who did not export goods the subject of an application for a dumping or countervailing duty notice or like goods at any time during the inquiry period as defined in the *Anti-Dumping Authority Act 1988* or the investigation period;
- "*residual exporter*", in relation to an application for publication of a dumping or countervailing duty notice in respect of goods, as an exporter of like goods other than a selected exporter. This definition reflects a class of exporters contemplated in Article 6.10 of the Dumping Agreement;
- "*selected exporter*", in relation to an application for publication of a dumping or countervailing duty notice in respect of goods, as an exporter of like goods whose exportations are investigated for the purposes of the application. This definition reflects another class of exporters contemplated in Article 6.10 of the Dumping Agreement.
- "*subsidy*", in relation to goods exported to Australia, as financial contribution by:
  - a) a government of the country of origin or export of those goods;
  - b) a public body of that country or of which that government is a member;
  - c) a private body entrusted or directed by that government or public body to carry out a governmental function,

made in connection with the production, manufacture or export of those goods that involves any or all of the matters in paragraphs (a)(iv) to (ix) and any form of income or price support pursuant to Article XVI of GATT which confers a benefit. This definition reflects the definition of a subsidy in Article 1.1 of the Subsidy Agreement;
- "*third country*", in relation to goods that have been or may be exported to Australia, as a country other than Australia or the country of export, or the country of origin of those goods;
- "*World Trade Organization Agreement*" as the Agreement establishing the World Trade Organization done at Marrakesh on 15 April 1994.

12. Paragraph 7(c) amends subsection 269T(2A) and is consequential upon the new definition of "subsidy".

13. Paragraph 7(d) inserts new subsections 269T(2AA), (2AB), (2AC) and (2AD) as follows:



New subsection 269T(2AA) is consequential upon the new definition of "subsidy" and is a drafting change for ease of reading of the Principal Act;

New subsection 269T(2AB) provides that a subsidy is taken to have been received from both a public body of a country which is a member and the member country where a subsidy is constituted by a financial contribution provided by that public body but delivered by the member country

New subsection 269T(2AC) provides that a subsidy is taken to have been received whether the benefit conferred by the subsidy is conferred directly or indirectly or whether the subsidy now involves or will involve in the future the payment or grant of any form of financial assistance;

New subsection 269T(2AD) is inserted to make it clear that the Minister may examine periods before the starting date of an investigation period in determining the question of material injury.

14. Paragraph 7(e) amends subparagraph 269T(4D)(b)(i) and is consequential upon the new definition of "countervailable subsidy".

15. Paragraph 7(f) amends subparagraph 269T(4E)(b)(i) and is consequential upon the new definition of "countervailable subsidy".

16. Paragraph 7(g) inserts new subsections 269T(5A) and (5B) as follows:

New subsection 269T(5A) introduces the concept of a weighted average of prices as reflected in Article 2.4.2 of the Dumping Agreement. A formula is set out by which the weighted average of prices, values costs or amounts per unit in relation to goods may be worked out;

The formula is used in new section 269TACB in determining the weighted average of export prices and normal values for the purposes of working out whether dumping has occurred and the amount of dumping;

New subsection 269T(5B) is inserted to allow any units of goods treated as being involved in a particular transaction to be taken to be actually involved in the transaction for the purposes of ascertaining constructed export prices and normal values under paragraph 269TAB(1)(b) or (c), 269TAB(3), 269TAC(2)(c) or (4)(e) or 269TAC(6) of the Principal Act.

#### **Clause 8 - Insertion of new sections**

17. This clause inserts new sections 269TAAB, TAAC and TAAD as follows:

#### **New section 269TAAB - Member countries, developing countries and special developing countries**

18. New subsection 269TAAB (1) provides for the Minister to certify the status of particular countries as either a member country of the World Trade Organization, a

developing country, whether a member or not, or a special developing country for the purposes of Part XVB of the Principal Act. This facility is necessary given the different treatment of developing countries and least developed countries under the Subsidy Agreement.

19. New subsection 269TAAB(2) describes a 'special developing country'.

20. New subsection 269TAAB(3) establishes that, for all purposes of Part XVB of the Principal Act and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified unless the contrary is established.

#### **New section 269TAAC - Definition - countervailable subsidy**

21. The provisions of new section 269TAAC provide the definition of a "countervailable subsidy". This section reflects Articles 1 and 2 of the Subsidy Agreement.

22. New subsection 269TAAC(1) provides that a subsidy is a countervailable subsidy if it is specific and not an excluded subsidy.

23. New subsection 269TAAC(2) sets out the circumstances in which a subsidy is specific.

24. New subsection 269TAAC(3) sets out the circumstances in which a subsidy is not specific.

25. New subsection 269TAAC(4) sets out the circumstances in which the Minister may determine that a subsidy is specific even though access to the subsidy is established by objective criteria under paragraph 269TAAC(3)(a).

26. New subsection 269TAAC(5) sets out the matters which the Minister must take account of in making a determination under subsection 269TAAC(4).

27. New subsection 269TAAC(6) sets out the circumstances in which a subsidy is an excluded subsidy.

#### **New section 269TAAD - Ordinary Course of Trade**

28. New section 269TAAD replaces subsection 269TAC(12) of the Principal Act and is placed in a separate section for ease of reading and understanding of the Principal Act. The new section restates the circumstance in subsection 269TAC(12) where the price paid for goods is taken not to have been paid in the ordinary course of trade [new subsection 269TAAD(1)].

29. This new section also introduces the new criteria contained in Article 2.2.1 of the Dumping Agreement for the purposes of new subsection 269TAAD(1). The new criteria are:

- Sales are in substantial quantities when the weighted average selling price in the exporting country or a third country is below the weighted average per unit costs for the transactions under question, or where the volume of sales in the exporting country or third country below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration [new subsection 269TAAD(2)];

Costs of goods shall be taken to be recovered within a reasonable period of time if prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation [new subsection 269TAAD(3)]; and

Cost of goods includes the costs of production plus administrative, selling and general costs associated with the sale of the goods [new subsection 269TAAD(4)].

30. New section 269TAAD does not preclude other circumstances in which the price paid for like goods in the country of export in sales that are at arms length as also not being paid in the ordinary course of trade.

31. New subsection 269TAAD(5) provides the amounts determined for the purposes of new paragraphs 269TAAD(4)(a) and (b) must be worked out in the manner and taking into account such factors as the regulations provide. The regulations will reflect Articles 2.2.1.1 and 2.2.2 of the Dumping Agreement.

#### **Clause 9 - Export price**

32. This clause amends section 269TAB of the Principal Act by omitting from subsection 269TAB(4) the words "subsection (3)" and substituting the words "this section". This has the effect of allowing the Minister to disregard unreliable information in respect of all methods of determining export prices in section 269TAB and reflects Articles 6.6 and 6.8 of the Dumping Agreement. In other words, subsection 269TAB(4) is no longer limited to subsection 269TAB(3).

#### **Clause 10 - Normal value of goods**

33. This clause amends section 269TAC of the Principal Act as follows:

34. Paragraph 10(a) omits subparagraphs 269TAC(2)(a)(i) and (ii) and substitutes new subparagraphs 269TAC(2)(a)(i) and (ii) which insert drafting changes for ease of reading and understanding of the subparagraphs and introduce a new criterion of "low volume of sales" for the purposes of section 269TAC. This reflects Article 2.2 of the Dumping Agreement.

35. Paragraph 10(b) omits all the words after subparagraph 269TAC(2)(c)(i) and substitutes a new subparagraph 269TAC(2)(c)(ii) to insert administrative, selling and general costs associated with the sale and profit on that sale as matters to be considered by the Minister in the assessment of normal value under subparagraph 269TAC(2)(c) in order to reflect Article 2.2 of the Dumping Agreement. New paragraph 269TAC(2)(d) provides that the normal value of goods will be the price

paid for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to an appropriate third country determined by the Minister.

36. Paragraph 10(c) omits subsection 269TAC(3) and introduces a new subsection 269TAC(3) which removes the criterion in paragraph 269TAC(3)(b) leaving the criterion in paragraph 269TAC(3)(a) intact. Drafting changes have also been effected for ease of reading and understanding of the provision. This change reflects Article 2.2 of the Dumping Agreement.

