

Customs Act 1901

Act No. 6 of 1901 as amended

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Sections 269SM – 277A
Schedules I, VI and VII

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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Part XVB—Special provisions relating to anti-dumping duties

269SM Overview of Part

- (1) This Part deals with the taking of anti-dumping measures in respect of goods whose importation into Australia involves a dumping or countervailable subsidisation of those goods that injures, or threatens to injure, Australian industry. Those measures might consist of the publication of a dumping duty notice or a countervailing duty notice or the acceptance of an undertaking on conditions that make it unnecessary to publish such a notice.
- (2) If a notice is published, that notice creates a liability under the Dumping Duty Act, in relation to any goods to which the notice extends, to pay a special duty of customs on their importation into Australia and, pending assessment of that special duty, to pay interim duty.
- (3) Divisions 1, 2 and 3 deal with the preliminary and procedural matters leading to a Ministerial decision to publish or not to publish a dumping duty notice or a countervailing duty notice or to accept an undertaking instead of publishing such a notice.
- (4) Division 4 allows a person who has been required to pay interim duty to seek an assessment of duty payable under the Dumping Duty Act and reconciles interim duty paid by that person with duty as so assessed.
- (5) Division 5 deals with the rights of persons, periodically, on the basis of changed circumstances, to seek review by the Minister of decisions to publish dumping duty notices or countervailing duty notices or to accept undertakings.
- (6) Division 6 deals with the rights of new exporters to seek an early review by the Minister of decisions to publish dumping duty notices or countervailing duty notices.
- (7) Division 6A ensures that interested parties are informed of the impending expiration of anti-dumping measures and allows them to seek continuation of those measures.

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- (8) Division 7 deals with procedural and evidentiary matters that are relevant both to applications for the taking of anti-dumping measures and for the various review procedures after such measures are taken.
- (9) Divisions 8 and 9 establish an independent reviewer, the Trade Measures Review Officer, and provide for the Review Officer to review Ministerial decisions to publish or not to publish dumping duty notices or countervailing duty notices and also a range of decisions made by the CEO.

Division 1—Preliminary

269SN What this Division is about

This Division deals with preliminary matters. The Division principally:

- sets out essential definitions and interpretations;
- provides the basis for determining various factors (such as normal value, export price and non-injurious price) necessary to decide whether dumping or countervailable subsidisation has occurred;
- sets out the criteria for the use of those factors in so deciding;
- provides the basis for determining whether dumping or subsidisation is causing material injury to Australian industry;
- identifies circumstances in which the Part does not apply;
- empowers the Minister to direct the CEO in relation to the CEO's powers and duties.

269T Definitions

- (1) In this Part, unless the contrary intention appears:

affected party, in relation to an application under Division 5 for review of anti-dumping measures imposed on particular goods, means:

- (a) a person who is directly concerned with the exportation to Australia of the goods to which the measures relate or who has been directly concerned with the exportation to Australia of like goods; or
- (b) a person who is directly concerned with the importation into Australia of the goods to which the measures relate or who

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has been directly concerned with the importation into Australia of like goods; or

- (c) a person representing, or representing a portion of, the Australian industry producing like goods; or
- (d) the Government of a country from which like goods have been exported to Australia.

Agreement on Agriculture means the Agreement by that name:

- (a) set out in Annex 1A to the World Trade Organization Agreement; and
- (b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia.

Agreement on Subsidies and Countervailing Measures means the Agreement by that name:

- (a) set out in Annex 1A to the World Trade Organization Agreement; and
- (b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia.

agricultural operations means:

- (a) the cultivation or gathering in of crops; or
- (b) the rearing of live-stock; or
- (c) the conduct of forestry operations;

and includes:

- (d) viticulture, horticulture or apiculture; or
- (e) hunting or trapping carried on for the purpose of a business.

allowable exemption or remission, in relation to exported goods, means:

- (a) the exemption of those goods from duties or taxes borne by like goods destined for domestic consumption; or
- (b) the remission of such duties or taxes otherwise payable in respect of those goods;

in accordance with the provisions of Article XVI of the General Agreement on Tariffs and Trade 1994 and the provisions of Annexes I, II and III of the Agreement on Subsidies and Countervailing Measures.

anti-dumping measures, in respect of goods, means:

- (a) the publication of a dumping duty notice or a countervailing duty notice or both; or
- (b) the acceptance of an undertaking under section 269TG or 269TJ or of undertakings under both of these sections;

in relation to such goods.

application, in relation to a dumping duty notice or a countervailing duty notice, means an application for the publication of such a notice.

countervailable subsidy means a subsidy that is, for the purposes of section 269TAAC, a countervailable subsidy.

countervailing duty means duty, other than interim countervailing duty:

- (a) that is payable on goods under section 10 of the Dumping Duty Act because of a declaration under subsection 269TJ(1) or (2) of this Act; or
- (b) that is payable on goods under section 11 of the Dumping Duty Act.

countervailing duty notice means a notice published by the Minister under subsection 269TJ(1) or (2) or 269TK(1) or (2).

country of export, in relation to goods exported to Australia, means a country outside Australia from which those goods are exported to Australia, whether or not it is the country where those goods are produced or manufactured.

country of origin, in relation to goods exported to Australia, means a country, whether the country of export or not, where those goods are produced or manufactured.

determination means a determination in writing.

direction means a direction in writing.

dumped goods means any goods exported to Australia that the Minister has determined, under section 269TACB, have been dumped.

dumping duty means duty, other than interim dumping duty, that is payable on goods under section 8 or 9 of the Dumping Duty Act.

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Dumping Duty Act means the *Customs Tariff (Anti-Dumping) Act 1975*.

dumping duty notice means a notice published by the Minister under subsection 269TG(1) or (2) or 269TH(1) or (2).

economy in transition has the meaning given by subsection (5C).

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

fishing operations means:

- (a) the taking, catching or capturing of fish; or
- (b) the farming of fish; or
- (c) pearling operations.

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

General Agreement on Tariffs and Trade 1994 means the Agreement by that name:

- (a) whose parts are described in Annex 1A to the World Trade Organization Agreement; and
- (b) as in force on the day on which the World Trade Organization Agreement enters into force for Australia.

importation period, in relation to goods that have been the subject of a dumping duty notice or a countervailing duty notice means:

- (a) in respect of goods covered by a retrospective notice—the period beginning on the day of entry for home consumption of the first consignment of goods to which the retrospective notice applied and ending immediately before the day of publication of the notice; and
- (b) in respect of goods covered by a prospective notice:
 - (i) the period of 6 months beginning on the day of publication of the prospective notice; and
 - (ii) each successive period of 6 months.

importer, in relation to goods exported to Australia, means:

- (a) if paragraph (b) or (d) does not apply—the beneficial owner of the goods at the time of their arrival within the limits of the port or airport in Australia at which they have landed; or

- (b) if the goods are taken from parts beyond the seas to an Australian resources installation or if they are goods on board an overseas resources installation at the time when it is attached to the Australian seabed—the beneficial owner of the goods at the time when they are imported into Australia; or
- (c) if the goods are an overseas resources installation that becomes attached to the Australian seabed—the beneficial owner of the installation at the time when it is imported into Australia; or
- (d) if the goods are taken from parts beyond the seas to an Australian sea installation or are goods on board an overseas sea installation at the time when it is installed in an adjacent area or a coastal area—the beneficial owner of the goods at the time when they are imported into Australia; or
- (e) if the goods are an overseas sea installation that becomes installed in an adjacent area or in a coastal area—the beneficial owner of the installation at the time when it is imported into Australia.

interested party, in relation to an application made to the CEO under section 269TB requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application, means:

- (a) the applicant;
- (b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods;
- (c) any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and
- (d) any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or of like goods that have been, or are likely to be, exported to Australia; and
- (e) a trade organisation a majority of whose members are, or are likely to be, directly concerned with the production or manufacture of the goods the subject of the application or of

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like goods, with their importation or exportation into Australia, or with both of those activities; and

- (f) the Government of the country of export or country of origin:
- (i) of goods the subject of the application that have been, or are likely to be, exported to Australia; or
 - (ii) of like goods that have been, or are likely to be, exported to Australia.

interim countervailing duty means duty imposed under subsection 10(3B) or 11(4) of the Dumping Duty Act.

interim dumping duty means duty imposed under subsection 8(5) and, where applicable, paragraph 8(4)(b) of the Dumping Duty Act or under subsection 9(5) and, where applicable, paragraph 9(4)(b) of that Act.

interim duty means interim dumping duty or interim countervailing duty.

investigation period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the CEO in a notice under subsection 269TC(4) to be the investigation period in relation to the application.

like goods, in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration.

member country means a country that is, in its own right, a member of the World Trade Organization established by the World Trade Organization Agreement.

negative preliminary decision means a decision of the kind referred to in paragraph 269X(6)(b) or (c).

new exporter, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like goods, means an exporter who did not export such goods to Australia at any time during the period:

- (a) starting at the start of the investigation period in relation to the application; and

- (b) ending immediately before the day the CEO places on the public record the statement of essential facts in relation to the investigation of the application.

positive preliminary decision means a decision of the kind referred to in paragraph 269X(6)(a).

preliminary affirmative determination means a determination made under section 269TD.

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

prospective notice means a notice issued under subsection 269TG(2), 269TH(2), 269TJ(2) or 269TK(2).

public notice, in relation to a decision, determination or other matter, means notice of the decision, determination or other matter published in accordance with section 269ZI.

public record means the public record maintained under section 269ZJ.

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

residual exporter, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods, other than:

- (a) a selected exporter; and
- (b) a new exporter of such goods.

retrospective notice means a notice issued under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1).

Review Officer means the person from time to time holding the office of Trade Measures Review Officer established under Division 8 and includes a person acting in that office.

selected exporter, in relation to a dumping duty notice or a countervailing duty notice in respect of goods, means an exporter of goods the subject of the application or like goods whose exportations were investigated for the purpose of deciding whether or not to publish that notice.

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subsidy, in respect of goods that are exported to Australia, means:

- (a) a financial contribution:
- (i) by a government of the country of export or country of origin of those goods; or
 - (ii) by a public body of that country or of which that government is a member; or
 - (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;
- that is made in connection with the production, manufacture or export of those goods and that involves:
- (iv) a direct transfer of funds from that government or body to the enterprise by whom the goods are produced, manufactured or exported; or
 - (v) a direct transfer of funds from that government or body to that enterprise contingent upon particular circumstances occurring; or
 - (vi) the acceptance of liabilities, whether actual or potential, of that enterprise by that government or body; or
 - (vii) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body by that enterprise; or
 - (viii) the provision by that government or body of goods or services to that enterprise otherwise than in the course of providing normal infrastructure; or
 - (ix) the purchase by that government or body of goods provided by that enterprise; or
- (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;

if that financial contribution or income or price support confers a benefit in relation to those goods.

third country, in relation to goods that have been or may be exported to Australia means a country other than Australia or the country of export, or the country of origin, of those goods.

World Trade Organization Agreement means the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

- (2) For the purposes of this Part, goods, other than unmanufactured raw products, are not to be taken to have been produced in Australia unless the goods were wholly or partly manufactured in Australia.
- (2A) A reference in this Part to the amount of the export price of goods, to the amount of the normal value of goods, to the amount of the subsidy received in respect of goods or to the amount of freight shall, where that amount is not expressed in Australian currency, be read as a reference to the equivalent amount in Australian currency.
- (2AA) A reference in this Part to a subsidy or a countervailable subsidy received in respect of goods from a government of the country of export or country of origin of the goods includes a reference to a subsidy or countervailable subsidy received in respect of those goods:
- (a) from a public body of that government or of which that government is a member; or
 - (b) from a private body entrusted or directed by that government or public body to carry out a governmental function.
- (2AB) If a subsidy is constituted by a financial contribution provided by a public body of which a country is a member but is delivered, not by the public body but rather by that member country, then, for the purposes of this Part, that subsidy is taken to have been received both from the public body and from the member country.
- (2AC) A subsidy is taken to have been received in respect of particular goods:
- (a) whether the benefit conferred by the subsidy is conferred directly or indirectly in relation to those goods; and
 - (b) whether or not the subsidy involves, or will involve, the payment or grant of any form of financial assistance.
- (2AD) The fact that an investigation period is specified to start at a particular time does not imply that the Minister may not examine periods before that time for the purpose of determining whether material injury has been caused to an Australian industry or to an industry of a third country.
- (2B) For the purposes of this Part, where, during the exportation of goods to Australia, the goods pass in transit from a country through
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another country, that other country shall be disregarded in ascertaining the country of export of the goods.

- (3) For the purposes of subsection (2), goods shall not be taken to have been partly manufactured in Australia unless at least one substantial process in the manufacture of the goods was carried out in Australia.
- (4) For the purposes of this Part, if, in relation to goods of a particular kind, there is a person or there are persons who produce like goods in Australia:
- (a) there is an Australian industry in respect of those like goods; and
 - (b) subject to subsection (4A), the industry consists of that person or those persons.
- (4A) Where, in relation to goods of a particular kind first referred to in subsection (4), the like goods referred to in that subsection are close processed agricultural goods, then, despite subsection (4), the industry in respect of those close processed agricultural goods consists not only of the person or persons producing the processed goods but also of the person or persons producing the raw agricultural goods from which the processed goods are derived.
- (4B) For the purposes of subsection (4A), processed agricultural goods derived from raw agricultural goods are not to be taken to be close processed agricultural goods unless the Minister is satisfied that:
- (a) the raw agricultural goods are devoted substantially or completely to the processed agricultural goods; and
 - (b) the processed agricultural goods are derived substantially or completely from the raw agricultural goods; and
 - (c) either:
 - (i) there is a close relationship between the price of the processed agricultural goods and the price of the raw agricultural goods; or
 - (ii) a significant part of the production cost of the processed agricultural goods, whether or not there is a market in Australia for those goods, is, or would be, constituted by the cost to the producer of those goods of the raw agricultural goods.

- (4C) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the production cost of processed agricultural goods to be ascertained for the purpose of subsection (4B), the production cost of those goods is such amount as is determined by the Minister having regard to all relevant information.
- (4D) In this Act, a reference to variable factors relevant to the determination of duty payable under the Dumping Duty Act on particular goods the subject of a dumping duty notice or a countervailing duty notice is a reference:
- (a) if the goods are the subject of a dumping duty notice:
 - (i) to the normal value of the goods; and
 - (ii) to the export price of the goods; and
 - (iii) to the non-injurious price of the goods; and
 - (b) if the goods are the subject of a countervailing duty notice:
 - (i) to the amount of countervailable subsidy received in respect of the goods; and
 - (ii) to the export price of the goods; and
 - (iii) to the non-injurious price of the goods.
- (4E) In this Act, a reference to variable factors relevant to the review, under Division 5, of anti-dumping measures taken in respect of goods is a reference:
- (a) if the goods are the subject of a dumping duty notice—to the normal value, export price and non-injurious price of goods of that kind as ascertained, or last ascertained, by the Minister for the purpose of the notice; and
 - (b) if the goods are the subject of a countervailing duty notice:
 - (i) to the amount of countervailable subsidy received in respect of the goods; and
 - (ii) to the non-injurious price of the goods; as ascertained, or last ascertained, by the Minister for the purpose of the notice; and
 - (c) if the goods are the subject of an undertaking accepted under section 269TG—to the normal value of the goods, and the non-injurious price of the goods, as indicated by the Minister to the exporter in negotiations relating to the acceptability of the undertaking; and

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- (d) if the goods are the subject of an undertaking accepted under section 269TJ—to the countervailable subsidy received in respect of the goods, and the non-injurious price of the goods, as indicated by the Minister to the exporter or to the country of export in negotiations relating to the acceptability of the undertaking.
- (5) A reference in this Act to goods the subject of an application under section 269TB is a reference to goods referred in the application:
- (a) that have been imported into Australia;
 - (b) that are likely to be so imported; or
 - (c) that may be so imported, being like goods to goods to which paragraph (a) or (b) applies.
- (5A) For the purposes of this Part, the weighted average of prices, values, costs or amounts in relation to goods over a particular period is to be worked out in accordance with the following formula:
- $$\frac{P_1 Q_1 + P_2 Q_2 + \dots + P_n Q_n}{Q_1 + Q_2 + \dots + Q_n}$$
- where:
- $P_1, P_2 \dots P_n$ means the price, value, cost or amount, per unit, in respect of the goods in the respective transactions during the period.
- $Q_1, Q_2 \dots Q_n$ means the number of units of the goods involved in each of the respective transactions.
- (5B) In working out the number of units of goods involved in a transaction, any units of goods that are, for the purposes of paragraph 269TAB(1)(b) or (c), subsection 269TAB(3), paragraph 269TAC(2)(c) or (4)(e) or subsection 269TAC(6), treated as being involved in a particular transaction are taken to be actually involved in the transaction.
- (5C) A country has an *economy in transition* at a time if:
- (a) before the time, the Government of the country had a monopoly, or a substantial monopoly, of the trade of that country and determined, or substantially influenced, the domestic price of goods in that country; and

- (b) at the time, that Government does not:
 - (i) have a monopoly, or a substantial monopoly, of the trade of that country; or
 - (ii) determine, or substantially influence, the domestic price of goods in that country.
- (6) Sundays and public holidays shall, notwithstanding the definition of *days* in section 4 be counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection shall derogate from the operation of section 36 of the *Acts Interpretation Act 1901*.

269TAAA Anti-dumping measures not to apply to goods of New Zealand origin

- (1) This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Dumping Duty Act, does not apply to goods that are the produce or manufacture of New Zealand.
- (2) In subsection (1):

goods includes goods imported into Australia before the commencement of this section.

269TAAB Member countries, developing countries and special developing countries

- (1) The Minister may certify that a particular country is, or was, during a specified period or on a specified day:
 - (a) a member country of the World Trade Organization; or
 - (b) a developing country, whether a member country or not; or
 - (c) a special developing country within the meaning of subsection (2).
- (2) For the purposes of subsection (1), a country is, or was, during a specified period or on a specified day, a special developing country if:
 - (a) it is or was, during that period or on that day, a developing country; and
 - (b) it is or was, during that period or on that day:
 - (i) a least developed country, whether a member country or not; or

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- (ii) a member country that has eliminated and not restored export subsidies; or
 - (iii) a member country referred to in paragraph (b) of Annex VII of the Agreement on Subsidies and Countervailing Measures having a gross national product of less than \$US1,000 per annum per head of population.
- (3) For all purposes of this Part and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified, except so far as the contrary is established.

269TAAC Definition—countervailable subsidy

- (1) For the purposes of this Part, a subsidy is a countervailable subsidy if:
- (a) it is specific; and
 - (b) it is not an excluded subsidy.
- (2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:
- (a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or
 - (b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or
 - (c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or
 - (d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.
- (3) Subject to subsection (4), a subsidy is not specific if access to the subsidy:
- (a) is established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
 - (b) those criteria or conditions do not favour particular enterprises over others and are economic in nature; and

- (c) those criteria or conditions are strictly adhered to in the administration of the subsidy.
- (4) Despite the fact that access to a subsidy is established by objective criteria, the Minister may, having regard to:
 - (a) the fact that the subsidy program benefits a limited number of particular enterprises; or
 - (b) the fact that the subsidy program predominantly benefits particular enterprises; or
 - (c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or
 - (d) the manner in which a discretion to grant access to the subsidy has been exercised;determine that the subsidy is specific.
- (5) In making a determination under subsection (4), the Minister must take account of:
 - (a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and
 - (b) the length of time during which the subsidy program has been in operation.
- (6) A subsidy is an excluded subsidy if the Minister is satisfied that:
 - (a) it is specific but described in paragraph (a), (b) or (c) of Article 8.2 of the Agreement on Subsidies and Countervailing Measures; or
 - (b) it is a domestic support measure that meets the criteria or conditions set out in Annex 2 to the Agreement on Agriculture.

269TAAD Ordinary course of trade

- (1) If the Minister is satisfied, in relation to goods exported to Australia:
 - (a) that like goods are sold in the country of export in sales that are arms length transactions in substantial quantities during an extended period:
 - (i) for home consumption in the country of export; or
 - (ii) for exportation to a third country;at a price that is less than the cost of such goods; and

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- (b) that it is unlikely that the seller of the goods will be able to recover the cost of such goods within a reasonable period; the price paid for the goods referred to in paragraph (a) is taken not to have been paid in the ordinary course of trade.
- (2) For the purposes of this section, sales of goods at a price that is less than the cost of such goods are taken to have occurred in substantial quantities during an extended period if the volume of sales of such goods at a price below the cost of such goods over that period is not less than 20% of the total volume of sales over that period.
- (3) Costs of goods are taken to be recoverable within a reasonable period of time if, although the selling price of those goods at the time of their sale is below their cost at that time, the selling price is above the weighted average cost of such goods over the investigation period.
- (4) The cost of goods is worked out by adding:
- (a) the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and
 - (b) the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.
- (5) Amounts determined by the Minister for the purposes of paragraphs (4)(a) and (b) must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

269TAA Arms length transactions

- (1) For the purposes of this Part, a purchase or sale of goods shall not be treated as an arms length transaction if:
- (a) there is any consideration payable for or in respect of the goods other than their price; or
 - (b) the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
 - (c) in the opinion of the Minister the buyer, or an associate of the buyer, will, subsequent to the purchase or sale, directly or

indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

- (1A) For the purposes of paragraph (1)(c), the Minister must not hold the opinion referred to in that paragraph because of a reimbursement in respect of the purchase or sale if the Minister is of the opinion that the purchase or sale will remain an arms length transaction in spite of the payment of that reimbursement, having regard to any or all of the following matters:
- (a) any agreement, or established trading practices, in relation to the seller and the buyer, in respect of the reimbursement;
 - (b) the period for which such an agreement or practice has been in force;
 - (c) whether or not the amount of the reimbursement is quantifiable at the time of the purchase or sale.
- (2) Without limiting the generality of subsection (1), where:
- (a) goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
 - (b) the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;
- the Minister may, for the purposes of paragraph (1)(c), treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.
- (3) In determining, for the purposes of subsection (2), whether goods are sold by an importer at a loss, the Minister shall have regard to:
- (a) the amount of the price paid or to be paid for the goods by the importer; and
 - (b) such other amounts as the Minister determines to be costs necessarily incurred in the importation and sale of the goods; and

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- (c) the likelihood that the amounts referred to in paragraphs (a) and (b) will be able to be recovered within a reasonable time; and
 - (d) such other matters as the Minister considers relevant.
- (4) For the purposes of this Part, 2 persons shall be deemed to be associates of each other if, and only if:
- (a) both being natural persons:
 - (i) they are connected by a blood relationship or by marriage or by adoption; or
 - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
 - (b) both being bodies corporate:
 - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate); or
 - (ii) both of them together control, directly or indirectly, a third body corporate; or
 - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them; or
 - (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate); or
 - (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or
 - (e) they are members of the same partnership.

269TAB Export price

- (1) For the purposes of this Part, the export price of any goods exported to Australia is:
- (a) where:
 - (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
 - (ii) the purchase of the goods by the importer was an arms length transaction;
- the price paid or payable for the goods by the importer, other than any part of that price that represents a charge in respect

of the transport of the goods after exportation or in respect of any other matter arising after exportation; or

(b) where:

- (i) the goods have been exported to Australia otherwise than by the importer and have been purchased by the importer from the exporter (whether before or after exportation); and
- (ii) the purchase of the goods by the importer was not an arms length transaction; and
- (iii) the goods are subsequently sold by the importer, in the condition in which they were imported, to a person who is not an associate of the importer;

the price at which the goods were so sold by the importer to that person less the prescribed deductions; or

(c) in any other case—the price that the Minister determines having regard to all the circumstances of the exportation.

(1A) For the purposes of paragraph (1)(a), the reference in that paragraph to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.

(2) A reference in paragraph (1)(b) to prescribed deductions in relation to a sale of goods that have been exported to Australia shall be read as a reference to:

- (a) any duties of Customs or sales tax paid or payable on the goods; and
- (b) any costs, charges or expenses arising in relation to the goods after exportation; and
- (c) the profit, if any, on the sale by the importer or, where the Minister so directs, an amount calculated in accordance with such rate as the Minister specifies in the direction as the rate that, for the purposes of paragraph (1)(b), is to be regarded as the rate of profit on the sale by the importer.

(3) Where the Minister is satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under the preceding subsections, the export price of those goods shall be such amount as is determined by the Minister having regard to all relevant information.

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- (4) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.
- (5) Paragraphs (1)(a) and (b) apply in relation to a purchase of goods by an importer from an exporter whether or not the importer and exporter are associates of each other.

269TAC Normal value of goods

- (1) Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.
- (1A) For the purposes of subsection (1), the reference in that subsection to the price paid or payable for like goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of the sales.
- (2) Subject to this section, where the Minister:
 - (a) is satisfied that:
 - (i) because of the absence, or low volume, of sales of like goods in the market of the country of export that would be relevant for the purpose of determining a price under subsection (1); or
 - (ii) because the situation in the market of the country of export is such that sales in that market are not suitable for use in determining a price under subsection (1);the normal value of goods exported to Australia cannot be ascertained under subsection (1); or
 - (b) is satisfied, in a case where like goods are not sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter, that it is not practicable to obtain, within a reasonable time, information in relation to sales by other sellers of like goods that would be relevant for the purpose of determining a price under subsection (1);the normal value of the goods for the purposes of this Part is:
 - (c) except where paragraph (d) applies, the sum of:

- (i) such amount as the Minister determines to be the cost of production or manufacture of the goods in the country of export; and
 - (ii) on the assumption that the goods, instead of being exported, had been sold for home consumption in the ordinary course of trade in the country of export—such amounts as the Minister determines would be the administrative, selling and general costs associated with the sale and, subject to subsection (13), the profit on that sale; or
 - (d) if the Minister directs that this paragraph applies—the price determined by the Minister to be the price paid or payable for like goods sold in the ordinary course of trade in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country, other than any amount determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of any such transactions.
- (3) The price determined under paragraph (2)(d) is a price that the Minister determines, having regard to the quantity of like goods sold as described in paragraph (2)(d) at that price, is representative of the price paid in such sales.
- (4) Subject to subsections (6) and (8), where the Minister is satisfied that it is inappropriate to ascertain the normal value of goods in accordance with the preceding subsections because the Government of the country of export:
- (a) has a monopoly, or substantial monopoly, of the trade of the country; and
 - (b) determines or substantially influences the domestic price of goods in that country;
- the normal value of the goods for the purposes of this Part is to be a value ascertained in accordance with whichever of the following paragraphs the Minister determines having regard to what is appropriate and reasonable in the circumstances of the case:
- (c) a value equal to the price of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country, being sales that are arms length transactions;

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- (d) a value equal to the price determined by the Minister to be the price of like goods produced or manufactured in a country determined by the Minister and sold in the ordinary course of trade in arms length transactions for exportation from that country to a third country determined by the Minister to be an appropriate third country;
 - (e) a value equal to the sum of the following amounts ascertained in respect of like goods produced or manufactured in a country determined by the Minister and sold for home consumption in the ordinary course of trade in that country:
 - (i) such amount as the Minister determines to be the cost of production or manufacture of the like goods in that country;
 - (ii) such amounts as the Minister determines to be the administrative, selling and general costs associated with the sale of like goods in that country and the profit on that sale;
 - (f) a value equal to the price payable for like goods produced or manufactured in Australia and sold for home consumption in the ordinary course of trade in Australia, being sales that are arms length transactions.
- (5) The price determined under paragraph (4)(d) is a price that the Minister determines, because of the quantity of like goods sold as described in paragraph (4)(d) at that price, is representative of the price paid in such sales.
- (5A) Amounts determined:
- (a) to be the cost of production or manufacture of goods under subparagraph (2)(c)(i) or (4)(e)(i); and
 - (b) to be the administrative, selling and general costs in relation to goods under subparagraph (2)(c)(ii) or (4)(e)(ii);
- must be worked out in such manner, and taking account of such factors, as the regulations provide for the respective purposes of paragraphs 269TAAD(4)(a) and (b).
- (5B) The amount determined to be the profit on the sale of goods under subparagraph (2)(c)(ii) or (4)(e)(ii), must be worked out in such manner, and taking account of such factors, as the regulations provide for that purpose.

- (5C) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2)(d) or (4)(d), the Minister may have regard to the following matters:
- (a) whether the volume of trade from the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the volume of trade from the country of export to Australia; and
 - (b) whether the nature of the trade in goods concerned between the country of export referred to in paragraph (2)(d) or the country first-mentioned in paragraph (4)(d) is similar to the nature of trade between the country of export and Australia.
- (5D) The normal value of goods (the *exported goods*) is the amount determined by the Minister, having regard to all relevant information, if the exported goods are exported to Australia and the Minister is satisfied that the country of export has an economy in transition and that at least one of the following paragraphs applies:
- (a) both of the following conditions exist:
 - (i) the exporter of the exported goods sells like goods in the country of export;
 - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
 - (b) both of the following conditions exist:
 - (i) the exporter of the exported goods does not sell like goods in the country of export but others do;
 - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
 - (c) the exporter of the exported goods does not answer questions in a questionnaire given to the exporter by the CEO under subsection 269TC(8) within the period described in that subsection or subsection 269TC(9) for answering questions;
 - (d) the answers given within the period mentioned in subsection 269TC(8), or the further period mentioned in subsection 269TC(9), by the exporter of the exported goods to a questionnaire given to the exporter under subsection 269TC(8) do not provide a reasonable basis for determining that paragraphs (a) and (b) of this subsection do not apply.

Note: Subsection 269TC(8) deals with the CEO giving an exporter of goods to Australia a questionnaire about evidence of whether or not paragraphs (a) and (b) of this subsection apply, with a

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specified period of at least 30 days for the exporter to answer the questions. Under subsection 269TC(9) the CEO may allow the exporter a further period for answering the questions.

- (5E) To be satisfied that the conditions in paragraph (5D)(a) or (b) exist, the Minister must have regard to the matters (if any) prescribed by the regulations.
- (5F) Without limiting the generality of subsection (5D), for the purpose of working out, under that subsection, the amount that is to be the normal value of goods exported to Australia, the Minister may determine that amount in a manner that would be open to the Minister under paragraph (4)(c), (d), (e) or (f) if subsection (4) were applicable.
- (5J) For the purposes of fulfilling Australia's international obligations under an international agreement, regulations may be made to disapply subsection (5D) to a country.
- (6) Where the Minister is satisfied that sufficient information has not been furnished or is not available to enable the normal value of goods to be ascertained under the preceding subsections (other than subsection (5D)), the normal value of those goods is such amount as is determined by the Minister having regard to all relevant information.
- (7) For the purposes of this section, the Minister may disregard any information that he or she considers to be unreliable.
- (7A) The application of subsection (5D) to goods that are exported to Australia from a particular country does not preclude the application of other provisions of this section (other than subsections (4) and (5)) to other goods that are exported to Australia from that country.
- (8) Where the normal value of goods exported to Australia is the price paid or payable for like goods and that price and the export price of the goods exported:
 - (a) relate to sales occurring at different times; or
 - (b) are not in respect of identical goods; or
 - (c) are modified in different ways by taxes or the terms or circumstances of the sales to which they relate;that price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that

those differences would not affect its comparison with that export price.

- (9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.
- (10) Where:
- (a) the actual country of export of goods exported to Australia is not the country of origin of the goods; and
 - (b) the Minister is of the opinion that the normal value of the goods should be ascertained for the purposes of this Part as if the country of origin were the country of export;
- he or she may direct that the normal value of the goods is to be so ascertained.
- (11) For the purposes of subsection (10), the country of origin of goods is:
- (a) in the case of unmanufactured raw products—the country of which they are products; or
 - (b) in any other case—the country in which the last significant process in the manufacture or production of the goods was performed.
- (13) Where, because of the operation of section 269TAAD, the normal value of goods is required to be determined under subsection (2), the Minister shall not include in his or her calculation of that normal value any profit component under subparagraph (2)(c)(ii).
- (14) If:
- (a) application is made for a dumping duty notice; and
 - (b) goods the subject of the application are exported to Australia; but
 - (c) the volume of sales of like goods for home consumption in the country of export by the exporter or another seller of like goods is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;
- the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2)(a), to be a low volume unless the
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Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB.

269TACA Non-injurious price

The non-injurious price of goods exported to Australia is the minimum price necessary:

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

269TACB Working out whether dumping has occurred and levels of dumping

- (1) If:
 - (a) application is made for a dumping duty notice; and
 - (b) export prices in respect of goods the subject of the application exported to Australia during the investigation period have been established in accordance with section 269TAB; and
 - (c) corresponding normal values in respect of like goods during that period have been established in accordance with section 269TAC;the Minister must determine, by comparison of those export prices with those normal values, whether dumping has occurred.

- (2) In order to compare those export prices with those normal values, the Minister may, subject to subsection (3):
- (a) compare the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period; or
 - (aa) use the method of comparison referred to in paragraph (a) in respect of parts of the investigation period as if each of these parts were the whole of the investigation period; or
 - (b) compare the export prices determined in respect of individual transactions over the whole of the investigation period with the corresponding normal values determined over the whole of that period; or
 - (c) use:
 - (i) the method of comparison referred to in paragraph (a) in respect of a part or parts of the investigation period as if the part or each of these parts were the whole of the investigation period; and
 - (ii) the method of comparison referred to in paragraph (b) in respect of another part or other parts of the investigation period as if that other part or each of these other parts were the whole of the investigation period.
- (2A) If paragraph (2)(aa) or (c) applies:
- (a) each part of the investigation period referred to in the paragraph must not be less than 2 months; and
 - (b) the parts of the investigation period as referred to in paragraph (2)(aa), or as referred to in subparagraphs (2)(c)(i) and (ii), must together comprise the whole of the investigation period.
- (3) If the Minister is satisfied:
- (a) that the export prices differ significantly among different purchasers, regions or periods; and
 - (b) that those differences make the methods referred to in subsection (2) inappropriate for use in respect of a period constituting the whole or a part of the investigation period;
- the Minister may, for that period, compare the respective export prices determined in relation to individual transactions during that period with the weighted average of corresponding normal values over that period.
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- (4) If, in a comparison under subsection (2), the Minister is satisfied that the weighted average of export prices over a period is less than the weighted average of corresponding normal values over that period:
- (a) the goods exported to Australia during that period are taken to have been dumped; and
 - (b) the dumping margin for the exporter concerned in respect of those goods and that period is the difference between those weighted averages.
- (4A) To avoid doubt, a reference to a period in subsection (4) includes a reference to a part of the investigation period.
- (5) If, in a comparison under subsection (2), the Minister is satisfied that an export price in respect of an individual transaction during the investigation period is less than the corresponding normal value:
- (a) the goods exported to Australia in that transaction are taken to have been dumped; and
 - (b) the dumping margin for the exporter concerned in respect of those goods and that transaction is the difference between that export price and that normal value.
- (6) If, in a comparison under subsection (3), the Minister is satisfied that the export prices in respect of particular transactions during the investigation period are less than the weighted average of corresponding normal values during that period:
- (a) the goods exported to Australia in each such transaction are taken to have been dumped; and
 - (b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of corresponding normal values.
- (7) Subject to subsection (8), the existence of dumping and the size of a dumping margin will normally be worked out for individual exporters of goods to Australia.
- (8) If the number of exporters from a particular country of export who provide information in relation to an application for a dumping duty notice is so large that it is not practicable to determine the existence of dumping and to work out individual dumping margins

for each of them, the Minister may, on the basis of information obtained from an investigation of a selected number of those exporters:

- (a) who constitute a statistically valid sample of those exporters; or
 - (b) who are responsible for the largest volume of exportations to Australia that can reasonably be investigated;
- decide whether dumping exists, and, if it does, fix dumping margins for such selected exporters and for exporters who are not so selected.
- (9) If information is submitted by an exporter not initially selected under subsection (8) for the purposes of an investigation, the investigation must extend to that exporter unless to so extend it would prevent the investigation's timely completion.
- (10) Any comparison of export prices, or weighted average of export prices, with any corresponding normal values, or weighted average of corresponding normal values, must be worked out in respect of similar units of goods, whether determined by weight, volume or otherwise.

269TACC Working out whether benefits have been conferred and amounts of subsidy

- (1) If:
- (a) a financial contribution referred to in paragraph (a) of the definition of *subsidy* in subsection 269T(1); or
 - (b) income or price support referred to in paragraph (b) of that definition;
- is received in respect of goods, the question whether that financial contribution or income or price support confers a benefit, and, if so, the amount of subsidy attributable to that benefit, are to be worked out according to this section.
- (2) If a financial contribution in respect of goods is a direct financial payment received from a government of a country, a public body of that government or of which that government is a member, or a private body entrusted or directed by that government or public body to carry out a governmental function, a benefit is taken to be conferred because of that payment.

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- (3) If:
- (a) there is no financial contribution of the kind referred to in subsection (2) received in respect of goods; but
 - (b) a financial contribution of another kind, or income or price support, is received in respect of those goods from a government of a country, a public body of that government or of which that government is a member, or a private body entrusted or directed by that government or public body to carry out a governmental function;
- the question whether that financial contribution or income or price support confers a benefit is to be determined by the Minister.
- (4) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:
- (a) the provision of equity capital from the government or body referred to in subsection (3) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;
 - (b) the making of a loan by the government or a body referred to in subsection (3) does not confer a benefit unless the loan requires repayment of a lesser amount than would be required for a comparable commercial loan;
 - (c) the guarantee of a loan by the government or a body referred to in subsection (3) does not confer a benefit unless, without the guarantee, the enterprise receiving the loan would have to repay a greater amount;
 - (d) the provision of goods or services by the government or body referred to in subsection (3) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;
 - (e) the purchase of goods by the government or body referred to in subsection (3) does not confer a benefit if the purchase is made for more than adequate remuneration.
- (5) For the purposes of paragraphs (4)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.
- (6) If a benefit is conferred:
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- (a) by a financial contribution in the form referred to in subsection (2)—the total amount of subsidy attributable to the benefit is an amount equal to the payment; or
 - (b) by the making of a loan by the government or a body referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount equal to the difference between the amount required to be repaid on that loan and the amount that would be required to be repaid on a comparable commercial loan; or
 - (c) by the guarantee of a loan by the government or a body referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount equal to the difference between the amount required to be repaid upon the loan so guaranteed and the amount that would be required to be repaid upon a commercial loan, without that guarantee, adjusted for any difference in fees; or
 - (d) by any other financial contribution, or income or price support as referred to in subsection (3)—the total amount of subsidy attributable to the benefit is an amount determined by the Minister, in writing, in accordance with the regulations made for the purposes of this section.
- (7) If the Minister is satisfied, in respect of a particular financial contribution or form of income or price support:
- (a) that subsections (2), (3), (4) and (5) are inappropriate for determining whether a benefit has been conferred; or
 - (b) that, if a benefit has been conferred, subsection (6) is inappropriate for determining the total amount of subsidy attributable to the benefit;
- the Minister may determine, in writing, that he or she is so satisfied and determine an alternative basis for deciding whether a benefit has been conferred or for working out the amount of subsidy attributable to the benefit.
- (8) If the number of exporters from a particular country of export who provide information in relation to an application for a countervailing duty notice is so large that it is not practicable to work out whether a benefit has been conferred and the amount of subsidy received by them, the Minister may, on the basis of information obtained from an investigation of a selected number of those exporters:
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- (a) who constitute a statistically valid sample of those exporters;
or
 - (b) who are responsible for the largest volume of exportations to Australia that can reasonably be investigated;
- decide whether a benefit is conferred and, if it is, the amount of subsidy attributable to that benefit for such selected exporters and for exporters who are not so selected.
- (9) If information is submitted by an exporter not initially selected under subsection (8) for the purposes of an investigation, the investigation must extend to that exporter unless to so extend it would prevent the investigation's timely completion.
 - (10) After the total amount of the subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

269TAE Material injury to industry

- (1) In determining, for the purposes of section 269TG or 269TJ, whether material injury to an Australian industry has been or is being caused or is threatened or would or might have been caused, or whether the establishment of an Australian industry has been materially hindered, because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A), (2B) and (2C), have regard to:
 - (aa) if the determination is being made for the purposes of section 269TG—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
 - (ab) if the determination is being made for the purposes of section 269TJ—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
 - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and

- (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
- (c) any change or likely change, during a particular period, in the proportion that:
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the Australian industry and sold or consumed in Australia;bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
- (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
- (e) the difference between:
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
 - (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
- (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the Australian industry and sold in Australia; and
- (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the Australian industry; and
- (h) if the determination is being made for the purposes of section 269TJ and the goods are agricultural products—whether the exportation of goods of that kind to Australia from the country of export in those circumstances has given or is likely to give rise to a need for financial or other support, or an increase in financial or other support, for the Australian industry from the Commonwealth Government.

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- (2) In determining, for the purposes of section 269TH or 269TK, whether material injury to an industry in a third country has been or is being caused or is threatened or would or might have been caused because of any circumstances in relation to the exportation of goods to Australia from the country of export, the Minister may, without limiting the generality of that section but subject to subsections (2A), (2B) and (2C), have regard to:
- (aa) if the determination is being made for the purposes of section 269TH—the size of the dumping margin, or of each of the dumping margins, worked out in respect of goods of that kind that have been exported to Australia and dumped; and
 - (ab) if the determination is being made for the purposes of section 269TK—particulars of any countervailable subsidy received in respect of goods of that kind that have been exported to Australia; and
 - (a) the quantity of goods of that kind that, during a particular period, have been or are likely to be exported to Australia from the country of export; and
 - (b) any increase or likely increase, during a particular period, in the quantity of goods of that kind exported to Australia from the country of export; and
 - (c) any change or likely change, during a particular period, in the proportion that:
 - (i) the quantity of goods of that kind exported to Australia from the country of export and sold or consumed in Australia; or
 - (ii) the quantity of goods of that kind, or like goods, produced or manufactured in the third country and sold or consumed in Australia;bears to the quantity of goods of that kind, or like goods, sold or consumed in Australia; and
 - (d) the export price that has been or is likely to be paid by importers for goods of that kind exported to Australia from the country of export; and
 - (e) the difference between:
 - (i) the price that has been or is likely to be paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and

- (ii) the price that has been or is likely to be paid for goods of that kind exported to Australia from the country of export and sold in Australia; and
 - (f) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the price paid for goods of that kind, or like goods, produced or manufactured in the third country and sold in Australia; and
 - (g) the effect that the exportation of goods of that kind to Australia from the country of export in those circumstances has had or is likely to have on the relevant economic factors in relation to the producer or manufacturer in the third country.
- (2A) In making a determination in relation to the exportation of goods to Australia for the purposes referred to in subsection (1) or (2), the Minister must consider whether any injury to an industry, or hindrance to the establishment of an industry, is being caused or threatened by a factor other than the exportation of those goods such as:
- (a) the volume and prices of imported like goods that are not dumped; or
 - (b) the volume and prices of importations of like goods that are not subsidised; or
 - (c) contractions in demand or changes in patterns of consumption; or
 - (d) restrictive trade practices of, and competition between, foreign and Australian producers of like goods; or
 - (e) developments in technology; or
 - (f) the export performance and productivity of the Australian industry;
- and any such injury or hindrance must not be attributed to the exportation of those goods.
- (2B) In determining:
- (a) for the purposes of subsection (1), whether or not material injury is threatened to an Australian industry; or
 - (b) for the purposes of subsection (2), whether or not material injury is threatened to an industry in a third country;
- because of the exportation of goods into the Australian market, the Minister must take account only of such changes in circumstances,
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including changes of a kind determined by the Minister, as would make that injury foreseeable and imminent unless dumping or countervailing measures were imposed.