37. Paragraph 10(d) is a consequential amendment which substitutes a new paragraph 269TAC(4)(d) to provide consistency with the changes made in the new paragraph 269TAC(2)(d).

38. Paragraph 10(e) is a consequential amendment which omits subparagraphs 269TAC(4)(e)(ii) and (iii) and substitutes a new subparagraph 269TAC(4)(e)(ii) for consistency with the changes made in the new paragraph 269TAC(2)(c)(ii).

39. Paragraph 10(f) omits subsection 269TAC(5) and substitutes new subsections 269TAC(5), (5A), (5B) and (5C) as follows:

- New subsection 269TAC(5) is consequential upon and provides consistency with the changes made in the new subsection 269TAC(3);
- New subsection 269TAC(5A) provides for the amounts determined to be the cost of production or manufacture under subparagraph 269TAC(2)(c)(i) or (4)(e)(i) and the administrative, selling and general costs under subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) to be worked out in the same manner as prescribed by regulations for new paragraphs 269TAAD(4)(a) and (b);
- New subsection 269TAC(5B) provides for the amount determined to be the profit under new paragraphs 269TAC(2)(c)(ii) and (4)(c)(ii) to be worked out and taking into account such factors as the regulations provide. The regulations will set out the terms of Article 2.2.2 (iii) of the Dumping Agreement;
- New subsection 269TAC(5C) sets out volume of trade and nature of trade as the matters to which the Minister may have regard in determining whether a third country is an appropriate country for the purposes of paragraph 269TAC(2)(d) or (4)(d).

40. Paragraph 10(g) amends section 269TAC(7) by omitting from subsection 269TAC(7) the words "subsection (6)" and substituting the words "this section" in its place. This has the effect of allowing the Minister to disregard unreliable information in respect of all methods of determining the normal value of goods in section 269TAC. In other words, subsection 269TAC(4) is no longer limited to subsection 269TAC(3).

41. Paragraph 10(h) omits subsection 269TAC(12). Subsection (12) is no longer necessary as a consequence of the introduction of new section 269TAAD.

42. Paragraph 10(i) corrects the cross reference in subsection 269TAC(13) to take account of the omission of subsection 269TAC(12) and the insertion of new section 269TAAD.

43. Paragraph 10(j) corrects the cross reference in subsection 269TAC(13) to take account of the amendment to subparagraph 269TAC(2)(c)(ii) of the Principal Act.

44. Paragraph 10(k) inserts a new subsection 269TAC(14) to reflect footnote 2 to Article 2.2 of the Dumping Agreement (relating to the adequacy of a particular volume of sale). For the purposes of paragraph 269TAC(2)(a), the volume of sales in the domestic market of the country of export is considered to be of a low volume if the volume of those sales is less than 5% of the volume of sales of like goods in the Australian market. Those sales may still be acceptable where the Minister is satisfied that those sales are still large enough to permit a proper comparison with the sales in the Australian market.

#### **Clause 11 - Insertion of new sections**

45. This clause inserts new sections 269TACB and 269TACC into the Principal Act as follows:

#### **New section 269TACB - Working out whether dumping has occurred and levels of dumping.**

46. New subsections 269TACB(1) to (6) give effect to Article 2.4.2 of the Dumping Agreement which sets out the different methods by which dumping must be established. Dumping may be established in three ways:

by comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions [new paragraph 269TACB(2)(a) refers]; or

by comparison of normal value and export prices on a transaction-to-transaction basis [new paragraph 269TACB(2)(b) refers]; or

by a combination of paragraph 269TACB(2)(a) and (b) in respect of certain part or parts of the investigation period [new paragraph 269TACB(2)(c) refers].

47. A normal value established on a weighted average basis may be compared to prices of individual export transactions over the same period if there is a pattern of export prices differing significantly among different purchasers, regions or time periods which makes it inappropriate to use a weighted average-to-weighted average or transaction-to-transaction comparison [new subsection 269TACB(3) refers].

48. New subsections 269TACB(4) to (6) inclusive prescribe the dumping margin depending on the method used for determining dumping as outlined above.

New subsection 269TACB(4) provides that goods are taken to be dumped where the Minister is satisfied that weighted average of export prices is less than the

weighted average of corresponding normal values and the dumping margin is the difference between those weighted averages.

- New subsection 269TACB(5) provides that goods are taken to be dumped where the Minister is satisfied that an export price in respect of an individual transaction is less than the corresponding normal and the dumping margin is the difference between that export price and that normal value.
- New subsection 269TACB(6) provides that goods are taken to be dumped where the Minister is satisfied that the export prices in particular transactions are less than the weighted average of corresponding normal values. The dumping margin is the difference between each relevant export price and the weighted average of corresponding normal values.

49. New subsection 269TACB(7) reflects the first part of Article 6.10 of the Dumping Agreement and provides that, as a general rule, there shall be a determination of an individual margin of dumping for each individual exporter.

50. New subsection 269TACB(8) reflects the second part of Article 6.10 of the Dumping Agreement and provides that where the number of exporters who provide information is so large as to make a determination for each individual exporter impracticable, the Minister may limit their examination either to a reasonable number of interested parties which are a statistically valid sample or to the exporters who are responsible for the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

51. New subsection 269TACB(9) reflects Article 6.10.2 of the Dumping Agreement to ensure that exporters that submit information for the purposes of the investigation will be investigated unless to do so would prevent the investigation's timely completion .

52. New subsection 269TACB(10) requires any comparison under the relevant preceding provisions to be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

#### **New section 269TACC - Working out whether benefits have been conferred and amounts of subsidy**

53. New section 269TACC is inserted to determine whether benefits have been conferred by the Government of the country of export or country of origin and the amount of subsidy attributable to the benefit. This new section reflects Article 14 of the Subsidy Agreement.

54. New subsection 269TACC(2) prescribes that a benefit is taken to be conferred if a financial contribution in respect of goods is a direct financial payment.

55. New subsection 269TACC(3) provides that where there is no financial contribution of the kind referred to in subsection 269TACC(2), the Minister is to

determine whether a financial contribution of another kind or income or price support confers a benefit.

56. New subsection 269TACC(4) sets out the guidelines to which the Minister must have regard in determining whether a financial contribution confers a benefit.

57. New subsection 269TACC(5) requires the Minister to have regard to the prevailing market conditions for like goods or services in the country in which the goods or services are purchased or provided in determining the adequacy of remuneration in relation to goods and services under new paragraphs 269TACC(4)(d) and (e).

58. New subsection 269TACC(6) sets out the manner by which the total amount of subsidy attributable to the benefit conferred under new subsections 269TACC(2) and (3) may be calculated.

59. New subsection 269TACC(7) provides for the Minister to determine an alternative basis for deciding whether a benefit has been conferred or for working out the amount of subsidy attributable to the benefit conferred if the Minister is satisfied that subsections 269TACC(2), (3), (4), (5) and (6) are inappropriate.

60. New subsection 269TACC(8) provides that where the number of exporters who provide information is so large that it is not practicable to work out whether a benefit has been conferred and the amount of subsidy received by each individual exporter, the Minister may limit their examination either to a reasonable number of interested parties which are a statistically valid sample or to the exporters who are responsible for the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

61. New subsection 269TACC(9) provides that exporters that submit information for the purposes of the investigation will be investigated unless to do so would prevent the investigation's timely completion.

62. New subsection 269TACC(10) requires the Minister to work out how much of the total amount of the subsidy is properly attributable to each unit of goods determined by weight, volume or otherwise where that subsidy is not quantified by reference to such unit of goods.

## **Clause 12 - Material injury to industry**

63. This clause amends section 269TAE of the Principal Act to reflect the relevant provisions of the Dumping Agreement and the Subsidy Agreement.

64. Paragraphs 12(a) and (e) are minor drafting changes consequential upon the new subsections 269TAE(2A), (2B) and (2C) detailed below in paragraph 69 of the Explanatory Memorandum.