- (2C) In determining, for the purposes referred to in subsection (1) or (2), the effect of the exportations of goods to Australia from different countries of export, the Minister should consider the cumulative effect of those exportations only if the Minister is satisfied that:
- (a) each of those exportations is the subject of an investigation; and
 - (b) either:
 - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Customs on the same day; or
 - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Customs on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
 - (c) the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
 - (d) for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17)) from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and
 - (e) it is appropriate to consider the cumulative effect of those exportations, having regard to:
 - (i) the conditions of competition between those goods; and
 - (ii) the conditions of competition between those goods and like goods that are domestically produced.
- (3) A reference in subsection (1) or (2) to the relevant economic factors in relation to an Australian industry, or in relation to an industry in a third country, in relation to goods of a particular kind exported to Australia is a reference to:

- (a) the quantity of goods of that kind, or like goods, produced or manufactured in the industry; and
- (b) the degree of utilization of the capacity of the industry to produce or manufacture goods of that kind, or like goods; and
- (c) the quantity of goods of that kind, or like goods, produced or manufactured in the industry:
 - (i) for which there are sales or forward orders; or
 - (ii) which are held as stocks; and
- (d) the value of sales of, or forward orders for, goods of that kind, or like goods, produced or manufactured in the industry; and
- (e) the level of profits earned in the industry, that are attributable to the production or manufacture of goods of that kind, or like goods; and
- (f) the level of return on investment in the industry; and
- (g) cash flow in the industry; and
- (h) the number of persons employed, and the level of wages paid to persons employed, in the industry in relation to the production or manufacture of goods of that kind, or like goods; and
- (j) the share of the market in Australia for goods of that kind, or like goods, that is held by goods of that kind, or like goods, produced or manufactured in the industry; and
- (k) the ability of persons engaged in the industry, to raise capital in relation to the production or manufacture of goods of that kind, or like goods; and
- (m) investment in the industry.

269TAF Currency conversion

- (1) If, for the purposes of this Part, comparison of the export prices of goods exported to Australia and corresponding normal values of like goods requires a conversion of currencies, that conversion, subject to subsection (2), is to be made using the rate of exchange on the date of the transaction or agreement that, in the opinion of the Minister, best establishes the material terms of the sale of the exported goods.

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- (2) If, in relation to goods exported to Australia, a forward rate of exchange is used, the Minister may, in a conversion of currencies under subsection (1), make use of that rate of exchange.
- (3) If:
- (a) the comparison referred to in subsection (1) requires the conversion of currencies; and
 - (b) the rate of exchange between those currencies has undergone a short-term fluctuation;
- the Minister may, for the purpose of that comparison, disregard that fluctuation.
- (4) If:
- (a) the comparison referred to in subsection (1) requires the conversion of currencies; and
 - (b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement;
- the Minister may, by notice published in the *Gazette*, declare that this subsection applies with effect from a day specified in the notice and, if the Minister does so, the Minister may use the rate of exchange in force on that day for the purposes of that comparison during the period of 60 days starting on that day.
- (5) Nothing in subsection (4) prevents the Minister specifying a day in a notice that is earlier than the day of publication of the notice if the day specified:
- (a) is a day after the start of the sustained movement; and
 - (b) is not a day occurring within 60 days after the day specified in a prior notice.
- (6) Nothing in subsection (4) prevents the Minister publishing more than one notice if a sustained movement in the rate of exchange continues for more than 60 days.
- (7) The CEO may, if he or she considers it desirable so to do for the avoidance of doubt, specify, by notice published in the *Gazette*, 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 between other currencies:
- (a) on a day, or during a period, preceding the day of publication of the notice; or

- (b) from and including the day of publication of the notice, or an earlier day specified in the notice, until the revocation of the notice.
- (8) The rate of exchange established between currencies in a notice under subsection (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 section in respect of the currencies specified in the notice.

269TAG Minister may take anti-dumping measures on own initiative

- (1) Nothing in this Part implies that the Minister cannot initiate an investigation into the need to take anti-dumping measures in respect of goods although no application has been made under section 269TB for the taking of such measures in respect of such goods.
- (2) An investigation under subsection (1) must be carried out in accordance with the Minister's written requirements instead of the requirements set out in this Part.
- (3) The Minister may, subject to subsection (4), take anti-dumping measures as a result of the investigation as if the investigation had been carried out under this Part.
- (4) The Minister must not take such anti-dumping measures unless the Minister:
 - (a) has determined any matters which the Minister would be required to determine; and
 - (b) is satisfied of any matters of which the Minister would be required to be satisfied;in order to take those measures if the investigation had been carried out in accordance with the requirements of the other provisions of this Part.
- (5) The Minister must ensure that:
 - (a) his or her instructions under subsection (2) for the conduct of an investigation referred to in subsection (1); and
 - (b) his or her actions in taking any anti-dumping measures as a result of such an investigation;

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are consistent with Australia's international obligations under the World Trade Organization Agreement.

- (6) The anti-dumping measures taken and any matters determined to permit the taking of those measures are to be treated, for all purposes of this Act and the Dumping Duty Act, as measures taken, and matters determined, under the relevant provisions of this Part.

269TA Minister may give directions to CEO in relation to powers and duties under this Part

- (1) The Minister may give to the CEO such written directions in connection with carrying out or giving effect to the CEO's powers and duties under this Part as the Minister thinks fit, and the CEO shall comply with any directions so given.
- (2) A direction under subsection (1) shall not deal with carrying out or giving effect to the powers or duties of the CEO in relation to a particular consignment of goods or to like goods to goods in a particular consignment but shall deal instead with the general principles for carrying out or giving effect to the CEO's powers.
- (3) Where the Minister gives a direction to the CEO, the Minister shall:
- (a) cause a written notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction; and
 - (b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.
- (4) A notice setting out particulars of a direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2—Consideration of anti-dumping matters by the CEO

269TBA What this Division is about

This Division:

- sets out the requirements for making applications for the publication of dumping duty notices and countervailing duty notices;
- sets out the procedures to be followed, and the matters to be considered, by the CEO in conducting investigations in relation to goods covered by such applications, for the purpose of making a report to the Minister;
- empowers Customs, in certain cases, to take securities in respect of interim duty that may become payable, in order to prevent injury to Australian industry while such investigations continue;
- sets out the circumstances in which the CEO must terminate such investigations.

269TB Application for action under Dumping Duty Act

(1) Where:

- (a) a consignment of goods:
 - (i) has been imported into Australia;
 - (ii) is likely to be imported into Australia; or
 - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies;
- (b) there is, or may be established, an Australian industry producing like goods; and
- (c) a person believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a

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countervailing duty notice in respect of the goods in the consignment;

that person may, by application in writing lodged with the Customs in accordance with subsection (5), request that the Minister publish that notice in respect of the goods in the consignment.

(2) Where:

- (a) a consignment of goods produced or manufactured in a country other than Australia:
 - (i) has been imported into Australia;
 - (ii) is likely to be imported into Australia; or
 - (iii) may be imported into Australia, being like goods to goods to which subparagraph (i) or (ii) applies; and
- (b) there is, in a third country, an industry that produces or manufactures like goods for export to Australia; and
- (c) the Government of that third country believes that there are, or may be, reasonable grounds for the publication of a dumping duty notice or a countervailing duty notice in respect of the goods in the consignment;

the Government of that third country may, by application in writing lodged with the Customs in accordance with subsection (5), request that the Minister publish that notice in respect of the goods in the consignment.

- (2A) During the period after receiving an application for a dumping duty notice and before giving public notice under subsection 269TC(4) of a decision not to reject the application, the CEO must notify the government of the country, or of each country, whose exporters are nominated in the application.
- (2B) During the period after receiving an application for a countervailing duty notice and before giving public notice under subsection 269TC(4) of a decision not to reject the application, the CEO must notify:
 - (a) the government of the country, or of each country, whose exporters are nominated in the application; and
 - (b) the government of any other country from which countervailable subsidies are alleged to have been received.
- (2C) A notification by the CEO under subsection (2B) must include an invitation to consult with the CEO in relation to whether:

- (a) any countervailable subsidies exist; and
 - (b) any such subsidies, if found to exist, are causing or are likely to cause material injury of a kind referred to in paragraph 269TJ(1)(b) or 269TK(1)(b);
- with the aim of arriving at a mutually agreed solution.
- (3) An applicant may, at any time before the Minister decides:
- (a) to publish a dumping duty notice or a countervailing duty notice in respect of an exporter to whom the application extends; or
 - (b) to accept an undertaking from an exporter to whom the application extends or from a country to whose exporters the application extends;
- by notice in writing lodged with Customs in accordance with subsection (5), withdraw the application so far as it extends to that exporter, or to exporters exporting from that country, as the case requires.
- (4) An application under subsection (1) or (2) or a notice under subsection (3) withdrawing such an application must:
- (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated in the form; and
 - (e) in the case of an application under subsection (1)—be supported by a sufficient part of the Australian industry.
- (5) An application, or a notice withdrawing an application, may be lodged with the Customs:
- (a) by giving it to an officer doing duty in relation to the receipt of dumping applications; or
 - (b) by posting it by pre-paid post to a postal address specified in the approved form; or
 - (c) by sending it by electronic facsimile to a facsimile number specified in the approved form;
- and the application or notice is taken to have been received by Customs when the application or notice, or a facsimile of the application or notice, is first received by an officer doing duty in relation to the receipt of dumping applications.

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- (6) An application under subsection (1) in relation to a consignment of goods is taken to be supported by a sufficient part of the Australian industry if the CEO is satisfied that persons (including the applicant) who produce or manufacture like goods in Australia and who support the application:
- (a) account for more than 50% of the total production or manufacture of like goods produced or manufactured by that portion of the Australian industry that has expressed either support for, or opposition to, the application; and
 - (b) account for not less than 25% of the total production or manufacture of like goods in Australia.

269TC Consideration of application

- (1) The CEO shall, within 20 days after Customs receives an application under subsection 269TB(1) in respect of goods, examine the application and, if the CEO is not satisfied, having regard to the matters contained in the application and to any other information that the CEO considers relevant:
- (a) that the application complies with subsection 269TB(4); or
 - (b) that there is, or is likely to be established, an Australian industry in respect of like goods; or
 - (c) that there appear to be reasonable grounds:
 - (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
 - (ii) for the publication of such a notice upon the importation into Australia of such goods;
- he or she shall reject the application and inform the applicant, by notice in writing, accordingly.
- (2) The CEO shall, within 20 days after Customs receives an application by the Government of a country under subsection 269TB(2) in respect of goods, examine the application and, if the CEO is not satisfied, having regard to the matters contained in the application and to any other information that the CEO considers relevant:
- (a) that the application complies with subsection 269TB(4); or
 - (b) that there is a producer or manufacturer of like goods in that country who exports such goods to Australia; or
 - (c) that there appear to be reasonable grounds:

- (i) for the publication of a dumping duty notice or a countervailing duty notice, as the case requires, in respect of the goods the subject of the application; or
 - (ii) for the publication of such a notice upon the importation into Australia of such goods;
- he or she shall reject the application and inform the applicant, by notice in writing, accordingly.
- (2A) If an applicant, after lodging an application under section 269TB, decides to give Customs further information in support of that application without having been requested to do so:
- (a) the information may be lodged with Customs, in writing, in accordance with section 269TB; and
 - (b) the information is taken to have been received by Customs in accordance with subsection 269TB(5); and
 - (c) this Part has effect as if:
 - (i) the application had included that further information; and
 - (ii) the application had only been lodged when that further information was lodged; and
 - (iii) the application had only been received when that further information was received.
- (3) Where, in accordance with subsection (1) or (2), the CEO rejects an application, the notice informing the applicant of that rejection:
- (a) shall state the reasons why the CEO was not satisfied of one or more of the matters set out in that subsection; and
 - (b) shall inform the applicant of the applicant's right, within 30 days of the receipt of the notice, to apply for a review of the CEO's decision by the Review Officer under Division 9.
- (4) If the CEO decides not to reject an application under subsection 269TB(1) or (2) in respect of goods, the CEO must give public notice of the decision:
- (a) setting out particulars of goods the subject of the application; and
 - (b) setting out the identity of the applicant; and
 - (ba) setting out the countries of export known to be involved; and
 - (bb) if the application is for a countervailing duty notice—also setting out the countries from which countervailable subsidisation is alleged to have been received; and
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- (bc) setting a date, which should be the date or estimated date of publication of the notice, as the date of initiation of the investigation; and
- (bd) indicating the basis on which dumping or countervailable subsidisation is alleged to have occurred; and
- (be) summarising the factors on which the allegation of injury or hindrance to the establishment of an industry is based; and
- (bf) indicating that a report will be made to the Minister:
 - (i) within 155 days after the date of initiation of the investigation; or
 - (ii) if the 110 days referred to in paragraph (e) is extended by the Minister—within the period of 155 days as similarly so extended;on the basis of the examination of exportations to Australia of goods the subject of the application during a period specified in the notice as the investigation period in relation to the application; and
- (c) inviting interested parties to lodge with the CEO, within a specified period of not more than 40 days after the date of initiation of the investigation, submissions concerning the publication of the notice sought in the application; and
- (d) stating that if the CEO, in accordance with section 269TD, makes a preliminary affirmative determination in relation to the application, he or she may apply provisional measures, including the taking of securities under section 42, in respect of interim duty that may become payable on the importation of the goods the subject of the application; and
- (e) stating that:
 - (i) within 110 days after the date of initiation of the investigation; or
 - (ii) such longer period as the Minister allows under section 269ZHI;the CEO, in accordance with section 269TDAA, will place on the public record a statement of the essential facts on which the CEO proposes to base a recommendation to the Minister; and
- (f) inviting interested parties to lodge with the CEO, within 20 days of that statement being placed on the public record, submissions in response to that statement; and

- (g) indicating the address at which, or the manner in which, submissions under paragraph (c) or (f) can be lodged; and
 - (h) stating that if the Minister decides to publish or not to publish a dumping duty notice or a countervailing duty notice after considering the report referred to in paragraph (bf), certain persons will have the right to seek review of that decision in accordance with Division 9.
- (5) Information required to be included in the notice under subsection (4) may be included in a separate report to which the notice makes reference.
- (6) Despite the fact that a notice under this section specifies a particular period for interested parties to lodge submissions with the CEO, if the CEO is satisfied, by representation in writing by an interested party:
- (a) that a longer period is reasonably required for the party to make a submission; and
 - (b) that allowing a longer period will be practicable in the circumstances;
- the CEO may notify the party, in writing, that a specified further period will be allowed for the party to lodge a submission.
- (7) As soon as practicable after the CEO decides not to reject an application under section 269TB for a dumping duty notice or a countervailing duty notice, the CEO must ensure that a copy of the application, or of so much of the application as is not claimed to be confidential or to constitute information whose publication would adversely affect a person's business or commercial interests, is made available:
- (a) unless paragraph (b) applies—to all persons known to be exporters of goods the subject of the application and to the government of each country of export; or
 - (b) if the number of persons known to be exporters of goods the subject of the application is so large that it is not practicable to provide a copy of the application, or of so much of the application as is not the subject of such a claim, to each of them—to the government of each country of export and to each relevant trade association.
- (8) If the CEO is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a

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countervailing duty notice has an economy in transition, the CEO must, as soon as practicable after deciding not to reject the application:

- (a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and
- (b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and
- (c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:
 - (i) the exporter does not give the answers to the CEO within the period; or
 - (ii) the exporter gives the answers to the CEO within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.

Note: Paragraph 269TAC(5D)(a) or (b) applies if a government of the country of export significantly affects the selling price in that country of like goods to the goods that are the subject of the application.

- (9) Despite the fact that, under subsection (8), the CEO has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the CEO is satisfied, by representation in writing by the exporter:
 - (a) that a longer period is reasonably required for the exporter to answer the questions; and
 - (b) that allowing a longer period will be practicable in the circumstances;the CEO may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.

269TD Preliminary affirmative determinations

- (1) At any time not earlier than 60 days after the date of initiation of an investigation as to whether there are sufficient grounds for the publication of a dumping duty notice, or a countervailing duty

notice, in respect of goods the subject of an application under section 269TB, the CEO may, if he or she is satisfied:

- (a) that there appears to be sufficient grounds for the publication of such a notice; or
- (b) that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation into Australia of such goods;

make a determination (a *preliminary affirmative determination*) to that effect.

- (2) Subject to subsection (3), in deciding whether to make such a preliminary affirmative determination, the CEO:
 - (a) must have regard to:
 - (i) the application concerned; and
 - (ii) any submissions concerning publication of the notice that are received by Customs within 40 days after the date of initiation of the investigation; and
 - (b) may have regard to any other matters that the CEO considers relevant.
- (3) The CEO is not obliged to have regard to any submission that is received by Customs after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the CEO's opinion, prevent the timely consideration of the question whether or not to make a preliminary affirmative determination.
- (4) If the CEO makes a preliminary affirmative determination:
 - (a) the CEO must give public notice of that determination; and
 - (b) Customs may, at the time of making that determination or at any later time during the investigation, require and take securities under section 42 in respect of interim duty that may become payable if the officer of Customs taking the securities is satisfied that it is necessary to do so to prevent material injury to an Australian industry occurring while the investigation continues.
- (5) If Customs decides to require and take securities under subsection (4), the CEO must give public notice of that decision.

Section 269TDAA

269TDAA Statement of essential facts in relation to investigation of application under section 269TB

- (1) The CEO must, within 110 days after the date of initiation of an investigation arising from an application under section 269TB or such longer period as the Minister allows under section 269ZHI, place on the public record a statement of the facts (the *statement of essential facts*) on which the CEO proposes to base a recommendation to the Minister in relation to that application.
- (2) Subject to subsection (3), in formulating the statement of essential facts, the CEO:
 - (a) must have regard to:
 - (i) the application concerned; and
 - (ii) any submissions concerning publication of the notice that are received by Customs within 40 days after the date of initiation of the investigation; and
 - (b) may have regard to any other matters that the CEO considers relevant.
- (3) The CEO is not obliged to have regard to a submission received by Customs after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the CEO's opinion, prevent the timely placement of the statement of essential facts on the public record.

269TDA Termination of investigations

CEO must terminate if all dumping margins are negligible

- (1) If:
 - (a) application is made for a dumping duty notice; and
 - (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:
 - (i) there has been no dumping by the exporter of any of those goods; or
 - (ii) there has been dumping by the exporter of some or all of those goods, but the dumping margin for the exporter, or each such dumping margin, worked out under section 269TACB, 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%;

the CEO must terminate the investigation so far as it relates to the exporter.

CEO must terminate if countervailable subsidisation is negligible

(2) If:

- (a) application is made for a countervailing duty notice; and
- (b) in an investigation, for the purposes of the application, of an exporter to Australia of goods the subject of the application, the CEO is satisfied that:
 - (i) no countervailable subsidy has been received in respect of any of those goods; or
 - (ii) a countervailable subsidy has been received in respect of some or all of those goods but it never, at any time after the start of the investigation period, exceeded the negligible level of countervailable subsidy under subsection (16);

the CEO must terminate the investigation so far as it relates to the exporter.

CEO must terminate if negligible volumes of dumping are found

(3) If:

- (a) application is made for a dumping duty notice; and
- (b) in an investigation for the purposes of the application the CEO is satisfied that the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export; and
 - (ii) that have been, or may be, dumped;is negligible;

the CEO must terminate the investigation so far as it relates to that country.

What is a negligible volume of dumped goods?

- (4) For the purpose of subsection (3), the total volume of goods the subject of the application that have been, or may be, exported to

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Australia over a reasonable examination period from the particular country of export and dumped is taken to be a negligible volume if:

- (a) when expressed as a percentage of the total Australian import volume, it is less than 3%; and
- (b) subsection (5) does not apply in relation to those first-mentioned goods.

Aggregation of volumes of dumped goods

- (5) For the purposes of subsection (4), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and dumped if:
 - (a) the volume of such goods that have been, or may be, so exported from that country and dumped, when expressed as a percentage of the total Australian import volume, is less than 3%; and
 - (b) the volume of goods the subject of the application that have been, or may be, exported to Australia over that period from another country of export and dumped, when expressed as a percentage of the total Australian import volume, is also less than 3%; and
 - (c) the total volume of goods the subject of the application that have been, or may be, exported to Australia over that period from the country to which paragraph (a) applies, and from all countries to which paragraph (b) applies, and dumped, when expressed as a percentage of the total Australian import volume, is more than 7%.

Negligible dumping margins to count in determining volume

- (6) The fact that the dumping margin, or each of the dumping margins, in relation to a particular exporter, 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%, does not prevent exports by that exporter being taken into account:
 - (a) in working out the total volume of goods that have been, or may be, exported from a country of export and dumped; and
 - (b) in aggregating, for the purposes of subsection (5), the volumes of goods that have been, or may be, exported from that country of export and other countries of export and dumped.

CEO must terminate if negligible volumes of countervailable subsidisation are found

- (7) If:
- (a) application is made for a countervailing duty notice; and
 - (b) in an investigation for the purposes of the application, the CEO is satisfied that the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia from a particular country of export during a reasonable examination period; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;is negligible;
- the CEO must terminate the investigation so far as it relates to that country.

What is a negligible volume of subsidised goods?

- (8) For the purposes of subsection (7), the total volume of goods the subject of the application for a countervailing duty notice that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been received is taken to be a negligible volume if:
- (a) that country of export is not a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 3%; or
 - (b) that country of export is a developing country and that total volume, when expressed as a percentage of the total Australian import volume, is less than 4%;
- and subsections (9), (10) and (11) do not apply in relation to those first-mentioned goods.

Aggregation of volumes of subsidised goods from countries other than developing countries

- (9) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received, if:

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- (a) the country of export is not a developing country; and
- (b) the volume of such goods:
 - (i) that have been, or may be, exported to Australia over that period from that country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;when expressed as a percentage of the total Australian import volume, is less than 3%; and
- (c) the volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from another country that is not a developing country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;when expressed as a percentage of the total Australian import volume, is also less than 3%; and
- (d) the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;when expressed as a percentage of the total Australian import volume, is more than 7%.

Aggregation of volumes of subsidised goods from developing countries

- (10) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:
 - (a) the country of export is a developing country; and
 - (b) the volume of such goods:
 - (i) that have been, or may be, exported to Australia over that period from that country; and

- (ii) in respect of which a countervailable subsidy has been, or may be, received;
when expressed as a percentage of the total Australian import volume, is less than 4%; and
- (c) the volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from another country that is a developing country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;
when expressed as a percentage of the total Australian import volume, is also less than 4%; and
- (d) the total volume of goods the subject of the application:
 - (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be received;
when expressed as a percentage of the total Australian import volume, is more than 9%.

Aggregation of volumes of subsidised goods from member countries that are developing countries

- (11) For the purposes of subsection (8), this subsection applies in relation to goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from the particular country of export and in respect of which a countervailable subsidy has been, or may be, received if:
 - (a) the country of export is a member country and a developing country; and
 - (b) the volume of such goods;
 - (i) that have been, or may be exported to Australia over that period from that country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;
when expressed as a percentage of the total Australian import volume, is less than 4%; and
 - (c) the volume of goods the subject of the application:

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- (i) that have been, or may be, exported to Australia over that period from another member country that is a developing country; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;
when expressed as a percentage of the total Australian import volume, is less than 4%; and
- (d) the volume of goods the subject of the application:
- (i) that have been, or may be, exported to Australia over that period from the country to which paragraph (b) applies and from all countries to which paragraph (c) applies; and
 - (ii) in respect of which a countervailable subsidy has been, or may be, received;
when expressed as a percentage of the total Australian import volume, is more than 9%.

Negligible countervailable subsidies to count in determining volume

- (12) The fact that the level of countervailable subsidy that has been, or may be, received in respect of goods that have been, exported, or may be exported, to Australia from a country of export is a negligible level under subsection (16) does not prevent exports from that country being taken into account:
- (a) in working out the total volume of goods that have been, or may be, exported from a country of export and in respect of which a countervailable subsidy has been, or may be, payable; and
 - (b) in aggregating, for the purposes of subsection (9), (10) or (11), volumes of goods that have been, or may be, exported to Australia from that country and other countries and in respect of which a countervailing subsidy has been, or may be, received.

CEO must terminate investigation if dumping causes negligible injury

- (13) If:
- (a) application is made for a dumping duty notice; and

(b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the CEO is satisfied that:

- (i) there has been, or may be, dumping of some or all of those goods; but
- (ii) the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that dumping is negligible;

the CEO must terminate the investigation so far as it relates to that country.

CEO must terminate investigation if subsidisation causes negligible injury

(14) If:

- (a) application is made for a countervailing duty notice; and
- (b) in an investigation, for the purpose of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the CEO is satisfied that:
 - (i) a countervailable subsidy has been, or may be, received in respect of some or all of those goods; but
 - (ii) the injury, if any, to an Australian industry or an industry in a third country has been, or may be, caused by the subsidisation is negligible;

the CEO must terminate the investigation so far as it relates to that country.

CEO must give public notice of termination decisions

(15) If the CEO decides to terminate an investigation so far as it relates to a particular exporter or country of export, the CEO must:

- (a) give public notice of that decision; and
- (b) ensure that:
 - (i) in the case of an exporter, a copy of the notice is sent to the applicant, the exporter and the government of the country of export; or

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- (ii) in the case of a country of export, a copy of the notice is sent to the applicant and the government of that country; and
- (c) inform the applicant of the applicant's right, within 30 days after the first publication of the public notice, to apply for a review of the CEO's decision by the Review Officer under Division 9.

Negligible countervailable subsidisation

- (16) For the purposes of this section, a countervailable subsidy received in respect of goods exported to Australia is negligible if:
- (a) the country of export is not a developing country and the subsidy, when expressed as a percentage of the export price of the goods, is less than 1%; or
 - (b) the country of export is a developing country but not a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 2%; or
 - (c) the country of export is a special developing country and the subsidy, when expressed as a percentage of the export price of the goods, is not more than 3%.

Definition—reasonable examination period

- (17) In this section:

reasonable examination period, in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period comprising:

- (a) the whole or a substantial part of the investigation period; or
- (b) any period after the end of the investigation period that is taken into account for the purpose of considering possible future importations of goods the subject of the application.

total Australian import volume, in relation to a volume of goods the subject of an application for a dumping duty notice or a countervailing duty notice that have been, or may be, exported to Australia from a particular country during a period, means 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 that period.

269TE CEO to have regard to same considerations as Minister

(1) In this section:

decision means:

- (a) a decision of the CEO under section 269TC or 269TD; or
- (b) a decision contained in a report by the CEO under section 269ZZL.

recommendation means:

- (a) a recommendation included in a report prepared by the CEO under section 269TEA, 269ZDA, 269ZG or 269ZHF; or
- (b) a recommendation by the CEO to the Minister under section 269TEB or 269X.

(2) If the CEO is required, in making a recommendation or decision, to determine any matter ordinarily required to be determined by the Minister under this Act or the Dumping Duty Act, the CEO must determine the matter:

- (a) in like manner as if he or she were the Minister; and
- (b) having regard to the considerations to which the Minister would be required to have regard if the Minister were determining the matter.

(3) Subsection (2) applies in respect of goods that have not been imported into Australia at the time of the CEO's determination of a matter in respect of those goods as if:

- (a) the CEO's determination of the matter were being made after an importation of those goods into Australia; and
- (b) the importation had occurred at the time of the anticipated importation of those goods into Australia.

(4) Nothing in this section implies that the determination of a matter by the CEO affects the power of the Minister to make a final determination in respect of that matter for the purposes of the Dumping Duty Act.

Section 269TEA

269TEA Report to Minister concerning publication of notices under this Part

- (1) If:
- (a) application has been made under section 269TB for publication of a dumping duty notice or a countervailing duty notice; and
 - (b) the CEO has initiated an investigation in respect of the application under section 269TC;
- the CEO must, after holding such an investigation and before the end of the period for reporting to the Minister that is referred to in paragraph 269TC(4)(bf), give the Minister a report in respect of the goods the subject of the application that:
- (c) recommends whether any such notice should be published and the extent of any duties that are, or should be, payable under the Dumping Duty Act because of that notice; and
 - (d) recommends, in particular, whether the Minister ought to be satisfied as to the matters in respect of which the Minister is required to be satisfied before such a notice can be published; and
 - (e) recommends, where applicable, whether the Minister ought to give notice to the exporter under subsection 269TG(3D) or to the government of the country of export or to the exporter under subsection 269TJ(2A).
- (2) The CEO's report must, to the extent that it is practicable to do so, also extend to any like goods not covered by the application but imported into Australia during the period starting on the date of initiation of the investigation and ending 20 days after the statement of essential facts in respect of the investigation is placed on the public record.
- (3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the CEO's report in relation to an application under section 269TB for publication of a dumping duty notice or a countervailing duty notice, the CEO:
- (a) must have regard to:
 - (i) the application; and
 - (ii) any submission concerning the publication of that notice to which the CEO has had regard for the purpose of formulating the statement of essential facts; and

- (iii) the statement of essential facts; and
 - (iv) any submission made in response to that statement that is received by Customs within 20 days after the placing of that statement on the public record; and
 - (b) may have regard to any other matters that the CEO considers to be relevant.
- (4) The CEO is not obliged to have regard to any submission made in response to the statement of essential facts that is received by Customs after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the CEO's opinion, prevent the timely preparation of the report to the Minister.
- (5) The report to the Minister must include a statement of the CEO's reasons for any recommendation contained in the report that:
- (a) sets out the material findings of fact on which that recommendation is based; and
 - (b) provides particulars of the evidence relied on to support those findings.

269TEB CEO recommendations concerning undertakings offered after preliminary affirmative determination

- (1) A person who:
- (a) if application has been made for publication of a dumping duty notice in respect of goods—is an exporter of such goods; or
 - (b) if application has been made for publication of a countervailing duty notice in respect of goods—is the government of the country of export, or is an exporter, of such goods;
- may, at any time after the making of a preliminary affirmative determination in respect of the application, indicate in writing to the CEO the terms in which the government or exporter would be prepared to give an undertaking to the Minister.
- (2) The CEO must consider whether he or she is satisfied that those terms are adequate to remove the injury, or the threat of injury, to which the application is addressed so far as the government or exporter offering the undertaking is concerned and, by notice in writing:

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- (a) if the CEO is so satisfied—recommend to the Minister that he or she accept the undertaking; or
 - (b) if the CEO is not so satisfied—indicate to the government or exporter the reasons why he or she is not so satisfied.
- (3) A government or an exporter may, having regard to those reasons, indicate to the CEO that the government or exporter is prepared to give an undertaking to the Minister in revised terms.
- (4) If an undertaking in revised terms is proposed to the CEO, the CEO must:
 - (a) if he or she is not satisfied that the undertaking as so revised is adequate to remove the injury, or the threat of injury, to which the application is addressed—inform the government or exporter to that effect; and
 - (b) if he or she is so satisfied—recommend to the Minister that the Minister accept the undertaking as revised.
- (5) If the Minister accepts the undertaking proposed by a government, investigation of the application is suspended so far as it relates to goods exported from that country.
- (6) If the Minister accepts the undertaking proposed by an exporter, investigation of the application is suspended so far as it relates to goods exported by that exporter.
- (7) If:
 - (a) investigation of an application is suspended:
 - (i) so far as it relates to goods exported from a particular country; or
 - (ii) so far as it relates to goods exported by a particular exporter;on the Minister's acceptance of an undertaking proposed by the government of that country or by that exporter; and
 - (b) that government or exporter breaches that undertaking;the Minister may take such steps as he or she considers necessary to facilitate the resumption of the investigation in so far as it relates to goods exported from that country or by that exporter.
- (8) Without limiting the generality of subsection (7), the Minister may, in writing, require the CEO to resume the investigation so far as it relates to goods exported from the country, or by the exporter, who

breached the undertaking subject to such conditions as to the conduct of the investigation as the Minister considers appropriate.

- (9) In determining the steps to be taken in order to facilitate the resumption of an investigation, and, where the Minister requires that the CEO resume the investigation, to determine the conditions on which the resumed investigation is to be conducted, the Minister must have regard to:
- (a) the procedures that had been completed when the undertaking was accepted; and
 - (b) the length of time that has elapsed since the acceptance of the undertaking.
- (10) The CEO is not obliged to consider the terms of any proposed undertaking provided by a government or an exporter if to do so would prevent the timely making of a recommendation by the CEO to the Minister under section 269TEA.
- (11) If the CEO does not recommend the acceptance of an undertaking under this section, the CEO may nonetheless recommend to the Minister that he or she seek an undertaking from the government or exporter who proposed the undertaking and set out the terms of the undertaking that he or she recommends the Minister seek.

Division 3—Consideration of anti-dumping matters by the Minister

269TF What this Division is about

This Division sets out the role of the Minister in considering an anti-dumping matter. The Minister will normally be acting after receipt of a report from the CEO. In particular, the Division:

- empowers the Minister to publish dumping duty notices or countervailing duty notices;
- empowers the Minister to accept undertakings rather than publish such notices;
- outlines the matters of which the Minister must be satisfied before publishing such notices or accepting such undertakings;
- indicates the period during which such notices or undertakings remain in force;
- sets out the circumstances in which such notices can extend to goods already exported.

269TG Dumping duties

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:
 - (a) the amount of the export price of the goods is less than the amount of the normal value of those goods; and
 - (b) because of that:
 - (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered; or

- (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 8 of the Dumping Duty Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;

the Minister may, by public notice, declare that section 8 of that Act applies:

- (c) to the goods in respect of which the Minister is so satisfied; and
 - (d) to like goods that were exported to Australia after the CEO made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind, that:
- (a) the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
 - (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 8 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

- (3) Where:
- (a) a notice under subsection (1) declares particular goods to be goods to which section 8 of the Dumping Duty Act applies;
- or

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- (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;
the notice must, subject to subsection (3A), include a statement of the respective amounts that the Minister ascertained, at the time of publication of the notice:
 - (c) was or would be the normal value of the goods to which the declaration relates; and
 - (d) was or would be the export price of those goods; and
 - (e) was or would be the non-injurious price of those goods.
- (3A) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:
 - (a) in accordance with subsection 269ZI(9) the Minister is not required to include in the notice a statement of that value or price; but
 - (b) upon request the CEO may notify that value or price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.
- (3B) In ascertaining a normal value and export price for goods of the residual exporter, the Minister must ensure that:
 - (a) the normal value does not exceed the weighted average of normal values for like goods of selected exporters from the same country of export; and
 - (b) the export price is not less than the weighted average of export prices for like goods of selected exporters from the same country of export.
- (3C) For the purposes of subsection (3B), the weighted average of normal values and the weighted average of export prices of the selected exporters must not include any normal value or export price if:
 - (a) in a comparison under section 269TACB involving that normal value or export price, the Minister has determined:

- (i) that there is no dumping; or
 - (ii) 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
 - (b) that normal value was determined under subsection 269TAC(6) or that export price was determined under subsection 269TAB(3).
- (3D) If the export of a consignment of goods to Australia by an exporter has been under consideration by the Minister so as to decide whether or not to publish a dumping duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the exporter stating that:
- (a) the Minister is of the opinion that it would be appropriate for the exporter to give an undertaking in accordance with subsection (4) to the Minister; and
 - (b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.
- (4) Whether or not a notice has been given to an exporter, the Minister may defer the decision to publish or not to publish a dumping duty notice covering that exporter, for so long as the Minister considers appropriate, if the exporter offers, and the Minister accepts, an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:
- (a) causing or threatening material injury to an Australian industry producing like goods; or
 - (b) materially hindering the establishment of such an Australian industry.
- (5) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase to which the undertaking relates is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.
- (6) The Minister:
- (a) may give a notice to an exporter under subsection (3D) whether or not the giving of such a notice has been recommended by the CEO in a report under section 269TEA; and
-

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- (b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the CEO in a recommendation under section 269TEB; and
 - (c) must not give a notice to an exporter under subsection (3D), or accept an undertaking from an exporter, before a preliminary affirmative determination, or an equivalent determination in an investigation conducted under section 269TAG, has been made that extends to that exporter; and
 - (d) must give public notice of any undertaking so accepted.
- (7) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:
- (a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and
 - (b) providing the Minister with appropriate access to such information.
- (8) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister would have published a dumping duty notice or would have decided not to publish such a notice.
- (9) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a dumping duty notice or would have decided not to publish such a notice if the undertaking had not been accepted.
- (10) Subsection (9) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report of the CEO in relation to the matter.
- (11) If the Minister determines under subsection (9) that he or she would have decided not to publish a dumping duty notice, the undertaking automatically lapses.

269TH Third country dumping duties

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:

- (a) the amount of the export price of the goods is less than the amount of the normal value of the goods; and
- (b) because of that:
 - (i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened; or
 - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 9 of the Dumping Duty Act—material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;

the Minister, if requested by the Government of the third country to do so, may, by public notice, declare that section 9 of that Act applies:

- (c) to the goods in respect of which the Minister is so satisfied; and
 - (d) to like goods that were exported to Australia after the CEO made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:
- (a) the amount of the export price of like goods so produced or manufactured that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods so produced or manufactured that may be exported to Australia in the future may be less than the normal value of the goods; and
 - (b) because of that, material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is threatened;

the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods so manufactured or produced that have been exported to Australia), declare that section 9 of the Dumping Duty Act applies to like goods so produced or manufactured that are

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exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

- (3) Where:
- (a) a notice under subsection (1) declares particular goods to be goods to which section 9 of the Dumping Duty Act applies; or
 - (b) a notice under subsection (2) declares like goods in relation to goods of a particular kind to be goods to which that section applies;
- the notice must, subject to subsection (4), include a statement of the respective amounts that the Minister ascertained at the time of publication of the notice:
- (c) was or would be the normal value of the goods to which the declaration relates; and
 - (d) was or would be the export price of those goods; and
 - (e) was or would be the non-injurious price of those goods.
- (4) If any person who has provided information to assist the Minister to ascertain the normal value, export price or non-injurious price of goods to which a declaration under subsection (1) or (2) relates claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of that value or price would adversely affect the person's business or commercial interests:
- (a) in accordance with subsection 269ZI(9), the Minister is not required to include in the notice a statement of that value or price; but
 - (b) upon request the CEO may notify that value or price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.
- (5) In ascertaining a normal value and export price for goods of the residual exporter, the Minister must ensure that:
- (a) the normal value does not exceed the weighted average of normal values for like goods of selected exporters from the same country of export; and
 - (b) the export price is not less than the weighted average of export prices for like goods of selected exporters from the same country of export.

- (6) For the purposes of subsection (5), the weighted average of normal values and the weighted average of export prices of the selected exporters must not include any normal value or export price if:
- (a) in a comparison under section 269TACB involving that normal value or export price, the Minister has determined:
 - (i) that there is no dumping; or
 - (ii) 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
 - (b) that normal value was determined under subsection 269TAC(6) or that export price was determined under subsection 269TAB(3).

269TJ Countervailing duties

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods that have been exported to Australia, that:
- (a) a countervailable subsidy has been received in respect of the goods; and
 - (b) because of that:
 - (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened or the establishment of an Australian industry producing like goods has been or may be materially hindered; or
 - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under section 10 of the Dumping Duty Act—material injury to an Australian industry producing like goods would or might have been caused if the security had not been taken;
- the Minister may, by public notice, declare that section 10 of that Act applies:
- (c) to the goods in respect of which the Minister is so satisfied; and
 - (d) to like goods that were exported to Australia after the CEO made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind that:
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- (a) a countervailable subsidy:
 - (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
 - (ii) may be received in respect of like goods that may be exported to Australia in the future; and
- (b) because of that, material injury to an Australian industry producing like goods has been or is being caused or is being threatened, or the establishment of an Australian industry producing like goods has been or may be materially hindered;

the Minister may, by public notice (whether or not he or she has made, or proposes to make, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 10 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.

- (2A) If the export of a consignment of goods to Australia has been under consideration by the Minister so as to decide whether or not to publish a countervailing duty notice under this section in relation to the goods in the consignment or to like goods, the Minister may give notice, in writing, to the government of the country of export or to the exporter stating that:
 - (a) the Minister is of the opinion that it would be appropriate for the government or the exporter to give an undertaking in accordance with subsection (3) to the Minister; and
 - (b) an undertaking, in the terms set out in the notice, would be satisfactory to the Minister.
- (3) Whether or not a notice has been given to a government or to an exporter in respect of goods in the consignment or like goods, the Minister may defer the decision to publish or not to publish a countervailing duty notice covering those goods if the Minister is given and accepts an undertaking to which subsection (3A) applies.
- (3A) This subsection applies:
 - (a) to an undertaking given by a government—if it is an undertaking that the government will, in relation to any export trade to Australia in like goods, review any countervailable subsidy delivered by that government and make any changes found to be necessary to avoid:

- (i) causing or threatening material injury to an Australian industry producing like goods; or
 - (ii) materially hindering the establishment of such an Australian industry; and
 - (b) to an undertaking by an exporter—if it is an undertaking that the exporter will so conduct future trade to Australia in like goods as to avoid:
 - (i) causing or threatening material injury to an Australian industry producing like goods; or
 - (ii) materially hindering the establishment of such an Australian industry.
- (3B) In giving a notice, and in considering the terms of any proposed undertaking, the Minister must have regard to the desirability that any price increase arising from the undertaking is limited to an amount such that the total price of the goods is not more than the non-injurious price of the goods.
- (3C) The Minister:
- (a) may give a notice under subsection (2A) whether or not the giving of such a notice has been recommended by the CEO in a recommendation under section 269TEA; and
 - (b) may accept an undertaking whether or not the acceptance of such an undertaking has been recommended by the CEO in a recommendation under section 269TEB; and
 - (c) must not:
 - (i) give a notice to a government or exporter under subsection (2A); or
 - (ii) accept an undertaking from a government or an exporter;
in respect of particular goods or like goods unless a preliminary affirmative determination, or an equivalent determination in an investigation conducted under section 269TAG, has been made to the effect that there are grounds for publication of a countervailing duty notice in respect of those like goods; and
 - (d) must not accept an undertaking from an exporter unless the government of the country of export consents to the giving of the undertaking; and
 - (e) must give public notice of any undertaking so accepted.