65. Paragraph 12(b) introduces new paragraphs 269TAE(1)(aa) and (ab) as follows:

- Paragraph 269TAE(1)(aa) is inserted to reflect Article 3.4 of the Dumping Agreement and provides that the Minister may also have regard to the size of the dumping margin in the determination of material injury under section 269TG.
  - Paragraph 269TAE(1)(ab) is inserted to reflect Article 15.4 of the Subsidy Agreement and provides that the Minister may also have regard to the particulars of the countervailable subsidy received in the determination of material injury under section 269TJ of the Principal Act.
66. Paragraph 12(c) is a minor drafting change for ease of reading of the Principal Act.
67. Paragraphs 12(d), (g), (i),(j), (k), (l) and (m) amend the Principal Act to reflect Article 14.3 of the Dumping Agreement to provide that the effects of the alleged dumping on the domestic industry and not the individual producer or manufacturer of the third country are relevant for the purposes of section 269TAE.
68. Paragraph 12(f) introduces new paragraphs 269TAE(2)(aa) and (ab) which are the equivalent provisions of new paragraphs 269TAE(1)(aa) and (ab) for determining material injury in a third country.
69. Paragraph 12(h) inserts new subsections 269TAE(2A), (2B) and (2C) after subsection 269TAE(2) as follows:
- New subsection 269TAE(2A) is inserted to reflect Article 3.5 of the Dumping Agreement and Article 15.5 of the Subsidy Agreement. The Minister shall take into account those factors set out in this subsection but not attribute any injury caused by those factors to the dumped or subsidised goods.
  - New subsection 269TAE(2B) is inserted to reflect Article 3.7 of the Dumping Agreement and Article 15.7 of the Subsidy Agreement. It provides that, in determining for the purposes of subsection 269TAE(1) or (2) whether material injury is threatened, the Minister must take into account only such changes in circumstances as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.
  - New subsection 269TAE(2C) is inserted to reflect Article 3.3 of the Dumping Agreement and Article 15.3 of the Subsidy Agreement. It provides that the Minister, in determining the effect of the exportation of like goods to Australia by different exporters from the same country of export or from different countries of export for the purposes referred to in subsection 269TAE(1) or (2), should consider the cumulative effects of those exportations only if it is appropriate in the light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.



### **Clause 13 - Repeal of sections and substitution of new sections**

70. This clause repeals sections 269TAF, 269TAG and 269TAH of the Principal Act as a consequence of the new sections 269TACC and 269TAF and substitutes a new section 269TAF.

#### **New section 269TAF - Currency conversion.**

71. New section 269TAF reflects Article 2.4.1 of the Dumping Agreement.

72. New subsection 269TAF(1) provides that where comparison of export prices and corresponding normal values requires a conversion of currency, that conversion is to be made using the rate of exchange on the date of the transaction or agreement that the Minister opines to best establish the material terms of the sale of the exported goods.

73. New subsection 269TAF(2) provides that where a forward rate of exchange is used, the Minister may, in a conversion of currencies under new subsection 269TAF(1), make use of that rate of exchange.

74. New subsection 269TAF(3) provides that the Minister may disregard any short term fluctuation in the rate of exchange between currencies required to be converted under the new subsection 269TAF(1).

75. New subsection 269TAF(4) provides that where a conversion of currencies is required under new subsection 269TAF(1) and there is a sustained movement in the rate of exchange between those currencies, the Minister may, by gazettal notice, declare that this new subsection applies with effect from a day specified in the notice. In such a circumstance, the Minister may use the rate of exchange in force on that day for the purposes of subsection 269TAF(1) during the period of 60 days starting on that day.

76. New subsection 269TAF(5) provides that the Minister may specify in a notice under new subsection 269TAF(4) a day that is earlier than the day of publication of the notice if the day specified is the day after the start of the sustained movement and is not a day occurring within 60 days after the day specified in a prior notice.

77. New subsection 269TAF(6) provides that the Minister is not prevented from publishing more than one notice under new subsection 269TAF(4) if the sustained movement continues for more than 60 days.

78. New subsection 269TAF(7) allows the Comptroller to specify, by gazettal notice, a means of establishing a rate that is taken to be, or to have been, the rate of exchange between the Australian currency and another currency or other currencies on a day, or during a period, preceding the day of publication of the notice or from and including the day of publication or an earlier day until the revocation of the notice.

79. New subsection 269TAF(8) provides that the rate of exchange established under new subsection 269TAF(7) is, for the purpose of working out the amount of duty or interim duty payable on any goods exported on the day or during the period to which the rate so specified applies, the rate of exchange that applies for the purposes of this new section in respect of the currencies specified in the notice.

#### **Clause 14 - Revocation of notices**

80. Paragraphs 14(a), (b), (c) and (d) are minor drafting changes to section 269TAJ of the Principal Act inserted to reflect the requirement of giving a public notice under Article 12.2 of the Dumping Agreement and Article 22.3 of the Subsidy Agreement.

#### **Clause 15 - Application for action under Anti-Dumping Act**

81. This clause amends section 269TB of the Principal Act to reflect changes introduced by the Dumping Agreement.

82. Paragraph 15(a) omits paragraph 269TB(2)(b) and substitutes a new paragraph with the effect it is the industry in a third country and not the individual producer or manufacturer that is relevant for the purposes of subsection 269TB(2). This reflects Article 14.3 of the Dumping Agreement.

83. Paragraph 15(b) inserts new subsections 269TB(2A), (2B) and (2C) dealing with notification requirements into the Principal Act as follows:

- New subsection 269TB(2A) reflects Article 5.5 of the Dumping Agreement and provides that the government of the exporters nominated in an application should be notified before initiation of a dumping investigation.
- New subsection 269TB(2B) reflects Article 11.5 of the Subsidy Agreement and provides that the government of the country whose exporters are nominated in an application and the government of any other country from which countervailable subsidy is alleged to have been received should be notified before the giving of a public notice under new subsection 269TC(4).
- New subsection 269TB(2C) requires the notification made under new subsection 269TB(2B) to invite the governments concerned for consultation with the Comptroller in order to reach a mutually agreed solution. This provision reflects Article 13.1 of the Subsidy Agreement.

84. Paragraph 15(c) inserts new paragraph 269TB(4)(e) and provides that an application under subsection 269TB(1) be supported by a sufficient part of the domestic industry. This is inserted to reflect Article 5.4 of the Dumping Agreement.

85. Paragraph 15(d) inserts new subsection 269TB(6) which sets out the circumstances where an application is taken to be supported by a sufficient part of the domestic industry. For the application to meet that requirement, the Comptroller must be satisfied that the Australian producers or manufacturers (including the applicant)

who support the application account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry which supports or opposes the application and which account for not less than 25% of the total production of like goods in Australia. This provision reflects Article 5.4 of the Dumping Agreement and Article 11.4 of the Subsidy Agreement.

#### **Clause 16 - Consideration of application**

86. This clause amends section 269TC of the Principal Act to reflect changes introduced by the Dumping Agreement.

87. Paragraph 16(a) omits from subsection 269TC(4) all the words preceding paragraph 269TC(4)(a) and substitutes new wording provide that the Comptroller must give public notice of a decision not to reject an application under subsection 269TB(1) or (2). This reflects Article 12.1 of the Dumping Agreement and Article 22.1 of the Subsidy Agreement.

88. Paragraphs 16(b) and 16(e) are minor drafting changes to enable the paragraphs in subsection 269TC(4) to be read cumulatively.

89. Paragraphs 16(c) and 16(f) amend subsection 269T(4) to reflect Article 12.1.1 of the Dumping Agreement and Article 22.2 of the Subsidy Agreement and provide that certain particulars are to be contained in the public notice of the initiation of the investigation.

90. Paragraph 16(d) is a drafting change to enable paragraph 269TC(4)(c) to be read consistently with the amendment in paragraph 16(a) above.

91. Paragraph 16(g) introduces new subsections 269TC(5), (6) and (7) as follows:

New subsection 269TC(5) allows information required to be included in the notice under subsection 269TC(4) to be included in a separate report referred to in the notice. This reflects Article 12.1.1 of the Dumping Agreement and Article 22.2 of the Subsidy Agreement;

New subsection 269TC(6) reflects the requirement of Article 6.1.1 of the Dumping Agreement and provides for the consideration and granting of any request from interested parties for an extension of time to lodge a submission in relation to an application under section 269TB whenever practicable;

New subsection 269TC(7) reflects Article 6.1.3 of the Dumping Agreement and provides that a copy of the application under section 269TB is made available to all known exporters and/or the government of each country of export with due regard to be given to the requirement for the protection of confidential information unless the number of known exporters is so large that it is not practicable to do so. In such a case, a copy of the application need only be provided to the government of each country of export and to each relevant trade association.

### **Clause 17 - Preliminary findings**

92. This clause amends section 269TD of the Principal Act to reflect changes introduced by the Dumping Agreement.

93. Paragraph 17(a) omits paragraph 269TD(2)(a) and substitutes a new paragraph 269TD(2)(a) which provides for the giving of a public notice of any preliminary finding that there are sufficient grounds for the publication of a dumping or countervailing notice. This reflects Article 12.2 of the Dumping Agreement or Article 22.3 of the Subsidy Agreement.

94. Paragraph 17(b) introduces a new subsection 269TD(2A) and provides for the giving of a public notice of the decision to require securities under subsection 269TD(2)(c) with respect to an application under section 269TB. This reflects Article 12.2.1 of the Dumping Agreement and Article 22.4 of the Subsidy Agreement.

95. Paragraph 17(c) amends subsection 269TD(3) to provide that the Comptroller must give public notice of the preliminary finding that there are not sufficient grounds for the publication of a dumping or countervailing notice. This reflects Article 12.2 of the Dumping Agreement and 22.3 of the Subsidy Agreement.

96. Paragraph 17(d) deletes subsection 269TD(4) as a consequence of the amendments in paragraphs 17(a), (b) or (c) above.

### **Clause 18 - Termination of investigations**

97. This clause inserts a new section 269TDA after section 269TD to reflect Article 5.8 of the Dumping Agreement and Articles 11.9 and 27.10 of the Subsidy Agreement which deal with the early termination of investigation.

98. The Comptroller must terminate the investigation where:

- there is no dumping or where the dumping margin, expressed as a percentage of the export price or weighted average of export price is less than 2% [new subsection (1) refers];
- there is no countervailable subsidy received or where the countervailable subsidisation is negligible under subsection 269TDA(16) [new subsection (2) refers]; or
- the volumes of dumping found are negligible [new subsection (3) refers].

99. New subsection 269TDA(4) provides that a volume of dumped goods is negligible when, expressed as a percentage of the total Australian import volume, it is less than 3% unless that volume may be aggregated under new subsection 269TDA(5).

100. New subsection 269TDA(5) provides, for the purposes of new subsection 269TDA(4), for aggregation of volumes of dumped goods from the country of export

where the total volume of goods the subject of the application exported over a reasonable examination period from that country of export and another country of export over a reasonable examination period, when expressed as a percentage of the total Australian import volume, is more than 7% even though the volume of dumped like goods from the country of export and the other country of export individually account for, when expressed as a percentage of the total Australian import volume, is less than 3%.

101. New subsection 269TDA(6) allows the taking into account of dumping margins that is less than 2 % in determining the total volume of dumped goods and in the aggregation of the volumes of dumped goods.

102. New subsection 269TDA(7) requires the Comptroller to terminate the investigation where the volumes of countervailable subsidisation are found to be negligible.

103. New subsection 269TDA(8) provides, for the purposes of new subsection 269TDA(7), that a volume of subsidised goods is negligible when:

in the case of a non-developing country of export, the total volume of goods the subject of the application exported from that country over a reasonable examination period, when expressed as a percentage of the total Australian import volume, is less than 3%;

in the case of a developing country of export, 4%;

and the aggregation provisions of subsection 269TDA(9) (10) and (11) are not applicable.

104. New subsection 269TDA(9) provides, for the purposes of new subsection 269TDA(8), for the aggregation of volumes of subsidised goods from a country of export which is not a developing country so that even though the volume of subsidised goods the subject of the application exported from that country and another non-developing country of export over a reasonable examination period, when expressed as a percentage of the total Australian import volume, individually account for less than 3%, those volumes may be aggregated, where those volumes when expressed as a percentage of the total Australia import volume, is more than 7%.

105. New subsection 269TDA(10) provides, for the purposes of new subsection 269TDA(8), for aggregation of volumes of subsidised goods, as in new subsection 269TDA(9) above, from a country of export which is a developing country. However the relevant and respective percentages are 4% and 9%. This new subsection reflects Article 27.10 of the Subsidy Agreement.

106. New subsection 269TDA(11) provides, for the purposes of new subsection 269TDA(8), for aggregation of volumes of subsidised goods, as in new subsection 269TDA(9) above, from member countries that are developing countries. However the relevant and respective percentages are 4% and 9%.

107. New subsection 269TDA(12) allows the taking into account of negligible levels of countervailable subsidy from a country of export in working out the total volume of subsidised goods and aggregating the volumes of subsidised goods under new subsections 269TDA(9), (10) or (11).

108. New subsection 269TDA(13) requires the Comptroller to terminate the investigation where injury or the hindrance, if any, to the establishment of an industry in Australia or in a third country that has been caused or may be caused by dumping is negligible.

109. New subsection 269TDA(14) requires the Comptroller to terminate the investigation where the subsidisation caused or is causing negligible injury.

110. New subsection 269TDA(15) requires the Comptroller to give public notice and communicate to the applicant and exporters and the government of the country of export concerned of his or her decision to terminate an investigation.

111. New subsection 269TDA(16) provides that a countervailable subsidisation is negligible if:

- in the case of a non-developing country of export, the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%;
- in the case of a developing but not a special developing country of export, the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or
- in the case of a special developing country of export, the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

112. New subsection 269TDA(17) defines a "reasonable examination period" as referred to in new subsections 269TDA(3), (4), (5), (7), (8), (9), (10) and (11).

113. New subsection 269TDA(17) also defines "total Australian import volume" as the total volume of all goods the subject of the application and like goods that have been, or may be, exported to Australia from all countries during a period.

#### **Clause 19 - Reviews by Anti-Dumping Authority**

114. This clause amends section 269TF of the Principal Act to provide for reviews by the Anti-Dumping Authority (the Authority) of the Comptroller's decision to terminate the investigation. These amendments are consequential upon the introduction of Article 5.8 of the Dumping Agreement and Article 11.9 of the Subsidy Agreement.

115. Paragraph 19(a) inserts a new paragraph 269TF(1)(c) to provide for the Authority to review the Comptroller's decision under section 269TDA to terminate an investigation so far as it relates to a particular exporter or country of export.

116. Paragraph 19(b) amends subsection 269TF(2) to require the Authority to give a public notice of a decision under this section consistent with Article 12.2 of the Dumping Agreement and 22.3 of the Subsidy Agreement.

117. Paragraph 19(c) inserts new subsections 269TF(4), (5) and (6) as follows.

118. New subsection 269TF(4) deems the Authority's decision to substitute a preliminary finding in lieu of the Comptroller's decision to terminate to be the decision of the Comptroller and requires the Comptroller to publish a public notice of the substituted decision and exercise his or her powers under paragraph 269TD(2)(c). It also provides that the substituted finding is to be treated as if it had been duly referred to the Authority.

119. New subsection 269TF(5) provides for the situation where the matter is remitted to the Comptroller. In such a case, the Comptroller must treat the matter as if he or she had made a decision under subsection 269TC(4) not to reject an application and give notice of a new investigation of the matter accordingly.

120. New subsection 269TF(6) allows for any submission made by an interested party in the prior investigation, upon the request of the interested party, to be treated as if duly received for the further investigation where the matter has been remitted to the Comptroller.

## **Clause 20 - Dumping duties**

121. This clause amends section 269TG of the Principal Act to reflect changes introduced by the Dumping Agreement.

122. Paragraphs 20(a) and (b) reflect the requirement of giving public notice of any preliminary finding under Article 12.2 of the Dumping Agreement.

123. Paragraph 20(c) requires paragraph 269TG(3A)(a) to be read in conjunction with the Minister's obligations under new subsection 269ZK(9) [see below] to ensure that any public notice disclosing any information given protects the confidentiality or business or commercial interests of any relevant person and, where practicable, to provide a summary of the information allowing reasonable understanding of the information.