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- (3D) The acceptance by the Minister of an undertaking may be subject to conditions that include, but are not limited to, conditions relating to:
- (a) giving the Minister, on an agreed basis, information that is relevant to the fulfilment of the undertaking; and
 - (b) providing the Minister with appropriate access to such information.
- (3E) The acceptance by the Minister of an undertaking from an exporter does not prevent the exporter requesting the Minister to determine whether, had the undertaking not been accepted, the Minister would have published a countervailing duty notice or would have decided not to publish such a notice.
- (3F) The Minister must, if an exporter makes such a request, and may, on his or her own initiative, determine whether he or she would have published a countervailing duty notice or would have decided not to publish such a notice if the undertaking had not been accepted.
- (3G) Subsection (3F) does not imply that the Minister is required to make a determination under that subsection before the Minister has received a report from the CEO in relation to the matter.
- (3H) If the Minister determines under subsection (3F) that he or she would have decided not to publish a countervailing duty notice, the undertaking automatically lapses.
- (11) If a notice under subsection (1) or (2) declares particular goods to be goods to which section 10 of the Dumping Duty Act applies, the notice must, subject to subsection (12), include a statement setting out:
- (a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and
 - (b) the amount that the Minister has ascertained, at that time, was or would be the non-injurious price of the goods.

- (12) If any person who has provided information to assist the Minister to ascertain:
- (a) the amount of any countervailable subsidy received in respect of goods to which a declaration under subsection (1) or (2) relates; or
 - (b) the non-injurious price of any goods to which a declaration under subsection (1) or (2) relates;
- claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:
- (c) in accordance with subsection 269ZI(9), the Minister is not required to include a statement of that amount or that price in the notice; but
 - (d) upon request the CEO may provide a statement of that amount or that price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

269TJA Concurrent dumping and subsidy

- (1) Where the Minister is satisfied, as to any goods that have been exported to Australia:
- (a) that the amount of the export price of those goods is less than the amount of the normal value of those goods; and
 - (b) that a countervailable subsidy has been received in respect of the goods; and
 - (c) that, because of the combined effect of the difference between the 2 amounts referred to in paragraph (a) and of the subsidy referred to in paragraph (b):
 - (i) material injury to an Australian industry producing like goods has been or is being caused or is threatened; or
 - (ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;
- the Minister may publish a notice under subsection 269TG(1), a notice under subsection 269TJ(1) or notices under both subsections 269TG(1) and 269TJ(1) at the same time in respect of the same goods.

- (2) Where the Minister is satisfied, as to goods of any kind:
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- (a) that the amount of the export price of like goods that have already been exported to Australia is less than the amount of the normal value of those goods, and the amount of the export price of like goods that may be exported to Australia in the future may be less than the normal value of the goods; and
 - (b) that a countervailable subsidy:
 - (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
 - (ii) may be received in respect of like goods that may be exported to Australia in the future; and
 - (c) that, because of the combined effect of the difference referred to in paragraph (a) and of the subsidy referred to in paragraph (b):
 - (i) material injury to an Australian industry producing like goods has been or is being caused or is being threatened; or
 - (ii) the establishment of an Australian industry producing like goods has been or may be materially hindered;
- the Minister may publish a notice under subsection 269TG(2), a notice under subsection 269TJ(2) or notices under both subsections 269TG(2) and 269TJ(2) at the same time in respect of the same goods.
- (3) If the Minister has had under consideration the export of a consignment of goods to Australia with a view to determining whether or not notices should be published in accordance with subsection (1) or (2), under both section 269TG and 269TJ in respect of the same goods, the Minister may defer the decision to publish or not to publish notices under both of those sections covering the exporter concerned if he or she is given and accepts:
 - (a) an undertaking by the exporter under section 269TG, and an undertaking by the exporter under section 269TJ, in respect of the same goods; or
 - (b) an undertaking by the exporter under section 269TG and an undertaking by the government of the country of origin, or of the country of export, of the goods in the consignment under section 269TJ.

- (4) If, in respect of the same consignment of goods, the Minister accepts 2 undertakings from the exporter of the goods or an undertaking from the exporter of the goods and an undertaking from the government of the country of origin or country of export of the goods, the Minister must be satisfied that the combined effect of the undertakings is not greater than is necessary to prevent material injury or the recurrence of material injury to an Australian industry producing like goods or to remove the actual or possible hindrance to the establishment of such an Australian industry.

269TK Third country countervailing duties

- (1) Subject to section 269TN, where the Minister is satisfied, as to any goods produced or manufactured in a particular country that have been exported to Australia, that:
- (a) a countervailable subsidy has been received in respect of the goods; and
 - (b) because of that:
 - (i) material injury to an industry in a third country engaged in the production or manufacture of like goods has been or is being caused or is being threatened; or
 - (ii) in a case where security has been taken under section 42 in respect of any interim duty that may become payable on the goods under this section—material injury to an industry in a third country engaged in the production or manufacture of like goods would or might have been caused if the security had not been taken;
- the Minister, if requested by the Government of the third country to do so, may, by public notice, declare that section 11 of that Act applies:
- (c) to the goods in respect of which the Minister is so satisfied; and
 - (d) to like goods that were exported to Australia after the CEO made a preliminary affirmative determination under section 269TD in respect of the goods referred to in paragraph (c) but before the publication of that notice.
- (2) Where the Minister is satisfied, as to goods of any kind produced or manufactured in a particular country that:
- (a) a countervailable subsidy:

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- (i) has been received in respect of goods the subject of the application that have already been exported to Australia; and
 - (ii) may be received in respect of like goods that may be exported to Australia in the future; and
 - (b) by reason thereof material injury to an industry in a third country engaged in the production of like goods has been or is being caused or is being threatened;
- the Minister, if requested by the Government of the third country so to do, may, by public notice (whether or not he or she has made, or makes, a declaration under subsection (1) in respect of like goods that have been exported to Australia), declare that section 11 of the Dumping Duty Act applies to like goods that are exported to Australia after the date of publication of the notice or such later date as is specified in the notice.
- (3) If the Minister is satisfied that adequate information as to the amount of countervailable subsidy in relation to goods cannot be obtained for the purposes of this section, the amount of countervailable subsidy is to be taken to be such amount as is determined, in writing, by the Minister.
 - (4) For the purposes of this section, the benefit accruing to an exporter from the use of dual or multiple rates of exchange in relation to the proceeds of export sales is to be taken to be financial assistance paid to the exporter.
 - (5) Where a notice under subsection (1) or (2) declares particular goods to be goods to which section 11 of the Dumping Duty Act applies, the notice must, subject to subsection (6), include a statement setting out:
 - (a) the amount of countervailable subsidy that the Minister ascertained, at the time of publication of the notice, had been or would be received in respect of the goods to which the notice relates; and
 - (b) the amount that the Minister ascertained, at that time, was or would be the non-injurious price of the goods.
 - (6) If any person who has provided information to assist the Minister to ascertain:

- (a) the amount of any countervailable subsidy received in respect of goods to which a notice under subsection (1) or (2) relates; or
- (b) the non-injurious price of such goods; claims, in writing, that the information is confidential or that the inclusion in a notice under that subsection of the amount of that subsidy or of the amount of that non-injurious price would adversely affect the person's business or commercial interests:
- (c) in accordance with subsection 269ZI(9), the Minister is not required to include a statement of that amount or that price in the notice; but
- (d) upon request the CEO may provide a statement of that amount or that price to persons who, in the CEO's opinion, would be affected parties in any review of the rate of interim duty imposed on like goods to the goods to which the declaration relates.

269TL Minister to give public notice not to impose duty

- (1) Where the Minister receives a recommendation from the CEO concerning the imposition of dumping duty, third country dumping duty, countervailing duty or third country countervailing duty on particular goods or on goods of a like kind to particular goods and the Minister decides, after having regard to that recommendation, not to declare those goods to be goods to which section 8, 9, 10 or 11, as the case requires, of the Dumping Duty Act applies, the Minister must give public notice to that effect.

269TM Periods during which certain notices and undertakings to remain in force

- (1) Where a notice is published after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant notification provision in respect of goods of a particular kind, that notice expires 5 years after the day on which it is published unless it is revoked before the end of that period.
- (2) Where an undertaking is entered into after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences under a relevant undertaking provision in respect of goods of a particular kind, that undertaking

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expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

(3) If:

- (a) a notice was or is published before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and
- (b) the notice is in force immediately before the commencement of that section;

the notice expires 5 years after the day on which it was published unless it is sooner revoked.

(3A) If:

- (a) an undertaking was or is entered into before section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences; and
- (b) the undertaking is in force immediately before that section commences;

the Minister must, by notice in writing, give the person who gave the undertaking the opportunity, before the undertaking expires, to extend the undertaking so that it expires 5 years after the day on which it was entered into unless provision is made for its earlier expiration.

(3B) If a person who gave an undertaking of the kind referred to in subsection (3A) refuses or fails to extend its operation in the manner referred to in subsection (3A) before the undertaking expires, the Minister may, in substitution for the extension of the undertaking, publish a dumping duty notice or a countervailing duty notice that commences on the day after the undertaking expired and ends 2 years after that day unless it is sooner revoked.

(7) In this section:

relevant notification provision means subsection 269TG(2), 269TH(2), 269TJ(2), (4), (5) or (6) or 269TK(2).

relevant undertaking provision means subsection 269TG(4) or 269TJ(3).

269TN Retrospective notices

- (1) Subject to this section, the Minister must not cause a notice to be published under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1) in respect of goods that have been entered for home consumption.
- (2) Subsection (1) does not prevent the publication of a notice under subsection 269TG(1), 269TH(1), 269TJ(1) or 269TK(1) in respect of goods that have been entered for home consumption in relation to which security has been taken under section 42 in respect of any interim duty that might become payable under section 8, 9, 10 or 11 of the Dumping Duty Act, as the case may be (not being security that has been cancelled), by reason of the publication of such a notice or in relation to which the Customs had the right to require and take such security (not being security that would have been cancelled under this Act if it had been taken).
- (3) Subsection (1) does not prevent the publication of a notice under subsection 269TG(1) in respect of goods that have been entered for home consumption to which, by virtue of subsection (4) of this section, this subsection applies, if:
 - (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 8 of the Dumping Duty Act or, within that period, the Customs had the right to require and take such security; and
 - (b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind, being injury arising by reason of the amount of the export price of the goods exported being less than the amount of the normal value of the goods exported, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury.
- (4) Subsection (3) applies to goods:
 - (a) that have been imported into Australia by an importer who knew, or ought to have known, that the amount of the export price of the goods was less than the normal value of the goods and that by reason thereof material injury would be caused to an Australian industry; or

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- (b) that are goods of a kind the exportation of which to Australia on a number of occasions has caused, or, but for the publication of a notice under section 269TG in respect of goods of that kind, would have caused, material injury to an Australian industry by reason of the amount of the export price of the goods exported being less than the normal value of the goods exported.
- (4A) Before the Minister decides to publish a dumping duty notice under subsection 269TG(1) in circumstances referred to in subsection (3) of this section, in respect of goods that have already been entered for home consumption, the Minister must:
- (a) inform the importer of the goods of the decision he or she proposes to make; and
 - (b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and
 - (c) give consideration to the comment provided by the importer.
- (5) Subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that have been entered for home consumption if:
- (a) within 90 days after the entry of the goods for home consumption, security has been taken under section 42 in respect of any interim duty that might be payable on goods of the same kind under section 10 of the Dumping Duty Act or, within that period, the Customs had the right to require and take such security; and
 - (b) material injury has been caused to an Australian industry by the export to Australia during a short period of large quantities of goods of the same kind because a countervailable subsidy has been received from the country of export or country of origin of those goods.
- (6) Where:
- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TG(4) is a violation of that undertaking; and
 - (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 8 of the Dumping Duty Act on goods of the kind to which the

undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TG(1) of this Act in respect of goods that:

- (c) have been exported by the exporter;
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that:
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(7) Where:

- (a) the Minister is satisfied that an act or omission of the Government of a country that has given an undertaking in accordance with subsection 269TJ(3) is a violation of that undertaking; and
- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that:

- (c) are the produce or manufacture of that country or have been exported from that country, as the case may be; and
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that:
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

(8) Where:

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking in accordance with subsection 269TJ(3) is a violation of that undertaking; and

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- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 10 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) does not prevent the publication of a notice under subsection 269TJ(1) in respect of goods that:

- (c) have been exported by the exporter; and
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that:
 - (i) was not earlier than the day on which that act or omission occurred; and
 - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

269TP Power to specify goods

A notice under subsection 269TG(2), 269TH(2), 269TJ(2) or 269TK(2) in respect of a kind of goods, may, without limiting the generality of those provisions be expressed to apply to:

- (a) goods of that kind exported from a particular country; or
- (b) goods of that kind exported by a particular exporter.

269U Inquiries in relation to undertakings [*see Note 2*]

- (1) Where the Minister is considering, in relation to goods the subject of an application under section 269TB:
 - (a) whether to give a notice, in accordance with subsection 269TG(3D), to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry; or
 - (b) whether to give a notice, in accordance with paragraph 269TJ(3)(a), to the Government of the country of origin, or of the country of export, of the goods in the consignment or to the exporter of the goods in the consignment in relation to an undertaking in relation to an Australian industry;the CEO may authorize an officer in writing to convene a meeting of representatives of the Australian industry for the purpose of

obtaining information and submissions from those representatives in relation to the question what terms of undertaking should be set out in the notice, if it is to be given, as the terms that may be satisfactory to the Minister.

- (2) An officer authorized under subsection (1) to convene a meeting of representatives of an Australian industry shall give notice in writing to such persons as, in his opinion, represent the Australian industry, setting out:
 - (a) the day, time and place for the convening of the meeting; and
 - (b) the question to be considered by the meeting.
- (3) The officer convening a meeting in pursuance of subsection (2):
 - (a) shall preside at the meeting; and
 - (b) may adjourn the meeting from time to time.
- (4) At a meeting of representatives of an Australian industry convened in pursuance of subsection (2), the representatives attending the meeting may provide information, or make submissions, to the officer convening the meeting in relation to the question being considered by the meeting.
- (5) Nothing in subsection (4) shall be taken to prevent a representative of an Australian industry who attends a meeting convened in pursuance of subsection (2) from providing information or making a submission, in relation to the question considered or to be considered at the meeting, to the officer convening the meeting otherwise than at the meeting or to the Minister.
- (6) The officer convening a meeting in pursuance of subsection (2) may, subject to subsection (7), put before the meeting information in relation to the question being considered by the meeting.
- (7) The officer convening a meeting in pursuance of subsection (2) shall not put before the meeting any information provided to him by another person that is information of a confidential nature (whether or not confidentiality was claimed in respect of the information by the person who provided the information).
- (8) After the close of a meeting convened in pursuance of subsection (2), the officer convening the meeting shall furnish to the CEO for submission to the Minister a report in writing of the information provided and the submissions made at the meeting.

Part XVB Special provisions relating to anti-dumping duties

Division 3 Consideration of anti-dumping matters by the Minister

Section 269U

- (9) Nothing in this section shall be taken, for the purposes of subsection 51(1) of the *Trade Practices Act 1974*, to authorize any act or thing other than the providing of information or the making of a submission, at a meeting of representatives of an Australian industry convened in pursuance of subsection (2), by a representative of the Australian industry to the officer convening the meeting in relation to the question being considered by the meeting.

Division 4—Dumping duty or countervailing duty assessment

269UA What this Division is about

This Division enables a reconciliation of interim duty, and final duty, payable under the Dumping Duty Act. The Division permits an importer who has paid interim duty on particular goods to apply, within specified time limits, for an assessment of duty payable on those goods. In particular, the Division provides that:

- if the duty is less than the interim duty, the excess is to be refunded;
- if the duty is more than the interim duty, the interim duty is treated as duty and the balance waived;
- if the importer fails, within the time limits available, to seek an assessment of duty, the interim duty paid on the goods is taken to be duty actually payable.

269V Importers may apply for duty assessment in certain circumstances

- (1) An importer of goods on which, under the Dumping Duty Act, an interim duty has been paid may, subject to subsection (2), by application lodged with the CEO, request that the Minister make an assessment of the liability of those goods to duty under that Act.
- (2) An application for an assessment of duty under subsection (1) may only be lodged if:
 - (a) the application is lodged not more than 6 months after the end of the particular importation period in which the goods the subject of the application were entered for home consumption; and
 - (b) the importer contends that the total amount of duty payable in respect of those goods under the Dumping Duty Act is less,

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by a specified amount, than the total amount of interim duty that has been paid on those goods under that Act.

269W Manner of making applications for duty assessment

- (1) An application for an assessment of duty on goods of a particular kind entered for home consumption during a particular importation period must be in writing and contain:
 - (a) a full description of the goods of that kind in each consignment imported during the particular importation period; and
 - (b) information concerning the amount of interim duty paid on the goods of that kind in each such consignment; and
 - (c) if an interim dumping duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are the normal value and the export price of goods of that kind in each such consignment; and
 - (d) if an interim countervailing duty has been imposed—a statement of the amounts that, in the opinion of the applicant, are:
 - (i) the amount of the countervailable subsidy received on goods of that kind in each such consignment; and
 - (ii) the amount of the export price of goods of that kind in each such consignment; and
 - (e) a statement of the amount by which the applicant contends that the total interim duty paid on those goods exceeds the total duty payable under the Dumping Duty Act.
- (1A) The application must also contain either:
 - (a) sufficient evidence to establish that the applicant's opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct; or
 - (b) both of the following:
 - (i) the evidence the applicant has to establish that the applicant's opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct;
 - (ii) a commitment that someone else will give the CEO further evidence within 30 days after lodgment or such longer period as the CEO allows, so that the CEO will then have sufficient evidence to establish that the applicant's opinion of those amounts is correct.

- (1B) If the interim duty on the goods covered by the application was calculated using the export price of the goods worked out (under paragraph 269TAB(1)(b) or otherwise) as the difference between:
- (a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and
 - (b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods;
- the requirement in subsection (1A) of this section is met only if the evidence referred to in that subsection includes evidence of the things described in paragraphs (a) and (b) of this subsection.
- (2) An application must be lodged with the CEO:
- (a) by leaving it at a place that has been allocated for lodgment of duty assessment applications at Customs House in Canberra; or
 - (b) by posting it by pre-paid post to a postal address notified in the *Gazette*; or
 - (c) by sending it by electronic facsimile to a facsimile number notified in the *Gazette*;
- and the application is taken to have been lodged when the application, or a facsimile of the application, is first received by an officer of Customs doing duty in relation to final duty assessment applications.
- (3) The day on which an application is taken to have been lodged must be recorded on the application.

269X Consideration of duty assessment applications

- (1) The CEO must, as soon as practicable after the lodgment of an application for assessment of duty in respect of goods that were entered for home consumption during a particular importation period but not more than 155 days after the lodgment of that application, examine the application and decide what recommendation to make to the Minister under subsection (6).

Note: The CEO may be required to reject the application or be able to terminate the examination of it without deciding what recommendation to make to the Minister. See section 269YA.

- (2) If the CEO considers that any person (including the applicant) may be able to supply information relevant to the consideration of the

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application, the CEO may, by notice in writing, request the supply of that information, in writing:

- (a) if the information is sought from a person other than the applicant—within a period specified in the notice ending not later than 120 days after the lodgment of the application; and
 - (b) if the information is sought from the applicant—within a period specified in the notice ending not later than 155 days after the lodgment of the application.
- (3) Where the CEO proposes to take into account any relevant information that was not supplied to the CEO by the applicant, the CEO must:
- (a) give the applicant a copy of the information that he or she proposes to take into account unless, in the opinion of the CEO, the provision of that information would adversely affect the business or commercial interests of a person supplying the information; and
 - (b) invite the applicant, within a specified period ending not later than 155 days after the lodgment of the application, to make any further submission the applicant considers appropriate in relation to that information.
- (3A) However, the CEO must not give the applicant information that the exporter of goods covered by the application supplied to the CEO (whether as a result of a request under subsection (2) or otherwise) that is relevant to working out:
- (a) the normal value of the goods; or
 - (b) the countervailable subsidy relating to the goods; or
 - (c) the export price of the goods;
- unless the exporter indicates that he or she is willing for the CEO to give the information to the applicant under paragraph (3)(a).
- (4) If a person refuses or fails to supply information or to make a submission within the period allowed but subsequently supplies that information or makes that submission, the CEO may disregard that information or submission in considering the application.
- (5) On the basis of the information and evidence contained in the application, any other information provided under subsection (2) or (3) that is not disregarded under subsection (4) and any other information the CEO considers relevant, the CEO must:

- (a) provisionally ascertain, in relation to each consignment of goods to which the application relates, each variable factor relevant to the determination of duty payable on the goods under the Dumping Duty Act; and
 - (b) having regard to those variable factors as so provisionally ascertained and, where appropriate, to the non-injurious price of goods of that kind—provisionally calculate, in respect of each such consignment, the amount of duty payable under the Dumping Duty Act.
- (5A) Subsection (5B) of this section applies if the CEO proposes to ascertain provisionally, for the purposes of paragraph (5)(a) of this section, the export price of goods (under paragraph 269TAB(1)(b) or otherwise) as the difference between:
- (a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and
 - (b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods.
- (5B) In provisionally ascertaining the export price of goods as described in subsection (5A), the CEO must:
- (a) take account of the following in relation to the goods:
 - (i) any change in normal value;
 - (ii) any change in costs incurred between importation and resale;
 - (iii) any movement in resale price which is duly reflected in subsequent selling prices; and
 - (b) despite paragraph 269TAB(1)(b), not deduct the amount of interim duty if the CEO has conclusive evidence of the things mentioned in subparagraphs (a)(i), (ii) and (iii) of this subsection.