124. Paragraph (d) omits subsections 269TG(4), (4A) and (5) and inserts new subsections 269TG(3B), (3C), (3D), (4), (5), (6), (7), (8), (9), (10) and (11) as follows:

New subsection 269TG(3B) provides that, in ascertaining a normal value and export price for goods of the residual exporter, the normal value and export price must be less than the weighted average of the normal values and export prices for like goods of selected exporters (reflects Article 9.4 of the Dumping Agreement).

New subsection 269TG(3C) provides, for the purposes of subsection (3B) above, that the weighted average of normal values and export prices of the selected

exporters must not include any normal value or export price if any of the matters in new paragraphs 269TG(3C)(a) or (b) are present.

- New subsection 269TG(3D) gives the Minister, whilst considering whether to publish a dumping duty notice in respect of a particular consignment of goods, the power to offer, in a written notice, the exporter of the goods the option of giving an undertaking in the terms set out in the Minister's notice. This provision reflects Article 8.5 of the Dumping Agreement;
- New subsection 269TG(4) gives the Minister the power to defer the decision to publish or not publish a dumping duty notice relating to an exporter for any period of time if he accepts the offer of an undertaking by the exporter to conduct future trade to Australia in a way that would avoid causing or threatening material injury or materially hindering the establishment of the relevant Australian industry. In case of any breach of the undertaking, the Minister may resume to make his decision to publish or not publish a dumping duty notice. This provision reflects Article 8.1 and the later part of Article 8.6 of the Dumping Agreement;
- New subsection 269TG(5) reflects the later part of Article 8.1 of the Dumping Agreement where it is required that the price increases under the undertakings shall not be higher than necessary to eliminate the margin of dumping and remove the injury to the domestic industry;
- New paragraphs 269TG(6)(a) and (b) give the Minister the power to give a notice under subsection 269TG(3D) or accept an undertaking under subsection 269TG(4) regardless of whether the notice or acceptance of the undertaking has been recommended by the Authority;
- New paragraph 269TG(6)(c) and (d) requires the Minister not to accept an undertaking from an exporter before a positive preliminary finding has been made that extends to that exporter (reflecting Article 8.2 of the Dumping Agreement) and to give public notice of any undertaking accepted (reflecting Article 12.2 of the Dumping Agreement);
- New subsection 269TG(7) gives the Minister the right to make the acceptance of an undertaking subject to conditions relating to giving the Minister information on an agreed basis relevant to the undertaking and appropriate access to such information. This subsection reflects Article 8.6 of the Dumping Agreement;
- New subsection 269TG(8) gives exporters the right to request the Minister to determine whether the Minister would have published or not published a dumping duty notice had the undertaking not been accepted. This provision reflects the opening part of Article 8.4 of the Dumping Agreement;
- New subsection 269TG(9) requires the Minister to determine whether a dumping duty notice would have been published upon the request by an exporter or on his or her own initiative under subsection 269TG(8). This provision also reflects the opening part of Article 8.4 of the Dumping Agreement;



New subsection 269TG(10) qualifies the obligation of the Minister under subsection 269TG(9) so that the Minister need not make a determination until he has received a report from the Authority;

New subsection 269TG(11) provides for the automatic lapsing of the undertaking if the Minister determines under subsection 269TG(9) that no dumping duty notice would be published. This provision reflects Article 8.4 of the Dumping Agreement.

## **Clause 21 - Third country dumping duties**

125. This clause amends section 269TH of the Principal Act as follows:

Paragraphs 21(a) and (c) amend paragraphs 269TH(1)(b) and (2)(b) to provide that it is the industry and not individual producers or manufacturers of the third country which is considered in assessing material injury to a third country. These amendments reflect Article 14.3 of the Dumping Agreement;

Paragraphs 21(b) and (d) amend subsections 269TH(1) and (2) to reflect the requirement to give public notice under Article 12.2 of the Dumping Agreement;

Paragraph 21(e) requires paragraph 269TH(4A)(a) to be read in conjunction with the Minister's obligations under the new subsection 269ZI(9) (see below) to ensure that any public notice disclosing any information given protects the confidentiality or business or commercial interests of any relevant person and, where practicable, to provide a summary of the information allowing reasonable understanding of the information.

126. Paragraph 21(f) inserts new subsections 269TH(5) and (6) as follows:

New subsection 269TH(5) provides that in ascertaining a normal value and export price of the residual exporter, the Minister must ensure that the normal value and the export price are not less than the weighted average of normal value and export price respectively for like goods of selected exporters from the same country of export. This reflects Article 9.4 of the Dumping Agreement.

New subsection 269TH(6) provides that, for the purposes of new subsection 269TH(5), the weighted average of normal values and export prices of the selected exporters must not include any normal value or export price if:

- in a comparison under new section 269TACB involving that normal value or export price, the Minister has determined that there is no dumping or that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%; or
- that normal value was determined under subsection 269TAC(6) or that export price was determined under subsection 269TAB(3).

## Clause 22 - Countervailing duties

127. This clause amends section 269TJ of the Principal Act as follows.

128. Paragraphs 22(a), (c), (e), (g), (h),(j), (l), (m), (n) and (o) insert drafting changes consistent with the definition of "countervailable subsidy" in new section 269TAAC.

129. Paragraphs 22(b), (d), (i) and (k) reflect the requirement of giving public notice under Article 22.3 of the Subsidy Agreement.

130. Paragraph 22(f) inserts new subsections 269TJ(2A), (3), (3A), (3B), (3C), (3D), (3E), (3G) and (3H) as follows:

- New subsection 269TJ(2A) gives the Minister, whilst considering whether to publish a countervailing duty notice in respect of a particular consignment of goods, the power to offer in writing, to the government concerned or the exporter of the goods the option of giving an undertaking in the terms set out in the Minister's notice. This provision reflects 18.5 of the Subsidy Agreement;
- New subsections 269TJ(3) and (3A) give the Minister the power to defer the decision to publish or not publish a countervailing duty notice relating to an exporter or a government for any period of time if he accepts an undertaking by the government to review any financial assistance it is giving or by the exporter to so conduct future trade to Australia so as to avoid causing or threatening material injury to or materially hindering the establishment of an Australian industry under subsection 269TJ(3A). These provisions reflect the earlier part of Article 18.1 of the Subsidy Agreement;
- New subsection 269TJ(3B) reflects the later part of Article 18.1 of the Subsidy Agreement where it is required that the price increases under the undertakings shall not be higher than necessary to eliminate the margin of dumping and remove the injury to the domestic industry;
- New paragraphs 269TJ(3C)(a) and (b) give the Minister the power to give a notice under subsection 269TJ(2A) or accept an undertaking under subsection 269TJ(3A) regardless of whether the notice or acceptance of the undertaking has been recommended by the Authority;
- New paragraph 269TJ(3C)(c) prevents the Minister from giving a notice under subsection 269TJ(2A) or accepting an undertaking from a government or an exporter before a positive preliminary finding has been made that extends to that exporter (reflecting Article 18.2 of the Subsidy Agreement) and requires him or her to give public notice of any undertaking accepted (reflecting Article 22.3 of the Subsidy Agreement);

New paragraph 269TJ(3C)(d) prevents the Minister accepting an undertaking from an exporter unless the government of the country of export consents to the giving of the undertaking;

New paragraph 269TJ(3C)(e) requires the Minister to give a public notice of any undertaking accepted to reflect Article 22.3 of the Subsidy Agreement;

New subsection 269TJ(3D) gives the Minister the right to make the acceptance of an undertaking subject to the conditions relating to giving the Minister information on an agreed basis relevant to the fulfilment of the undertaking and appropriate access to such information. This subsection reflects Article 18.6 of the Subsidy Agreement;

New subsection 269TJ(3E) gives exporters the right to request the Minister to determine whether the Minister would have published or not published a countervailing duty notice had the undertaking not been accepted. This provision reflects the opening part of Article 18.4 of the Subsidy Agreement;

New subsection 269TJ(3F) requires the Minister to determine whether a countervailing duty notice would have been published upon the request by an exporter or on his or her own initiative under subsection 269TJ(3E). This provision also reflects the opening part of Article 18.4 of the Subsidy Agreement;

New subsection 269TJ(3G) qualifies the obligation of the Minister under subsection 269TJ(3F) so that the Minister need not make a determination until he has received a report from the Authority;

New subsection 269TJ(3H) provides for the automatic lapsing of the undertaking if the Minister determines under new subsection 269TJ(3E) that no countervailing duty notice would be published. This provision reflects Article 18.4 of the Subsidy Agreement.

131. Paragraph (p) requires paragraph 269TJ(12)(c) to be read in conjunction with the Minister's obligations under new subsection 269ZI(9) [see below] to ensure that any public notice disclosing any information given protects the confidentiality or business or commercial interests of any relevant person and, where practicable, to provide a summary of the information allowing reasonable understanding of the information.

### **Clause 23 - Concurrent dumping and subsidy**

132. This clause amends section 269TJA of the Principal Act as follows:

Paragraphs 23(a), (b) and (d) insert drafting changes consistent with the definition of "countervailable subsidy" in new section 269TAAC;

Paragraph 23(c) amends subsection 269TJA(3) consistent with the new subsections 269TG(4) and TJ(2A) and to reflect Article 8.1 of the Dumping Agreement and 18.1 of the Subsidy Agreement.

### **Clause 24 - Third country countervailing duties**

133. This clause amends section 269TK of the Principal Act as follows:

- Paragraphs 24(a), (d), (g), (h), (i), and (j) insert drafting changes consistent with the definition of "countervailable subsidy" in new section 269TAAC;
- Paragraphs 24(b) and (e) are inserted to provide that it is the effects of the alleged subsidisation on the domestic industry and not the individual producer or manufacturer of the third country that is considered;
- Paragraphs 24(c) and (f) are inserted to reflect the requirement of giving public notice under Article 22.3 of the Subsidy Agreement;
- Paragraph 24(k) requires paragraph 269TK(6)(c) to be read in conjunction with the Minister's obligations under new subsection 269ZI(9) [see below] to ensure that any public notice disclosing any information given protects the confidentiality or business or commercial interests of any relevant person and, where practicable, to provide a summary of the information allowing reasonable understanding of the information.

### **Clause 25 - Minister to give public notice not to impose duty**

134. This clause amends section 269TL of the Principal Act as follows:

- Paragraph 25(a) reflects the requirement of giving public notice of any final determination under Article 12.2 of the Dumping Agreement and 22.3 of the Subsidy Agreement;
- Paragraph 25(b) inserts new subsection 269TL(2) to require the Minister to give a public notice of the decision not to make a declaration under sections 8, 9, 10 or 11 of the Anti-Dumping Act after having regard to the Authority's recommendation to terminate an inquiry. This reflects Article 12.2 of the Dumping Agreement and Article 22.3 of the Subsidy Agreement.

### **Clause 26 - Retrospective notices**

135. This clause amends section 269TN of the Principal Act as follows:

- Paragraph 26(a) inserts a new subsection 269TN(4A) which requires the Minister, before deciding to publish a dumping duty notice under subsection 269TG(1) in the circumstances in subsection 269TN(3) in respect of goods already entered for home consumption, to inform the importer of the goods of the proposed decision, allowing a reasonable opportunity for the importer to comment on the proposed decision and give consideration to those comments. This subsection reflects Article 10.6(ii) of the Dumping Agreement;

Paragraph (b) substitutes a new subsection 269TN(5)(b). The amendment is a drafting change consistent with the definition of "countervailable subsidy" in new section 269TAAC.

#### **Clause 27 - Manner of making applications for duty assessment**

136. This clause amends section 269W of the Principal Act. This clause substitutes a new subparagraph 269W(1)(d)(i) to be consistent with the new definition of "countervailable subsidy" in new section 269TAAC.

#### **Clause 28 - Insertion of new Divisions**

137. This clause inserts new Division 6 and Division 7 into Part XVB of the Principal Act. Division 6 provides for accelerated review of dumping duty notices or countervailing duty notices for residual exporters and Division 7 provides for procedural and evidentiary matters. Division 6 reflects Article 9.5 of the Dumping Agreement and 19.3 of the Subsidy Agreement. Division 7 sets out the new provisions necessary for the implementation of Article 12 of the Dumping Agreement and Article 22 of the Subsidy Agreement in relation to the giving of public notices.

##### ***Division 6 - Accelerated review of dumping duty or countervailing duty notices for residual exporters.***

#### **New section 269ZE - Circumstances in which accelerated review may be sought**

138. New subsection 269ZE(1) provides that a residual exporter, other than such an exporter in respect of whom a declaration has already been made under new paragraph 269ZG(3)(b)(ii) in respect of a previous application, may, by application lodged with the Comptroller, request an accelerated review of a dumping duty or countervailing duty notice published in respect of all goods exported by that residual exporter so far as affects that residual exporter.

139. New subsection 269ZE(2) allows the Comptroller to reject the application for accelerated review where the applicant refused to cooperate in the investigation and where the applicant is related to a selected exporter.

140. New subsection 269ZE(3) allows the Comptroller to terminate the accelerated review where, during the review, the applicant refused to cooperate or it is found that the applicant is related to a selected exporter.

141. New subsection 269ZE(4) adopts the terms of the definition of "associates" in subsection 269TAA(4) for the purposes of this section.

#### **New section 269ZF - Application for accelerated review**

142. New subsection 269ZF(1) prescribes the matters which must be contained in an application for accelerated review.

143. New subsection 269ZF(2) sets out the manner in which an application may be lodged with Customs.

144. New subsection 269ZF(3) requires the day on which an application for accelerated review is taken to be lodged must be recorded on the application.

#### **New section 269ZG - Consideration of application**

145. New subsection 269ZG(1) requires the Comptroller, after considering the application for accelerated review, to recommend to the Minister either that the dumping or countervailing duty notice the subject of the application remain unaltered or be altered so as not to apply to the applicant or to apply to the applicant as if different variable factors had been fixed. The recommendation must set out the reasons therefore.

146. New subsection 269ZG(2) requires the Comptroller to complete a report under subsection (1) not later than 100 days from the lodgement of the application.

147. New subsection 269ZG(3) requires the Minister to publish in the Gazette a notice of the outcome of the accelerated review.

148. New subsection 269ZG(4) requires the Minister, as soon as practicable after the issue of a notice under subsection 269ZG(2), to notify the applicant of the term of the notice.

#### **New section 269ZH - Effect of accelerated review**

149. New subsection 269ZH sets out the effects of the accelerated review. Upon such an application, no interim duty can be collected from the applicant for goods entered for home consumption during the period of review. However, securities under section 42 of the Principal Act may still be taken.

### ***Division 7 - Procedural and evidentiary matters***

#### **New section 269ZI - Public notice**

150. New subsection 269ZI(1) provides that public notices of a finding or decision must be published in the Gazette and in a newspaper circulating in each State and in the internal Territories where the provision requiring or empowering the giving of that notice does not specify where the notice is to be given. The subsection reflects Article 12.1 of the Dumping Agreement and Article 22.1 of the Subsidy Agreement.

151. New subsection 269ZI(2) sets out the matters which must be included in the public notices or separate report of a finding or decision. The subsection reflects Article 12.2 of the Dumping Agreement and Article 22.3 of the Subsidy Agreement.

152. New subsection 269ZI(3) requires that a copy of the public notice of a finding or decision and, where appropriate, of a report to which the notice refers must be provided to each country whose exporters are affected by the finding or decision. A

copy of the report must also be given to each other interested party known to be affected by the finding or decision. The subsection reflects Article 12.2 of the Dumping Agreement and Article 22.3 of the Subsidy Agreement.

153. New subsection 269ZI(4) sets out the matters which should be included in a public notice of a decision made under paragraph 269TD(2)(c) to take securities in respect of interim duty that may become payable. The subsection reflects Article 12.2.1 of the Dumping Agreement and Article 22.4 of the Subsidy Agreement.

154. New subsection 269ZI(5) provides that where a public notice is given of a decision under section 269TG, TH or TL, the particulars of the decision should include the matters set out in paragraphs 269ZI(5)(c)(i) to (iii). New paragraph 269ZI(5)(d) provides that if the decision involves any retrospective imposition of duty, the basis for that imposition should also be included in the reasons for the decision.