An expression used in this subsection and subparagraph 3.3 of Article 9 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement has the same meaning in this subsection as it has in that subparagraph.

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

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- (a) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Dumping Duty Act by at least the amount contended in the application—to recommend to the Minister:
 - (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and
 - (ii) that the Minister order a repayment of the amount of interim duty overpaid; or
 - (b) if satisfied that the total interim duty paid on the goods the subject of the application exceeds the total duty payable under the Dumping Duty Act but not to the extent contended in the application—to recommend to the Minister:
 - (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; and
 - (ii) that the Minister order a repayment of the amount of interim duty overpaid; or
 - (c) if satisfied that the total amount of duty payable under the Dumping Duty Act on the goods the subject of the application is equal to or exceeds the total of interim duty that was paid on the goods—to recommend to the Minister:
 - (i) that the Minister make an assessment of duty by ascertaining, for each consignment of those goods, the variable factors as so provisionally ascertained; but
 - (ii) that the Minister order that any duty in excess of the interim duty paid on those goods be waived.
- (7) As soon as practicable, but not later than 7 days after making a decision under subsection (6), the CEO must:
- (a) notify the applicant, in writing, of the decision made; and
 - (b) if the decision is a negative preliminary decision:
 - (i) inform the applicant of the reasons why the CEO made the decision; and
 - (ii) inform the applicant of the applicant's right, within 30 days of the receipt of the notification, to apply for a review of the CEO's decision by the Review Officer under Division 9.
- (8) The CEO must:

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

269Y Duty assessments

- (1) As soon as practicable after receiving a recommendation from the CEO or from the Review Officer under subsection 269ZZU(2) in relation to goods the subject of an application, the Minister must, having regard to the terms of that recommendation, by notice in writing:
 - (a) ascertain, for the purposes of this Act and the Dumping Duty Act, the variable factors relevant to the determination of duty payable under the Dumping Duty Act in respect of each consignment; and
 - (b) order that the total interim duty overpaid in respect of all consignments to which the application relates be repaid or that the total unpaid duty in excess of the interim duty already paid be waived, as the case requires.
- (2) As soon as practicable after issuing a notice under subsection (1) the Minister must ensure that a copy of that notice is provided to the applicant.
- (3) If the Minister issues a notice under subsection (1) ordering that an amount of interim duty be repaid to an applicant the Commonwealth is liable to make a repayment to the applicant accordingly.
- (4) If:
 - (a) one or more consignments of goods of a particular kind that are the subject of a dumping duty notice or a countervailing duty notice are entered for home consumption during an importation period; and

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- (b) interim duty is paid on those goods under the Dumping Duty Act; and
- (c) application is not lodged under section 269V of this Act for an assessment of duty payable on those goods under the Dumping Duty Act;

then:

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

269YA Rejection etc. of application for duty assessment

- (1) This section has effect despite sections 269X and 269Y if an application under section 269V is lodged with the Customs under section 269W.
- (2) The CEO must reject the application if the CEO is satisfied within 20 days after it is lodged that it does not contain everything it must contain under subsections 269W(1) and (1A).
- (3) The CEO must reject the application if:
 - (a) the application contains a commitment described in paragraph 269W(1A)(b); and
 - (b) within 20 days after the time described in that paragraph, the CEO is satisfied that he or she has not received from the applicant and one or more other persons sufficient evidence to establish that the applicant's opinion of the amounts described in whichever of paragraphs 269W(1)(c) and (d) apply is correct.
- (4) The CEO may terminate examination of the application if he or she is satisfied after the last of the 20 days mentioned in subsection (2) or (3) of this section that he or she does not have enough information to be able to comply with paragraph 269X(5)(a).
- (5) If the CEO rejects the application or terminates examination of it:

- (a) the CEO must notify the applicant in writing of the following:
 - (i) the rejection or termination;
 - (ii) the reasons for the rejection or termination;
 - (iii) the applicant's right, within 30 days of the receipt of the notification, to apply for a review by the Review Officer under Division 9 of the rejection or termination; and
- (b) the CEO must not:
 - (i) provisionally ascertain a variable factor or provisionally calculate an amount under subsection 269X(5) in connection with the application; or
 - (ii) decide what recommendation to make to the Minister under subsection 269X(6) in connection with the application; and
- (c) subsection 269Y(4) has effect as if the application had not been lodged under section 269V.

Division 5—Review of anti-dumping measures

269Z What this Division is about

This Division enables affected parties (exporters, industry etc.) to apply for the review of anti-dumping measures. The Division also empowers the Minister to initiate such a review. The Division:

- sets out the circumstances in which applications can be brought;
- empowers the CEO to recommend, through a Minister's request, an extension of the ambit of a review where appropriate;
- sets out the procedure to be followed by the CEO in dealing with applications or requests and preparing reports for the Minister;
- empowers the Minister, after consideration of such reports, to leave the anti-dumping measures unaltered or to modify them as appropriate;
- empowers the Minister, if interim duty has been paid under the Dumping Duty Act, to make any necessary adjustment of that interim duty.

269ZA Applications and requests for review of anti-dumping measures

- (1) If:
- (a) anti-dumping measures have been taken in respect of goods; and
 - (b) an affected party considers that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:

- (i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters have changed; or
 - (ii) if those measures had not been taken—the Minister would not be entitled to take any such measures;
- the affected party may, by application lodged with the CEO, request that the CEO initiate such a review.
- (2) An application for review of anti-dumping measures must not be made:
 - (a) if the measures involve the publication of a dumping duty notice or a countervailing duty notice—earlier than 12 months after:
 - (i) the publication of the notice; or
 - (ii) the publication of a notice declaring the outcome of the last review of the notice (whether that last review was undertaken at the applicant’s request or not); and
 - (b) if the measures involve the acceptance of an undertaking—earlier than 12 months after:
 - (i) the publication of notice of the acceptance of that undertaking; or
 - (ii) the publication of a notice declaring the outcome of the last review of the undertaking (whether that last review was undertaken at the applicant’s request or not).

Example: If an application under section 269TB resulted in:

- (a) the publication of the acceptance of an undertaking from exporter A on 1 January 1999; and
- (b) the publication of a dumping duty notice covering exporters B and C on 1 March 1999;

an affected party could seek review of the undertaking on 2 January 2000 but could not seek review of both the undertaking and the dumping duty notices until 2 March 2000.

However, the Minister could decide to review the notices before 2 March 2000 either on his or her own initiative or on the recommendation of the CEO. See subsection (3).

- (3) If:
 - (a) anti-dumping measures have been taken in respect of goods; and
 - (b) the Minister considers (either as a result of a recommendation from the CEO under subsection 269ZC(4)
-

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or on his or her own initiative) that it may be appropriate to review those measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally, because:

- (i) one or more of the variable factors relevant to the taking of the measures in relation to that exporter or those exporters may have changed; or
- (ii) if those measures had not been taken—the Minister would not be entitled to take any such measures;

the Minister may, at any time, by notice in writing, request that the CEO initiate a review under this Division.

(4) If, as a result of a person's application under Division 6 for accelerated review of a dumping duty notice or a countervailing duty notice, the Minister has made a declaration under subsection 269ZG(3):

- (a) that person may not make an application, under subsection (1) of this section, for a review of that notice earlier than 12 months after the making of that declaration; but
- (b) for the purpose of determining whether subsection (2) permits any other person to apply for a review of the notice, the making of that declaration is not to be treated as a review of the notice.

(5) If:

- (a) a person applies, under Division 9, for a review of the Minister's decision to publish a dumping duty notice or a countervailing duty notice or not to publish such a notice; and
- (b) as a result of that review:
 - (i) a dumping duty notice or a countervailing duty notice is published by the Minister despite an earlier decision not to publish such a notice; or
 - (ii) a dumping duty notice or countervailing duty notice originally published by the Minister is varied; or
 - (iii) another dumping duty notice or countervailing duty notice is substituted for the notice originally published by the Minister;

then, for the purpose only of determining whether subsection (2) permits a review of the new notice, the notice as varied or the

substituted notice, that new notice, notice as varied or substituted notice has affect as if it had been published at the time of the Minister's decision not to publish a notice, or at the time of publication of the original notice, as the case requires.

269ZB Content and lodgment of applications for review of anti-dumping measures

- (1) An application under subsection 269ZA(1) for review of anti-dumping measures must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated by the form.
- (2) Without otherwise limiting the matters that can be required by the approved form to be included, the application must include:
 - (a) a description of the kind of goods to which the measures the subject of the application relate; and
 - (b) a description of the measures the subject of the application; and
 - (c) if the application is based on a change in variable factors—a statement of the opinion of the applicant concerning:
 - (i) the variable factors relevant to the taking of the measures taken that have changed; and
 - (ii) the amount by which each such factor has changed; and
 - (iii) the information that establishes that amount; and
 - (d) if the application is based on any other circumstances that in the view of the applicant would prevent the Minister, in the absence of the anti-dumping measures, from taking such measures—a statement of those other circumstances.
- (3) An application may be lodged with Customs:
 - (a) by leaving it at a place allocated for lodgment of such applications at Customs House in Canberra; or
 - (b) by posting it by prepaid post to a postal address specified in the approved form; or
 - (c) by sending it by electronic facsimile to a facsimile number specified in the approved form;

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

- (4) The day on which the application is taken to have been lodged must be recorded on the application.

269ZC Consideration of applications and requests for review

- (1) If an application for review of anti-dumping measures is lodged with Customs under section 269ZB, the CEO must, within 20 days after Customs receives the application:
- (a) examine the application; and
 - (b) if the CEO is not satisfied, having regard to the application and to any other information that the CEO considers relevant, of one or more of the matters referred to in subsection (2);
- the CEO must reject the application and inform the applicant, by notice in writing, accordingly.
- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
- (a) whether the application complies with section 269ZB; and
 - (b) whether there appear to be reasonable grounds for asserting either:
 - (i) that the variable factors relevant to the taking of anti-dumping measures have changed; or
 - (ii) that, if the anti-dumping measures to which the application relates had not been taken, the Minister would not be entitled to take such measures.
- (3) The notice informing the applicant of the rejection of the application must set out the reasons why the CEO was not satisfied of one or more of the matters set out in subsection (2).
- (4) If the CEO decides not to reject an application for review of anti-dumping measures, the CEO must either:
- (a) publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory indicating that it is proposed to review the measures covered by the application; or

- (b) if the application for review related only to the review of the measures as they affect particular exporters and the CEO is satisfied that there is a reasonable prospect that a review of such measures as they affect other particular exporters, or as they affect exporters generally, may be justified—
recommend to the Minister that the review applied for be extended accordingly.
- (5) If the CEO is requested by the Minister to undertake a review of anti-dumping measures, either as a result of a recommendation made to the Minister under subsection (4) or otherwise, the CEO must, on receipt of that request, publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory indicating that it is proposed to review the measures covered by the request.
- (6) If:
- (a) the CEO recommends to the Minister under paragraph (4)(b) the extension of a review of anti-dumping measures; but
 - (b) the CEO is informed by the Minister, within 20 days after that recommendation is made, that the Minister does not require the review to be so extended;
- the CEO must, on being so informed, publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory indicating that it is proposed to review the anti-dumping measures under this Division covered by the original application.
- (7) The notice published by the CEO under subsection (4), (5) or (6) must:
- (a) describe the kind of goods to which the review relates; and
 - (b) describe the measures to which the review relates; and
 - (c) indicate that a report will be made to the Minister:
 - (i) within 155 days after the date of publication of the notice; or
 - (ii) if the 110 days referred to in paragraph (e) is extended by the Minister—within the period of 155 days as similarly so extended; and
 - (d) invite interested parties to lodge with the CEO, within a specified period of not more than 40 days after the date of

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publication of the notice, submissions concerning the review;
and

- (e) state that:
 - (i) within 110 days after the publication of the notice; or
 - (ii) such longer period as the Minister allows under section 269ZHI;

the CEO will place on the public record a statement of the essential facts on which the CEO proposes to base a recommendation concerning the measures under review; and

- (f) invite interested parties to lodge with the CEO, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
- (g) indicate the address at which, or the manner in which, submissions under paragraph (d) or (f) can be lodged.

269ZD Statement of essential facts in relation to review of anti-dumping measures

- (1) If the CEO publishes a notice under subsection 269ZC(4), (5) or (6) in relation to the review of anti-dumping measures, he or she must, within the time limit specified for so doing on that notice, place on the public record a statement of the facts (the *statement of essential facts*) on which the CEO proposes to base a recommendation to the Minister in relation to the review of those measures.
- (2) Subject to subsection (3), in formulating the statement of essential facts, the CEO:
 - (a) must have regard to:
 - (i) the application or request; and
 - (ii) any submissions relating generally to the review that are received by Customs within 40 days after the publication of the notice under subsection 269ZC(4), (5) or (6); and
 - (b) may have regard to any other matters that the CEO considers relevant.
- (3) The CEO is not obliged to have regard to any submissions relating generally to the review that are received by Customs after the end of the period referred to in subparagraph (2)(a)(ii) if to do so

would, in the CEO's opinion, prevent the timely placement of the statement of essential facts on the public record.

269ZDA Report on review of measures

- (1) The CEO must, after conducting a review of anti-dumping measures and before the end of the period referred to in paragraph 269ZC(7)(c) as it applies to those measures, give the Minister a report recommending:
 - (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice:
 - (i) that the notice remain unaltered; or
 - (ii) that the notice be revoked in its application to a particular exporter or to a particular kind of goods or revoked generally; or
 - (iii) that the notice have effect in relation to a particular exporter or to exporters generally, as if different variable factors had been ascertained; and
 - (b) to the extent that the measures involved the acceptance by the Minister of an undertaking:
 - (i) that the undertaking remain unaltered; or
 - (ii) that the Minister seek a variation of the terms of the undertaking as indicated in the CEO's report; or
 - (iii) that the Minister indicate to the person who gave the undertaking that the undertaking is no longer acceptable and that the investigation of the need for a dumping duty notice or a countervailing duty notice, as the case requires, covering that person is to be resumed; or
 - (iv) that the Minister indicate to the person who gave the undertaking that the person is released from the undertaking and that the investigation of the need for a dumping duty notice or countervailing duty notice covering that person is terminated.
- (2) Nothing in this section is to be taken to imply that the CEO cannot simultaneously make the same recommendation in relation to more than one exporter or person giving an undertaking.
- (3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the report, the CEO:
 - (a) must have regard to:

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- (i) the application or request for review; and
 - (ii) any submission relating generally to the review to which the CEO has had regard for the purpose of formulating the statement of essential facts in relation to the review; and
 - (iii) that statement of essential facts; and
 - (iv) any submission made in response to that statement that is received by Customs within 20 days after the placing of that statement on the public record; and
- (b) may have regard to any other matter that the CEO considers to be relevant to the review.
- (4) The CEO is not obliged to have regard to any submission made in response to the statement of essential facts that is received by Customs after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the CEO's opinion, prevent the timely preparation of the report to the Minister.
- (5) The report to the Minister must include a statement of the CEO's reasons for any recommendation contained in the report that:
- (a) sets out the material findings of fact on which that recommendation is based; and
 - (b) provides particulars of the evidence relied on to support those findings.

269ZDB Powers of the Minister in relation to review of anti-dumping measures

- (1) After considering the report of the CEO and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with subsection (7), that for the purposes of this Act and the Dumping Duty Act:
- (a) to the extent that the anti-dumping measures concerned involved the publication of a dumping duty notice or a countervailing duty notice:
 - (i) that the notice is to remain unaltered; or
 - (ii) that, with effect from a date specified in the declaration, the notice is taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods; or

- (iii) that, with effect from a date specified in the declaration, the notice is to be taken to have effect or to have had effect, either in relation to a particular exporter or to exporters generally, as if the Minister had fixed different variable factors in respect of that exporter or of exporters generally, relevant to the determination of duty; and
- (b) to the extent that the anti-dumping measures concerned involved the acceptance by the Minister of an undertaking:
 - (i) that the undertaking is to remain unaltered; or
 - (ii) that if, before a date specified in the declaration, the terms of the undertaking are altered in a manner specified in the declaration, the undertaking as so varied will be acceptable to the Minister; or
 - (iii) that the undertaking is no longer acceptable to the Minister and that the investigation of the need for a dumping duty notice or a countervailing duty notice is to be resumed immediately; or
 - (iv) that, with effect from a date specified in the declaration, the person who gave the undertaking is released from the undertaking and that the investigation giving rise to the undertaking is terminated.
- (2) If the Minister makes a declaration under subsection (1), that declaration has effect according to its terms.
- (3) If:
 - (a) the Minister makes a declaration under subsection (1); and
 - (b) under that declaration, new variable factors are taken to have been fixed, in relation to goods exported to Australia by a particular exporter, with effect from a date specified in the declaration; and
 - (c) interim duty paid on such goods on the basis of the variable factors as previously fixed exceeds the interim duty that would be payable on the basis of the new variable factors;the person who paid the interim duty may apply under Division 3 of Part VIII for a refund of the excess.
- (4) The Minister must, as soon as practicable after the making of a declaration under subsection (1) that affects an exporter or person

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giving an undertaking, inform that exporter or person of the terms of the declaration.

- (5) Nothing in this section is to be taken to imply that the Minister cannot simultaneously make the same declaration in relation to more than one exporter or person giving an undertaking.
- (6) For the purposes of a declaration under subsection (1), the Minister must not fix a date:
 - (a) in a circumstance to which subparagraph (1)(a)(ii) or (iii) applies—that is earlier than the date of publication under section 269ZC of a notice indicating the proposal to undertake the review concerned; and
 - (b) in a circumstance to which subparagraph (1)(b)(ii) or (iv) applies—that is earlier than the date of the declaration.
- (7) A notice under subsection (1) must be published in:
 - (a) the *Gazette*; and
 - (b) a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory.

Division 6—Certain exporters may seek accelerated review of dumping duty notices or countervailing duty notices

269ZDC What this Division is about

This Division provides for the early review of a dumping duty notice or a countervailing duty notice on the application of certain exporters of goods covered by the notice. The review can be sought when a review of the notice under Division 5 would not be available and is only open to new exporters.

269ZE Circumstances in which accelerated review may be sought

- (1) If a dumping duty notice or a countervailing duty notice has been published:
 - (a) in respect of goods exported from a particular country of export; or
 - (b) in respect of goods exported by new exporters from a particular country of export;
a new exporter from that country (other than such an exporter in respect of whom a declaration has already been made under subparagraph 269ZG(3)(b)(ii) in respect of a previous application) may, by application lodged with the CEO, request an accelerated review of that notice in so far as it affects that exporter.
- (2) If the CEO is satisfied that:
 - (a) because that exporter refused to co-operate, in relation to the application for publication of that notice, the exportations of that exporter were not investigated; or
 - (b) the exporter is related to an exporter who was a selected exporter in relation to the application for publication of that notice;the CEO may reject the application.

Part XV B Special provisions relating to anti-dumping duties

Division 6 Certain exporters may seek accelerated review of dumping duty notices or countervailing duty notices

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- (3) If, during the course of an accelerated review, the CEO becomes satisfied that:
- (a) the exporter is refusing to co-operate with any aspect of the review; or
 - (b) the exporter is related to an exporter who was a selected exporter in relation to the application for publication of that notice;
- the CEO may terminate the review.
- (4) For the purposes of this section, an exporter is taken to be related to another exporter who is a selected exporter if the 2 exporters are associates of each other under subsection 269TAA(4).

269ZF Application for accelerated review

- (1) An application for accelerated review must be in writing, be lodged in accordance with subsection (2), and contain:
- (a) a description of the kind of goods to which the dumping duty notice or countervailing duty notice relates; and
 - (b) a statement of the basis on which the exporter considers that the particular notice is inappropriate so far as the exporter is concerned.
- (2) An application may be lodged with Customs:
- (a) by leaving it at a place allocated for lodgment of accelerated review applications; or
 - (b) by posting it by pre-paid post to a postal address specified in the *Gazette*; or
 - (c) by sending it by electronic facsimile to a number specified in the *Gazette*;
- and the application is taken to be lodged when the application, or a facsimile of it, is first received by an officer of Customs doing duty in relation to such applications.
- (3) The day on which an application is taken to be lodged must be recorded on the application.