155. New subsection 269ZI(6) sets out similar provisions as in subsection (5) above except that it applies to public notices given of a decision under subsection 269TJ or TK of the decision to publish or under subsection 269TL of the decision not to publish.

156. New subsection 269ZI(7) and (8) provide that where a public notice is given under new subsections 269TG(6) or 269TJ(3C) of a decision to accept an undertaking given by an exporter the Minister must include in the particulars of that decision the matters set out in new paragraphs 269ZI(7)(a), (b) and (c) and 269ZI(8)(a), (b) and (c) respectively.

157. New subsection 269ZI(9) provides for the protection of any confidential information or information whose publication would adversely affect a person's business or commercial interests in the publication of a public notice of a finding or decision. Where practicable, the information should be summarised in a form that allows a reasonable understanding of the information without breaching that confidentiality or adversely affecting those interests. This new subsection gives effect to Article 12.2.2 of the Dumping Agreement and 22.5 of the Subsidy Agreement.

#### **New section 269ZJ - Comptroller to maintain public record for certain purposes**

158. New subsection 269ZJ(1) requires the Comptroller to maintain a public record of the investigation or review conducted for applications received under subsection 269TB(1) or (2) or 269Z(1) or a request under subsection 269Z(2). The public record must contain a copy of all submissions from interested parties and correspondence between the Comptroller and all other persons. The Comptroller must also draw the attention of all interested parties to the existence of the public record and to their entitlement to inspect that record and to make the record available to an interested party requesting such inspection. This new subsection reflects Article 6.1 and 6.2 of the Dumping Agreement and Article 12.1 of the Subsidy Agreement.

159. New subsection 269ZJ(2) requires a person giving information claimed to be confidential or information whose publication would adversely affect a person's business or commercial interests to ensure that a summary of that information that

contains sufficient detail to allow a reasonable understanding of the substance of the information without breaching that confidentiality or adversely affect those interests is given to the Comptroller for inclusion in the public record. This new subsection reflects Article 6.5.1 of the Dumping Agreement and Article 12.4.1 of the Subsidy Agreement.

160. New subsection 269ZJ(3) allows a person not to give a summary under subsection 269ZJ(2) if he could satisfy the Comptroller that such a summary is not possible. This new subsection reflects Article 6.5.1 of the Dumping Agreement and Article 12.4.1 of the Subsidy Agreement.

161. New subsection 269ZJ(4) requires oral information given to the Comptroller by a person to be subsequently put in writing by either the person or the Comptroller before it may be taken into account. Once it is put in writing, it forms a part of the public record subject to considerations of confidentiality and protection of business and commercial interests. This new subsection reflects Article 6.3 of the Dumping Agreement and Article 12.2 of the Subsidy Agreement.

162. New subsection 269ZJ(5) allows the Comptroller to disregard information, unless it is demonstrated that the information is correct, where:

- the Comptroller opines that the information is not confidential or would not adversely affect a person's business or commercial interests despite the claim of the person giving the information to the contrary; and
- the person refuses to agree to include that information in the public record or prepare a summary of that information under subsection 269ZJ(2).

163. This new subsection reflects Article 6.5.2 of the Dumping Agreement and Article 12.4.2 of the Subsidy Agreement.

164. New subsection 269ZJ(6) allows the Comptroller to disregard information, unless it is demonstrated that the information is correct, where the Comptroller agrees with the claim that the information provided is confidential or would adversely affect a person's business or commercial interests but the person claiming confidentiality will not prepare a summary of the information under subsection 269ZJ(2).

#### **Clause 29 -Transitional**

165. This clause provides that, despite the amendments made to the Principal Act by this Act, the provisions of the Principal Act as in force immediately before the day fixed for the purposes of subsection 2(2) of this Act, continue to apply, subject to section 3 of this Act, in relation to dumping or countervailing duty notices made but not completed, before that day and in relation to all securities taken and duty imposed as if those amendments had not been made.



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

#### Clause 30 - Principal Act

166. This is a machinery clause which provides that the "Principal Act" in this Part means the *Anti-Dumping Authority Act 1988*.

#### Clause 31 - Definitions

167. Paragraph 31(a) inserts the following definitions into subsection 3(1) of the Principal Act:

The expressions or words "*application*", "*countervailable subsidy*", "*country of export*", "*country of origin*" and "*interested party*" all have the same meaning as they have for the purposes of Part XVB of the *Customs Act 1901*; and

"*Inquiry period*", in relation to an application for a dumping or countervailing duty notice in respect of goods, means a period starting on a day specified by the Authority under paragraph 23(2)(d) in relation to the examination of importations of like goods and ending on the day the Authority commences to prepare its report for the Minister.

168. Paragraph 31(b) inserts a new subsection 3(3) which permits the Minister to examine periods before the particular time specified to be the start of the inquiry period for the purpose of determining whether material injury has been caused to Australian industry or to an industry of a third country.

#### Clause 32 - Functions

169. This clause amends section 5 of the Principal Act by inserting a new paragraph 5(ba) which describes the functions of the Authority to include reviewing under section 7A any decision by the Comptroller to terminate an investigation of an exporter or of a country of export.

#### Clause 33 - Authority may make recommendations on publication of dumping duty notices etc.

170. This clause amends section 7 of the Principal Act as follows.

171. Paragraph 33(a) substitutes a new paragraph 7(1)(e) which requires the Authority to recommend to the Minister whether the Minister ought to give to the government of the country of export or the exporter a notice under subsection 269TG(3D) or TJ(2A) of the *Customs Act 1901* or to accept an undertaking the terms of which have been considered by the Authority under section 7C (see below).

172. Paragraph 33(b) is a drafting change to correct a cross reference in subsection 7(3) of the Principal Act.

173. Paragraph 33(c) amends subsection 7(4) so that it is read subject to new subsection 7(4A) [see below].

174. Paragraph 33(d) inserts a new subsection 7(4A) which prohibits an application for an inquiry into whether a dumping or countervailing duty notice under subsection 8(5), 9(5), 10(3B) or 11(4) of the Anti-Dumping Act and a notice under Part XVB of the *Customs Act 1901* should be revoked or whether a person should be released or partly released from an undertaking given under Part XVB of the *Customs Act 1901* to be made until after 12 months have elapsed from the date of imposition of the dumping or countervailing duty notice. This amendment is necessary for consistency with the same time requirement in subsection 269Z(3) of the *Customs Act 1901*.

175. Paragraph 33(e) omits subsection 7(5) as it is no longer necessary in light of the new section 23 (see below).

176. Paragraph 33(f) is a drafting change to amend subsection 7(6) so as to substitute the 40 day period with a period specified in the notice of inquiry under new section 23 (see below).

177. Paragraph 33(g) inserts a new subsection 7(7) which requires the Authority to have regard to any submission that relates to the statement of essential facts placed on public record under subsection 23A(8) of the Principal act and received by the Authority within 7 days after placing the statement on the record. However, the Authority may disregard any submission received after the stipulated 7 days period.

#### **Clause 34 - Insertion of new sections**

178. This clause inserts new sections 7A, 7B, and 7C into the Principal Act as follows.

#### **New section 7A - Review of termination decision under section 269TDA of the *Customs Act 1901***

179. New section 7A provides for a review of a termination decision under new section 269TDA of the *Customs Act 1901*.

180. New subsection 7A(1) gives the Authority 60 days to review the termination decision referred to it for review and allows the Authority to either:

- confirm the termination decision;
- reject the termination decision and substitute a finding to the effect that there are sufficient grounds for the publication of a notice in respect of the goods the subject of the application or that there will be sufficient grounds for such publication subsequent to the importation into Australia of such goods; or

reject the termination decision and remit the investigation to the Comptroller.

181. New subsection 7A(2) requires the Authority to give public notice and a notice to the Comptroller and the exporter concerned of the decision made by the Authority on a review under section 7A.

182. New subsection 7A(3) circumscribes the scope of the matters the Authority could have regard to for the purpose of the review. The Authority may only have regard to any information that was available to the Comptroller at the time the Comptroller made the termination decision..

#### **New section 7B - Termination of inquiry by Authority**

183. New section 7B provides for termination of an inquiry by the Authority where the dumping margins, countervailable subsidisation, dumping volumes and injury are negligible.

184. New subsection 7B(1) provides that where the Authority is satisfied that the dumping margin for the exporter concerned worked out under section 269TACB of the *Customs Act 1901* is less than 2%, the Authority must recommend to the Minister that the inquiry be terminated.

185. New subsection 7B(2) provides that where the Authority is satisfied either that there was no countervailable subsidy received or the countervailable subsidy received never exceeded the negligible level of countervailable subsidy under new subsection 269TDA(16) of the *Customs Act 1901*, the Authority must recommend to the Minister that the inquiry be terminated.

186. New subsection 7B(3) provides that where the Authority is satisfied that the total volume of dumped goods exported to Australia during the inquiry period is negligible, the Authority must recommend to the Minister that the inquiry be terminated.

187. New subsection 7B(4) provides that where the Authority is satisfied that the total volume of subsidised goods exported to Australia during the inquiry period receiving the countervailable subsidy is negligible, the Authority must recommend to the Minister that the inquiry be terminated.

188. New subsection 7B(5) provides that where the Authority is satisfied that the material injury to an industry in Australia or a third country that has been or is being caused by dumping is negligible, the Authority must recommend to the Minister that the inquiry be terminated.

189. New subsection 7B(6) provides that where the Authority is satisfied that the material injury to an industry in Australia or a third country that has been or is being caused by countervailable subsidisation is negligible, the Authority must recommend to the Minister that the inquiry be terminated.

190. New subsection 7B(7) is inserted to ensure that the relevant termination provisions in section 269TDA of the *Customs Act 1901* applies in the same manner to an inquiry under subsection 7(1) as they apply under the *Customs Act 1901*.

**New section 7C - Authority may consider recommending to the Minister whether undertaking should be accepted**

191. New section 7C allows the Authority to consider recommending to the Minister whether an undertaking by an exporter should be accepted.

192. New subsection 7C(1) provides for the government of the country of export or an exporter of goods the subject of an application for publication of a dumping or countervailing duty notice to indicate, at any time during an inquiry under subsection 7(1), in writing to the Authority the terms in which it would be prepared to give an undertaking to the Minister.

193. New subsection 7C(2) provides that the Authority must consider the terms of the proposed undertaking given by a government or an exporter and, by notice in writing given to the government or exporter, indicate whether it would recommend the acceptance of the undertaking by the Minister and, if not, the reasons for the refusal to recommend acceptance.

194. New subsection 7C(3) provides that the Authority is not obliged to consider the terms of any proposed undertaking provided by an exporter or a government if to do so would prevent the timely completion of a report by the Authority to the Minister under section 7.

195. New subsection 7C(4) allows a government or an exporter to give a revised undertaking after having regard to the reasons given to it by the Authority for the Authority's refusal to recommend the acceptance of the undertaking to the Minister.

196. New subsection 7C(5) provides that the Authority may, at the time it makes its report to the Minister under section 7, inform the Minister of the terms or revised terms of the undertaking and recommend whether to accept that undertaking or seek an undertaking from an exporter and on what terms.

**Clause 35 - Authority may make recommendations of continuation of dumping duty notices etc.**

197. This clause amends section 8A of the Principal Act as follows.

198. Paragraph 35(a) inserts new subsection 8A(1A) which deems the modified dumping or countervailing duty notice to have been issued at the time of the issue of the original notice where the Minister makes a declaration under paragraph 269ZG(2)(b) of the *Customs Act 1901*.

199. Paragraph 35(b) omits from subsection 8A(5) "may" and substituting "must" to make it mandatory for the Authority to hold an inquiry. This is to reflect Article 11.3 of the Dumping Agreement and Article 21.3 of the Subsidy Agreement.

200. Paragraph 35(c) omits subsection (6) as the new section 23 (see below) requires the Authority to give public notice inviting interested parties to lodge submissions before the commencement of any inquiry.

201. Paragraph 35(d) amends subsection 8A(7) so as to substitute the 40 day period with a period specified in the notice of inquiry under new section 23 (see below).

202. Paragraph 35(e) inserts new subsection 8A(7A) which requires the Authority not to recommend continuation of an anti-dumping (or countervailing) measure unless it is satisfied that the expiration of the notice would or would be likely to lead to a continuation of material injury. This provision reflects Article 11.3 of the Dumping Agreement and Article 21.3 of the Subsidy Agreement.

**Clause 36 - Authority to have regard to same considerations as Minister in certain circumstances**

203. This clause amends section 11 of the Principal act as follows.

204. Paragraph (a) is a consequential amendment to provide that subsection 11(4) is subject to new subsection 11(4).

205. Paragraph (b) inserts new subsection 11(4) which provides that where in an inquiry under section 7 the Authority needs to determine whether the price paid for goods has been paid in the ordinary course of trade or whether goods have been dumped and the dumping margin thereof, the references in new sections 269TAAD and 269TACB of the *Customs Act 1901* to the investigation period are taken to be references to the inquiry period specified by the Authority.

**Clause 37 - Repeal of section and substitution of new sections.**

206. This clause repeals section 23 of the Principal Act and inserts new sections 23 and 23A as follows:

**New section 23 - Public notice of inquiries**

207. New subsection 23(1) requires the Authority to give public notice of an inquiry under section 7 or 8A in the Gazette and newspaper before the commencement of any such inquiry.

208. New subsection 23(2) sets out the particulars which must be included in the public notice under new subsection 23(1).

**New section 23A - Authority to maintain public record for certain purposes**

209. New subsection 23A(1) requires the Authority to maintain a public record of an inquiry under section 7 or 8A and to make that record available for inspection.

210. New subsection 23A(2) requires the public record to also contain the full public record of the preceding investigation by the Comptroller.

211. New subsection 23A(3) requires a person giving information claimed to be confidential or information whose publication would adversely affect a person's business or commercial interests to ensure that a summary of that information that contains sufficient detail to allow a reasonable understanding of the substance of the information without breaching that confidentiality or adversely affect those interests is given to the Authority for inclusion in the public record. This new subsection reflects Article 6.5.1 of the Dumping Agreement and Article 12.4.1 of the Subsidy Agreement.

212. New subsection 23A(4) allows a person not to give a summary under subsection 269ZJ(2) if he could satisfy the Authority that such a summary is not possible. This new subsection reflects Article 6.5.1 of the Dumping Agreement and Article 12.4.1 of the Subsidy Agreement.

213. New subsection 23A(5) requires oral information given to the Authority by a person to be subsequently put in writing by either the person or the Authority before it may be taken into account. Once it is put in writing, it forms a part of the public record subject to considerations of confidentiality and protection of business and commercial interests. This new subsection reflects Article 6.3 of the Dumping Agreement and Article 12.2 of the Subsidy Agreement.

214. New subsection 23A(6) allows the Authority to disregard information, unless it is demonstrated that the information is correct, where:

- the Authority opines that the information is not confidential or would not adversely affect a person's business or commercial interests despite the claim of the person giving the information to the contrary; and
- the person refuses to agree to include that information in the public record or prepare a summary of that information under subsection 23A(3).

This new subsection reflects Article 6.5.2 of the Dumping Agreement and Article 12.4.2 of the Subsidy Agreement.

215. New subsection 23A(7) allows the Authority to disregard information, unless it is demonstrated that the information is correct, where the Authority agrees with the claim that the information provided is confidential or would adversely affect a person's business or commercial interests but the person claiming confidentiality will not prepare a summary of the information under subsection 23A(3).

216. New subsection 23A(8) requires the Authority to ensure that there is placed on public record a final statement of the essential facts on which it proposes to base its report before reporting to the Minister.

**Clause 38 -Transitional**

217. This clause provides that, despite the amendments made to the Principal Act by this Act, the provisions of the Principal Act as in force immediately before the day fixed for the purposes of subsection 2(2) of this Act, continue to apply, subject to section 3 of this Act, in relation to dumping or countervailing duty notices that are published by the Minister before that day, or on or after that day as a consequence of an application for such a notice made before that day.