269ZG Consideration of application

- (1) The CEO must, after considering the application and making such inquiries as the CEO thinks appropriate, give the Minister a report recommending:
 - (a) that the dumping duty notice or countervailing duty notice the subject of the application remain unaltered; or
 - (b) that the dumping duty notice or countervailing duty notice the subject of the application be altered:
 - (i) so as not to apply to the applicant; or
 - (ii) so as to apply to the applicant as if different variable factors had been fixed;and set out the CEO's reasons for so recommending.
- (2) A report by the CEO under subsection (1) must be completed as soon as practicable and in any case not later than 100 days after the day the application is lodged.
- (3) After considering the recommendation of the CEO and the reasons for the recommendation, the Minister must, by notice in writing published in the *Gazette*:
 - (a) declare that, for the purposes of this Act and the Dumping Duty Act, the original dumping duty notice or countervailing duty notice is to remain unchanged; or
 - (b) declare that, with effect from the date the application is lodged, this Act and the Dumping Duty Act have effect as if:
 - (i) the original dumping duty notice or countervailing duty notice had not applied to the applicant; or
 - (ii) the original dumping duty notice or countervailing duty notice had applied to the applicant but the Minister had fixed specified different variable factors relevant to the determination of duty payable by the applicant;and, where the Minister does so, the declaration has effect according to its terms.
- (4) The Minister must, as soon as practicable after the issue of a notice under subsection (3), notify the applicant of the term of the notice.

Part XVB Special provisions relating to anti-dumping duties

Division 6 Certain exporters may seek accelerated review of dumping duty notices or countervailing duty notices

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269ZH Effect of accelerated review

If an application for accelerated review of a dumping duty notice or a countervailing duty notice is lodged:

- (a) no interim duty can be collected from the applicant in respect of consignments of goods entered for home consumption after the application is lodged and until the completion of the review; but
- (b) the CEO may, on the importation of goods to which the application relates, require and take securities under section 42 in respect of interim duty that may be payable.

Division 6A—Continuation of anti-dumping measures

269ZHA What this Division is about

This Division provides for the CEO to alert interested parties to the anticipated termination of anti-dumping measures and provide them with an opportunity, before those measures expire, to apply for a continuation of the measures. The Division:

- sets out the consequences if no application is made;
- outlines the procedure to be followed by the CEO in dealing with an application and preparing a report for the Minister;
- empowers the Minister, after consideration of that report, either to decide that the measures will expire or to take steps to ensure the continuation of the measures.

269ZHB Applications for continuation of anti-dumping measures

- (1) Not later than 9 months before particular anti-dumping measures expire, the CEO must publish in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory, a notice:
 - (a) informing persons that the dumping duty notice, countervailing duty notice or undertaking comprising those measures is due to expire on a specified day (the *specified expiry day*); and
 - (b) inviting the following persons to apply within 60 days to the CEO, in accordance with section 269ZHC, for a continuation of those measures:
 - (i) the person whose application under section 269TB resulted in those measures;
 - (ii) persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by those measures.

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- (2) If the Minister makes a declaration under paragraph 269ZG(3)(b) in relation to an anti-dumping duty notice or countervailing duty notice, the original dumping duty notice or countervailing duty notice and that notice as modified because of that declaration are both to be treated, for the purposes of this Division and despite section 269TM, as if they had been issued at the time of issue of the original notice.
- (3) If no application for the continuation of the anti-dumping measures is received by the CEO within the period specified in the notice, then, on the specified expiry day:
 - (a) to the extent that the measures comprise a dumping duty notice—that notice expires; and
 - (b) to the extent that the measures comprise a countervailing duty notice—that notice expires; and
 - (c) to the extent that the measures comprise the giving of an undertaking—the person who gave the undertaking is taken to be released from the undertaking and the investigation giving rise to the undertaking is terminated.

269ZHC Content and lodgment of application for continuation of anti-dumping measures

- (1) An application under section 269ZHB must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated in the form.
- (2) An application may be lodged with Customs:
 - (a) by leaving it at a place allocated for lodgment of such applications at Customs House in Canberra; or
 - (b) by posting it by prepaid post to a postal address specified in the approved form; or
 - (c) by sending it by electronic facsimile to a facsimile number specified in the approved form;and the application is taken to have been lodged when the application, or a facsimile of the application, is first received by an officer of Customs doing duty in relation to applications for continuation of anti-dumping measures.

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

269ZHD Consideration of applications for continuation of anti-dumping measures

- (1) If an application or applications for continuation of anti-dumping measures are lodged with Customs in accordance with section 269ZHC, the CEO must, within 20 days after the end of the 60 days referred to in paragraph 269ZHB(1)(b):
- (a) examine each such application; and
 - (b) if the CEO is not satisfied in relation to any of the applications, having regard to the application and to any other information that the CEO considers relevant, of one or more of the matters referred to in subsection (2);
- the CEO must reject each such application and inform the applicant, by notice in writing, accordingly.
- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
- (a) whether the application complies with section 269ZHC; and
 - (b) whether there appear to be reasonable grounds for asserting that the expiration of the anti-dumping measures to which the application relates might lead, or might be likely to lead, to a continuation of, or a recurrence of, the material injury that the measures are intended to prevent.
- (3) A notice informing an applicant of the rejection of an application must set out the reasons why the CEO was not satisfied of one or more of the matters set out in subsection (2).
- (4) If the CEO decides not to reject an application for continuation of anti-dumping measures taken in respect of goods as they affect a particular exporter of those goods, the CEO must publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory indicating that it is proposed to inquire whether continuation of the measures is justified.
- (5) The notice published by the CEO must:
- (a) describe the kind of goods to which the anti-dumping measures apply; and

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- (b) describe the measures to which the application relates; and
- (c) indicate that a report as to the continuation of these measures will be made to the Minister:
 - (i) within 155 days after the date of publication of the notice; or
 - (ii) if the period of 110 days referred to in paragraph (e) is extended by the Minister—within the period of 155 days as similarly so extended; and
- (d) invite interested parties to lodge with the CEO, within a specified period of not more than 40 days after the date of publication of the notice, submissions concerning the continuation of the measures; and
- (e) state that:
 - (i) within 110 days after the publication of the notice; or
 - (ii) such longer period as the Minister allows under section 296ZHI;the CEO will place on the public record a statement of the essential facts on which the CEO proposes to base a recommendation concerning the continuation of the measures; and
- (f) invite interested parties to lodge with the CEO, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
- (g) indicate the address at which, or the manner in which, submissions under paragraph (d) or (f) can be lodged.

269ZHE Statement of essential facts in relation to continuation of anti-dumping measures

- (1) If the CEO publishes a notice under subsection 269ZHD(4) concerning the continuation of anti-dumping measures, he or she must, within the time limit specified for so doing in the notice, ensure that there is placed on the public record a statement of the facts (the *statement of essential facts*) on which the CEO proposes to base his or her recommendation to the Minister concerning the continuation of those measures.

- (2) Subject to subsection (3), in formulating the statement of essential facts, the CEO:
 - (a) must have regard to:
 - (i) the application concerned; and
 - (ii) any submissions relating generally to the inquiry that are received by Customs within 40 days after the publication of the notice under subsection 269ZHD(4); and
 - (b) may have regard to any other matters that the CEO considers relevant.
- (3) The CEO is not obliged to have regard to any submissions relating generally to the inquiry that are received by Customs after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the CEO's opinion, prevent the timely placement of the statement of essential facts on the public record.

269ZHF Report on application for continuation of anti-dumping measures

- (1) The CEO must, after conducting an inquiry into the continuation of anti-dumping measures and before the end of the period referred to in paragraph 269ZHD(5)(c) as it applies to those measures, give the Minister a report recommending:
 - (a) that the Minister take steps to secure the continuation of the anti-dumping measures the subject of the application; or
 - (b) that the anti-dumping measures expire on the specified expiry date.
- (2) The CEO must not recommend that the Minister take steps to secure the continuation of the anti-dumping measures unless the CEO is satisfied that the expiration of the measures would lead, or would be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the anti-dumping measure is intended to prevent.
- (3) Subject to subsection (4), in deciding on the recommendations to be made to the Minister in the CEO's report, the CEO:
 - (a) must have regard to:
 - (i) the application for continuation of the anti-dumping measures; and

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- (ii) any submission relating generally to the continuation of the measures to which the CEO has had regard for the purpose of formulating the statement of essential facts in relation to the continuation of those measures; and
 - (iii) that statement of essential facts; and
 - (iv) any submission made in response to that statement that is received by Customs within 20 days after the placing of that statement on the public record; and
- (b) may have regard to any other matter that the CEO considers to be relevant to the inquiry.
- (4) The CEO is not obliged to have regard to any submission made in response to the statement of essential facts that is received after the end of the period referred to in subparagraph (3)(a)(iv) if to do so would, in the CEO's opinion, prevent the timely preparation of the report to the Minister.
- (5) The report to the Minister must include a statement of the CEO's reasons for any recommendation contained in the report that:
- (a) sets out the material findings of fact on which that recommendation is based; and
 - (b) provides particulars of the evidence relied on to support those findings.

269ZHG Powers of the Minister in relation to continuation of anti-dumping measures

- (1) After considering the report of the CEO and any other information that the Minister considers relevant, the Minister must, by notice published in accordance with subsection (2), declare whether or not the Minister has decided to take steps to secure the continuation of the anti-dumping measures concerned.
- (2) A notice under subsection (1) must be published:
- (a) before the expiry day specified in the notice; and
 - (b) in the *Gazette*, and a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory.
- (3) If the Minister declares that he or she has decided not to secure the continuation of the anti-dumping measures, then, on the specified expiry day:

- (a) to the extent that the measures comprise a dumping duty notice—that notice expires; and
 - (b) to the extent that the measures comprise a countervailing duty notice—that notice expires; or
 - (c) to the extent that the measures comprise the giving of an undertaking—the person who gave the undertaking is taken to be released from the undertaking and the investigation giving rise to the undertaking is terminated;
- as the case requires.
- (4) If the Minister declares that he or she has decided to secure the continuation of the anti-dumping measures, the continuation of those measures is so secured:
- (a) to the extent that the measures comprise the publication of a dumping duty notice—by the Minister determining, in writing, that the notice continues in force after the specified expiry day; and
 - (b) to the extent that the measures comprise the publication of a countervailing duty notice—by the Minister determining, in writing, that the notice continues in force after the specified expiry day; and
 - (c) to the extent that the measures involve the acceptance of an undertaking—by the person who gave the undertaking agreeing to extend the undertaking beyond the specified expiry day or, if the person will not so agree, by the Minister publishing a dumping duty notice or a countervailing duty notice to take effect from the day after the specified expiry day in substitution for the undertaking.
- (5) If the Minister secures the continuation of anti-dumping measures in accordance with this section, the measures continue in force for 5 years after the specified expiry day unless:
- (a) in the case of a dumping duty notice or a countervailing duty notice—the notice is revoked before the end of that period; or
 - (b) in the case of an undertaking—provision is made for its earlier expiration.

Division 7—Procedural and evidentiary matters

269ZHH What this Division is about

This Division:

- enables extension of the period for placing statements of essential facts on the public record if the Minister is satisfied it is necessary;
- provides for the giving of public notice of decisions and determinations under this Part;
- provides for the CEO to maintain a public record of investigations, reviews and inquiries conducted by the CEO under this Part.

269ZHI Minister may extend time for statements of essential facts

- (1) If the CEO becomes satisfied within 110 days after:
 - (a) the date of initiation of an investigation as specified in a notice published under section 269TC; or
 - (b) the date of publication, under section 269ZC, of a notice of a review of anti-dumping measures; or
 - (c) the date of publication, under section 269ZHD, of a notice of an inquiry into the continuation of anti-dumping measures;that that period is likely to be insufficient for the CEO to place on the public record a statement of essential facts in relation to that investigation, review or inquiry, the CEO may, before the end of that period, give the Minister a written request to extend the period.
- (2) If the CEO makes such a request, he or she must supply reasons why the period is likely to be insufficient.
- (3) The Minister may, having regard to the request and to the reasons:
 - (a) if he or she is satisfied that it is reasonable to do so—
determine the period by which the 110 days is to be extended and notify the CEO accordingly; and

- (b) if he or she is not so satisfied—inform the CEO that the statement must be prepared within the 110 days.

269ZI Public notice

- (1) If a person or body is required or empowered to give public notice of a decision or determination but the provision requiring or empowering the giving of that notice does not specify where the notice is to be given, it is to be published:
- (a) in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory; and
 - (b) if it is a decision under Division 3—in the *Gazette*.
- (2) If a person or body is required or empowered to give public notice of a decision or determination in a particular publication, whether because of subsection (1) or otherwise, that person or body must:
- (a) set out in the notice particulars of the decision or determination made; and
 - (b) set out in the notice, or in a separate report to which the notice refers, the reasons for the decision or determination including all material findings of fact or law on which the decision or determination is based; and
 - (c) if a person has a right to have the decision or determination reviewed by another body or referred to another body for review—set out in the notice full particulars of those rights; and
 - (d) if the material findings of fact or law are contained in a separate report—ensure that copies of the report are freely available and that the manner of obtaining a copy is set out in the notice.
- (3) A person or body required or empowered to give public notice of a decision or determination must:
- (a) ensure that a copy of the notice and, where appropriate, of a report to which the notice refers, is provided to each country whose exporters are affected by the decision or determination; and
 - (b) give a copy of the report to each other interested party known to be affected by the decision or determination.
- (4) If the CEO gives public notice of a decision under paragraph 269TD(4)(b) to require securities in respect of interim duty that

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may become payable, the particulars of the decision to require those securities as set out in the notice should include, in particular:

- (a) the names of the exporters of the goods concerned, or, where this is impracticable, the name of the country or countries of export concerned; and
 - (b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and
 - (c) in the case of an application for the publication of a notice under section 269TG or 269TH:
 - (i) particulars of dumping margins established in relation to each of the exporters involved; and
 - (ii) an explanation of the methods used to compare export prices and normal values to establish those dumping margins;
 - (d) in the case of an application for the publication of a notice under section 269TJ or 269TK—the amount of subsidy established in relation to each of the exporters involved; and
 - (e) the considerations relevant to the determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the preliminary affirmative determination.
- (5) If the Minister gives public notice:
- (a) of a decision under section 269TG or 269TH to publish a dumping duty notice; or
 - (b) of a decision under section 269TL not to publish such a notice;
- then, for the purposes of the public notice:
- (c) the particulars of the decision should include:
 - (i) the matters referred to in paragraphs (4)(a), (b) and (c); and
 - (ii) particulars of the export price and normal value of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TG(1) or (2) or 269TH(1) or (2); and
 - (iii) any considerations relevant to a determination of material injury to an industry, or of material hindrance to the establishment of an industry, for the purposes of the decision; and

- (d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.
- (6) If the Minister gives public notice:
- (a) of a decision under section 269TJ or 269TK to publish a countervailing duty notice; or
 - (b) of a decision under section 269TL not to publish such a notice;
- then, for the purposes of the public notice:
- (c) the particulars of the decision should include:
- (i) the matters referred to in paragraphs (4)(a), (b) and (d); and
 - (ii) particulars of the countervailable subsidy received in respect of the goods concerned ascertained, or last ascertained, for the purposes of subsection 269TJ(1) or (2) or 269TK(1) or (2); and
 - (iii) any considerations relevant to a determination of material injury, to an industry or of material hindrance to the establishment of an industry, for the purposes of the decision; and
- (d) if the decision involves any retrospective imposition of duty—the reasons for the decision should include the basis for the retrospective imposition of duty.
- (7) If the Minister gives public notice under subsection 269TG(6) of a decision to accept an undertaking by an exporter of goods, the particulars of the decision to accept that undertaking should include, in particular:
- (a) the name of the exporter of the goods concerned; and
 - (b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and
 - (c) the price below which, in accordance with the terms of the undertaking, the goods will not be sold for export to Australia.
- (8) If the Minister gives public notice under subsection 269TJ(3C) of a decision to accept an undertaking given by a government of a country of export in relation to the export trade to Australia in like goods, the particulars of the decision to accept that undertaking should include, in particular:
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- (a) the name of the government of the country of export; and
 - (b) a description of the goods either in terms of an item of the *Customs Tariff Act 1995* or otherwise; and
 - (c) details of the changes proposed to be made to the countervailable subsidy provided by that government in respect of those goods.
- (9) If, a person or body is required or empowered to give public notice of a decision or determination in a particular publication:
- (a) the person or body must ensure that the notice given does not contain any information that is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests; but
 - (b) if it is practicable to do so, the person or body should include in the notice a summary of that information in a form that allows a reasonable understanding of the information without breaching that confidentiality or adversely affecting those interests.
- (10) Nothing in this section limits the operation of another provision of this Part that specifies the matters that must be included in a public notice.

269ZJ CEO to maintain public record for certain purposes

- (1) The CEO must, in relation to each application received under section 269TB that leads to an investigation, each application or request under section 269ZA that leads to a review and each application under section 269ZHB that leads to an inquiry:
- (a) maintain a public record of the investigation, review or inquiry conducted for the purposes of the application or request, containing, subject to subsection (2), a copy of all submissions from interested parties, the statement of essential facts compiled in respect of that investigation, review or inquiry, and a copy of all relevant correspondence between the CEO and other persons; and
 - (b) draw the attention of all interested parties to the existence of the public record, and to their entitlement to inspect that record; and
 - (c) at the request of an interested party, make the record available to that party for inspection.

- (2) To the extent that information given to the CEO by a person is claimed to be confidential or to be information whose publication would adversely affect a person's business or commercial interests, the person giving that information must ensure that a summary of that information:
- (a) that contains sufficient detail to allow a reasonable understanding of the substance of the information; but
 - (b) that does not breach that confidentiality or adversely affect those interests;
- is given to the CEO for inclusion in the public record.
- (3) A person is not required to give the CEO a summary of information under subsection (2) for inclusion in the public record if the person satisfies the CEO that there is no way such a summary can be given to allow a reasonable understanding of the substance of the information.
- (4) If oral information is given to the CEO by a person, the CEO must not take that information into account unless it is subsequently put in writing by the person or by the CEO and thereby becomes available, subject to considerations of confidentiality and to the need to protect business and commercial interests, as a part of the public record.
- (5) If:
- (a) in relation to an application under subsection 269TB(1) or (2) or 269ZA(1) or a request under subsection 269ZA(3), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and
 - (b) the CEO indicates to the party that he or she disagrees with the claim;
- but, despite the opinion of the CEO, the person making the claim will not:
- (c) agree to the inclusion of the information in the public record; or
 - (d) prepare a summary of the information for inclusion in that record;
- the CEO may disregard the information unless it is demonstrated that the information is correct.

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(6) If:

- (a) in relation to an application under subsection 269TB(1) or (2) or 269ZA(1) or a request under subsection 269ZA(3), a person claims that information is confidential or would adversely affect a person's business or commercial interests; and
- (b) the CEO indicates to the party that he or she agrees with the claim;

but the person making the claim will not prepare a summary of the information for inclusion in that record, the CEO may disregard the information unless it is demonstrated that the information is correct.

Division 8—Trade Measures Review Officer

269ZK What this Division is about

This Division provides for the establishment of the office of Trade Measures Review Officer. As well as establishing the office, the Division:

- sets out the terms and conditions of appointment to the office;
- sets out the functions and powers of the Review Officer and related matters;
- provides for the appointment of an acting Review Officer;
- provides for the provision of resources to the Review Officer;
- regulates disclosure of information in the control of the Review Officer.

269ZL Trade Measures Review Officer

- (1) There is to be a Trade Measures Review Officer, who is to be appointed by the Minister.
- (2) A person may be appointed as a Trade Measures Review Officer on a full-time basis or on a part-time basis.
- (3) The Minister must not appoint an officer of Customs as the Trade Measures Review Officer.
- (4) A person must not be appointed as the Trade Measures Review Officer unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

269ZM Review Officer's powers

The Review Officer has the powers to do all things necessary or convenient to be done for or in connection with performance of the

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Review Officer's functions under this Part in relation to the review of certain decisions made by the Minister or the CEO.

Note: Sections 269ZZA and 269ZZN set out these reviewable decisions.

269ZN Protection of Review Officer

The Review Officer has, in the performance of his or her duties as the Review Officer, the same protection and immunity as a Justice of the High Court.

269ZO Terms and conditions of appointment

- (1) Subject to this section, the Review Officer holds office for a period not exceeding 3 years as is specified in the instrument of appointment.
- (2) The Review Officer is eligible for re-appointment.
- (3) The Review Officer holds office on such terms and conditions as are determined in writing by the Minister.

269ZOA Disclosure of interests

The Review Officer must give written notice to the Minister of all direct and indirect pecuniary interests that the Review Officer has or acquires in:

- (a) any business in Australia or elsewhere; or
- (b) any body corporate carrying on such a business.

269ZP Outside employment

The Review Officer must not, except with the Minister's approval:

- (a) if appointed on a full-time basis—engage in paid employment outside the duties of the office of Review Officer; or
- (b) if appointed on a part-time basis—engage in paid employment that, in the Minister's opinion, conflicts with the proper performance of the Review Officer's functions.

269ZQ Resignation

The Review Officer may resign by giving the Minister a signed notice of resignation.

269ZR Termination of appointment

- (1) The Minister may terminate the appointment of the Review Officer:
 - (a) if the Review Officer, being appointed on a full-time basis, is absent from duty (except on leave of absence) for 14 consecutive days or for 28 days in any period of 12 months; or
 - (b) because of:
 - (i) misbehaviour of the Review Officer; or
 - (ii) a disability of the Review Officer which renders him or her incapable of performing the functions of the office of Review Officer.
- (2) The Minister must terminate the appointment of the Review Officer if the Review Officer:
 - (a) becomes bankrupt, applies to take the benefit of any laws for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) being appointed on a full-time basis, engages in any paid employment outside the duties of the office of Review Officer; or
 - (c) being appointed on a part-time basis, engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Review Officer's functions.

269ZS Acting Review Officer

- (1) The Minister may appoint a person to act as Review Officer:
 - (a) during a vacancy in the office of Review Officer (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Review Officer is absent from duty or from Australia or is, for any

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other reason, unable to perform the functions of the office of Review Officer.

- (2) A person appointed to act as the Review Officer during a vacancy under paragraph (1)(a) must not be appointed for a term that is more than 6 months, but the person is eligible for re-appointment.
- (3) Anything done by or in relation to a person purporting to act under this section is not invalid because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

269ZT Provision of resources to Review Officer

- (1) The Minister must arrange with the Review Officer for sufficient resources (including personnel) to be made available to the Review Officer to enable the Review Officer to perform the Review Officer's functions effectively.
- (2) If a person is performing services for the Review Officer under such an arrangement, the person must perform those services in accordance with the directions of the Review Officer.

269ZU Review Officer may supply information

- (1) Subject to this section, the Review Officer may supply information (including personal information) received by the Review Officer under this Act to a person.
- (2) The Review Officer or a person whose services are being made available to the Review Officer under section 269ZT must not:
 - (a) except for the purposes of this Act, supply information (other than personal information) to a person if the supplying of the information would constitute a breach of confidence; and
 - (b) supply personal information to a person unless the information is supplied to the CEO, or an officer of Customs designated in writing by the CEO, for purposes relating to a reinvestigation conducted under section 269ZZL.
- (3) Paragraph (2)(a) does not apply to the supply of information to:

- (a) the Minister; or
- (b) the CEO; or
- (c) the Secretary to the Department; or
- (d) an officer of Customs designated in writing by the CEO; or
- (e) a person who is employed in the Department and who is designated in writing by the Secretary to the Department.

269ZV False or misleading information

- (1) A person must not give the Review Officer any written information that the person knows to be false or misleading in a material particular.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to any written information if, at the time when the person gives it to the Review Officer, the person:
- (a) informs the Review Officer that it is false or misleading in a material particular; and
 - (b) specifies in what respect it is, to the person's knowledge, false or misleading in a material particular.

Division 9—Review by Review Officer

Subdivision A—Preliminary

269ZW What this Division is about

This Division sets out the procedures for review by the Review Officer of certain decisions by the Minister or the CEO. It includes:

- provisions dealing with definitions and other preliminary matters (Subdivision A);
- the mechanism for review of certain Ministerial decisions (Subdivision B);
- the mechanism for review of certain decisions made by the CEO (Subdivision C);
- the keeping of a public record in relation to certain reviews conducted under this Division (Subdivision D).

The right to seek review by the Review Officer of Ministerial decisions is conferred only in respect of original Ministerial decisions and not in respect of subsequent Ministerial decisions arising out of reviews of original decisions under Subdivision B or Division 5 or 6.

269ZX Definitions

In this Division:

application means:

- (a) in Subdivision B—an application for a review of a decision by the Minister referred to in section 269ZZA; and
- (b) in Subdivision C—an application for a review of a decision by the CEO referred to in section 269ZZN.

approved form means an approved form within the meaning of section 269ZXA.

finding, in relation to a reviewable decision under Subdivision B, means a finding on a material question of fact or on a conclusion based on that fact.

interested party, in relation to a reviewable decision, means any one of the following persons:

- (a) if there was an application under section 269TB or 269V that led to the making of the reviewable decision—the applicant in relation to that application;
- (b) a person representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods to the goods the subject of the reviewable decision;
- (c) a person who:
 - (i) is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the reviewable decision; or
 - (ii) has been or is likely to be directly concerned with the importation or exportation into Australia of like goods, to the goods the subject to the reviewable decision;
- (d) a person who is or is likely to be directly concerned with the production or manufacture of:
 - (i) the goods the subject of the reviewable decision; or
 - (ii) like goods to those goods that have been, or are likely to be, exported to Australia;
- (e) a trade organisation a majority of whose members are, or are likely to be, directly concerned with:
 - (i) the production or manufacture of the goods the subject of the reviewable decision or of like goods; or
 - (ii) the importation or exportation into Australia of those goods; or
 - (iii) both the activities referred to in subparagraphs (i) and (ii);
- (f) the government of the country of export or country of origin:
 - (i) of goods the subject of the reviewable decision that have been, or are likely to be, exported to Australia; or
 - (ii) of like goods to those goods that have been, or are likely to be, exported to Australia.

reviewable decision means:

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- (a) in Subdivision B—a decision by the Minister referred to in section 269ZZA; and
- (b) in Subdivision C—a decision by the CEO referred to in section 269ZZN.

269ZZA Approved form

- (1) In this Division, a reference to an approved form is a reference to a form that is approved, by instrument in writing, by the Review Officer.
- (2) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

269ZZY Lodgment of application

For the purposes of this Division, an application for a review under Subdivision B or C is lodged with the Review Officer if:

- (a) it is left at a place designated by the Review Officer for the purposes of this paragraph; or
- (b) it is posted by prepaid post to a postal address specified by the Review Officer in the approved form for the application; or
- (c) it is sent by electronic facsimile to a facsimile number specified by the Review Officer in the approved form for the application.

269ZZZ Review Officer to have regard to same considerations as Minister

- (1) If the Review Officer is required, in conducting a review under Subdivision B or C, to determine any matter ordinarily required to be determined by the Minister under this Act or the Dumping Duty Act, the Review Officer must determine the matter:
 - (a) in like manner as if he or she were the Minister; and
 - (b) having regard to the consideration to which the Minister would be required to have regard if the Minister were determining the matter.
- (2) Subsection (1) applies in respect of goods that have not been imported into Australia at the time of the Review Officer's determination in a matter in respect of those goods as if:

- (a) the Review Officer's determination of the matter were being made after an importation of those goods into Australia; and
- (b) the importation occurred at the time of the anticipated importation of those goods into Australia.

Subdivision B—Review of Ministerial decisions

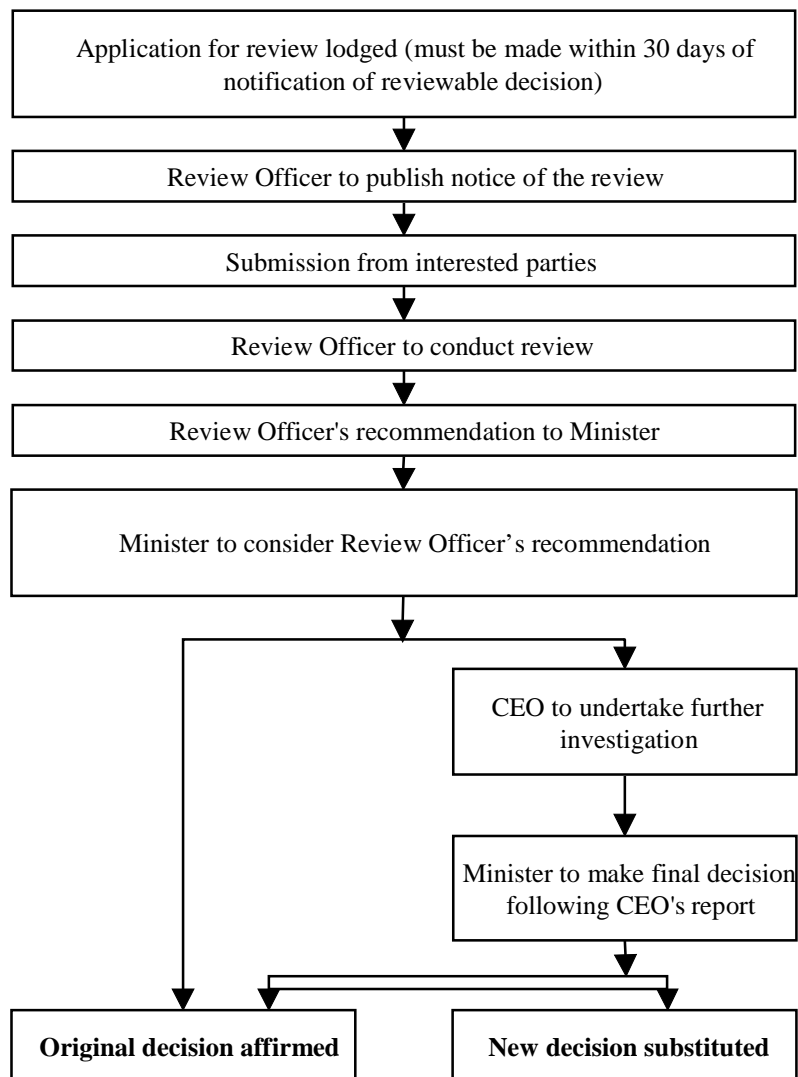
269ZZA Reviewable decisions

- (1) This Subdivision deals with the review by the Review Officer of the following decisions:
 - (a) a decision by the Minister to publish a dumping duty notice under subsection 269TG(1) or (2) or 269TH(1) or (2), or a countervailing duty notice under subsection 269TJ(1) or (2) or 269TK(1) or (2);
 - (b) a decision by the Minister under subsection 269TL(1) not to publish such a notice.
- (2) A reference to a decision by the Minister in paragraph (1)(a) or (b) does not include a reference to such a decision made by the Minister following a review under Division 5 or 6 or this Subdivision.

Note: The Review Officer only has the power to make certain recommendations to the Minister following a review of a decision under this Subdivision (see section 269ZZK). The Review Officer may not revoke the Minister's decision or substitute another decision.

269ZZB Overview of a review of a ministerial decision

The following diagram outlines and summarises the basic procedures in relation to a review under this Subdivision.



269ZZC Who may seek a review?

A person who is an interested party in relation to a reviewable decision may apply for a review of that decision under this Subdivision.

269ZZD When must an application be made?

An application for a review must be made within 30 days after a public notice of the reviewable decision was first published in a newspaper under section 269ZI.

269ZZE How must an application be made?

- (1) An application must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and
 - (d) be signed in the manner indicated in the form.
 - (2) Without limiting paragraph (1)(c), an application must:
 - (a) contain a full description of the goods to which the application relates; and
 - (b) particularise the ground or grounds that, in the applicant's view, would warrant the reinvestigation of a finding or findings that formed the basis of the reviewable decision; and
 - (c) specify the finding or findings.
- Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in an application, including the need to accompany the application with a summary of such information.
- (3) An application is made when it is received by the Review Officer after it has been lodged with the Review Officer in accordance with section 269ZY.

269ZZF Applicant's obligations

An applicant seeking a review under this Subdivision must establish, to the satisfaction of the Review Officer, that, on the basis of the particulars contained in the application, there are

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reasonable grounds to warrant the reinvestigation of the finding or findings specified in the application.

269ZZG Rejection of application—failure to provide sufficient particulars

- (1) The Review Officer must reject an application if the Review Officer is satisfied that the applicant fails to provide sufficient particulars in relation to the application, including particulars concerning the finding or findings to which the application relates, within the 30 day period referred to in section 269ZZD.
- (2) Nothing in subsection (1) prevents the Review Officer from seeking further particulars from an applicant within that period.
- (3) A reference in subsection (1) to sufficient particulars in relation to an application includes a reference to:
 - (a) the matters required to be included in the approved form for the application referred to in paragraph 269ZZE(1)(c); and
 - (b) particulars concerning the application that are sought by the Review Officer from the applicant.

269ZZH Rejection of application—failure to provide summary of confidential information

The Review Officer must reject an application if:

- (a) the applicant in respect of the application claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and
- (b) the applicant fails to give a summary of that information to the Review Officer in accordance with section 269ZZY.

269ZZI Public notification of review

- (1) Before the Review Officer begins to conduct a review, the Review Officer must publish a notice in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory, indicating that the Review Officer proposes to conduct that review.
- (2) Without limiting the matters that must be dealt with in a notice under subsection (1), it must:

- (a) describe the goods to which the application relates; and
- (b) set out the decision that is sought to be reviewed and the ground for seeking the review (including the particular finding or findings the reinvestigation of which is sought by the applicant); and
- (c) invite interested parties to lodge with the Review Officer, within 30 days starting from the date of publication of the public notice, submissions concerning the application; and
- (d) indicate the address at which, or the manner in which, such submissions can be lodged.

269ZZJ Submissions by interested parties

Interested parties in relation to a reviewable decision may, within 30 days after the publication of the notice under section 269ZZI in relation to a review of that decision, make submissions to the Review Officer in accordance with that notice.

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in a submission, including the need to accompany the submission with a summary of such information.

269ZZK The review

- (1) If an application is not rejected under section 269ZZG or 269ZZH, the Review Officer must make a report to the Minister on the application by:
 - (a) recommending that the Minister affirm the reviewable decision; or
 - (b) recommending that the Minister direct the CEO to reinvestigate a finding or findings that formed the basis of the reviewable decision, being the finding or any of the findings specified in the application.
- (2) In a report under subsection (1), the Review Officer must:
 - (a) if the Review Officer is of the view that the finding or findings specified in the application should be affirmed—recommend that the Minister affirm the reviewable decision; and
 - (b) if the Review Officer recommends that a finding or findings be reinvestigated—set out the finding or findings; and

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- (c) set out the reasons for the Review Officer's recommendations.
- (3) The report must be made:
 - (a) at least 30 days after the public notification of the review under section 269ZZI; but
 - (b) not more than 60 days after that notification, or such longer period allowed by the Minister in writing because of special circumstances.
- (4) In making the recommendation, the Review Officer:
 - (a) must not have regard to any information other than the relevant information; and
 - (b) subject to subsection (5), must only have regard to the relevant information and any conclusions based on the relevant information that are contained in the application for the review or in any submissions received from interested parties within 30 days as mentioned in section 269ZZJ.
- (5) The Review Officer must not have regard to a submission under subsection (4) if:
 - (a) the person giving the submission claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and
 - (b) the person fails to give a summary of that information to the Review Officer in accordance with section 269ZZY.
- (6) In this section:
 - relevant information*** means:
 - (a) if the reviewable decision was made pursuant to an application under section 269TB—the information to which the CEO had had regard or was, under paragraph 269TEA(3)(a), required to have regard, when making the findings set out in the report under section 269TEA to the Minister in relation to the making of the reviewable decision; and
 - (b) if the reviewable decision was made pursuant to an investigation initiated by the Minister as mentioned in section 269TAG—the information:

- (i) that was collected for the purposes of that investigation in accordance with the Minister's requirements; and
- (ii) that was before the Minister when the Minister made the reviewable decision.

269ZZL What happens after the Minister receives a recommendation?

- (1) If:
 - (a) the Minister receives a recommendation by the Review Officer to affirm a reviewable decision; or
 - (b) the Minister does not accept a recommendation by the Review Officer to require the CEO to reinvestigate a finding or findings that formed the basis of the reviewable decision; the Minister must, by public notice, affirm the reviewable decision.
- (2) If the Minister accepts a recommendation by the Review Officer to require the CEO to reinvestigate a finding or findings, the Minister must:
 - (a) in writing, require the CEO to:
 - (i) make further investigation of the finding or findings, having regard only to the information and conclusions to which the Review Officer was permitted to have regard; and
 - (ii) report the result of the further investigation to the Minister within a specified period; and
 - (b) by public notice indicate the acceptance of that recommendation (including particulars of the requirements made of the CEO).
- (3) The CEO must conduct an investigation in accordance with the Minister's requirements under subsection (2) and give the Minister a report of the investigation concerning the finding or findings within the specified period.
- (4) In a report under subsection (3), the CEO must:
 - (a) if the CEO is of the view that the finding or any of the findings the subject of reinvestigation should be affirmed—affirm the finding or findings; and
 - (b) set out any new finding or findings that the CEO made as a result of the reinvestigation; and

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- (c) set out the evidence or other material on which the new finding or findings are based; and
- (d) set out the reasons for the CEO's decision.

269ZZM What happens after a reinvestigation?

- (1) After receiving a report by the CEO in respect of a reinvestigation under subsection 269ZZL(3), the Minister must:
 - (a) affirm the reviewable decision concerned; or
 - (b) revoke that decision and substitute a new decision.
- (2) The Minister's decision under subsection (1) takes effect from the time specified by the Minister.
- (3) Without limiting subsection (1), the Minister may, under that subsection:
 - (a) publish a dumping duty notice or countervailing duty notice; or
 - (b) vary a dumping duty notice or countervailing duty notice; or
 - (c) revoke a dumping duty notice or countervailing duty notice and substitute another dumping duty notice or countervailing duty notice (as the case requires).
- (4) The Minister must give public notice of his or her decision.
- (5) In spite of section 269TM, any new dumping duty notice or countervailing duty notice published in the exercise of a power conferred on the Minister under subsection (3) or any such notice as varied or substituted in the exercise of that power, expires:
 - (a) in the case of a notice published after a reinvestigation of a decision not to publish such a notice—5 years after the publication of the decision not to publish such a notice; or
 - (b) in the case of a varied or substituted notice—5 years after the publication of the original notice.

Example: If the reviewable decision relates to a dumping duty notice that was published on 1 July 1998, and if the Minister, following a review under this Division, revokes that notice and substitutes a new dumping duty notice on 1 January 1999, the substituted notice will expire on 1 July 2003.

- (6) If:
 - (a) the Minister makes a decision under subsection (1) to revoke or vary a dumping duty notice or countervailing duty notice

(the *original notice*), or to revoke the original notice and substitute another notice, with effect from a date before the Minister's decision; and

- (b) an amount of interim duty has been paid on goods the subject of the original notice in excess of the amount of interim duty that would have been payable on those goods as a result of the Minister's decision;

the person who paid the interim duty may apply for a refund of the excess under Division 3 of Part VIII.

Subdivision C—Review of CEO's decisions

269ZZN Reviewable decisions

This Subdivision deals with the review of the following decisions:

- (a) a decision by the CEO under subsection 269TC(1) or (2) to reject an application under subsection 269TB(1) or (2), as the case requires (a *negative prima facie decision*);
- (b) a decision by the CEO to terminate an investigation under subsection 269TDA(1), (2), (3), (7), (13) or (14) (a *termination decision*);
- (c) a decision by the CEO to make recommendations to the Minister under paragraph 269X(6)(b) or (c) (a *negative preliminary decision*);
- (d) a decision (a *rejection decision*):
- (i) by the CEO that the CEO is satisfied as described in subsection 269YA(2) or (3); or
- (ii) by the CEO to terminate under subsection 269YA(4) examination of an application.

269ZZO Who may seek a review

The following table sets out who may make an application for a review under this Subdivision.

Persons who may apply for review		
Item	Reviewable decision	Applicant

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Persons who may apply for review		
Item	Reviewable decision	Applicant
1	A negative prima facie decision under subsection 269TC(1) rejecting an application made under subsection 269TB(1)	The person who made the application under subsection 269TB(1)
2	A negative prima facie decision under subsection 269TC(2) rejecting an application under subsection 269TB(2)	The person who made the application under subsection 269TB(2)
3	A termination decision under subsection 269TDA(1), (2), (3), (7), (13) or (14)	The person who made the application referred to in paragraph (a) of subsection 269TDA(1), (2), (3), (7), (13) or (14) (as the case may be)
4	A negative preliminary decision under paragraph 269X(6)(b) or (c)	The person who made the application for an assessment of duty under section 269V that relates to the decision
5	A rejection decision	The applicant under section 269V for an assessment of duty whose application was affected by the decision

269ZZP When must an application be made?

An application for a review must be made within 30 days after the applicant was notified of the reviewable decision concerned by the CEO.

269ZZQ How must an application be made?

- (1) An application must:
 - (a) be in writing; and
 - (b) be in an approved form; and
 - (c) contain such information as the form requires; and

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(d) be signed in the manner indicated in the form.

Note: Sections 269ZZX and 269ZZY set out requirements concerning confidential or sensitive commercial information that might be contained in an application for a review of a termination decision, including the need to accompany the application with a summary of such information.

(2) An application is made when it is received by the Review Officer after it has been lodged with the Review Officer in accordance with section 269ZY.

Note: Section 269ZY sets out the manner by which an application may be lodged with the Review Officer.

269ZZR Rejection of application for review of termination decision

The Review Officer must reject an application for a review of a termination decision if:

- (a) the applicant in respect of the application claims that information included in it is confidential or is information whose publication would adversely affect a person's business or commercial interest; and
- (b) the applicant fails to give a summary of that information to the Review Officer in accordance with section 269ZZY.

269ZZS The review of a negative prima facie decision

- (1) The Review Officer must make a decision on an application for the review of a negative prima facie decision by:
 - (a) affirming the reviewable decision; or
 - (b) revoking the reviewable decision and substituting a new decision accepting the application under subsection 269TB(1) or (2) (as the case requires).
- (2) As soon as practicable after a new decision is substituted under subsection (1), the CEO must publish a notice under subsection 269TC(4) in respect of the application referred to in paragraph (1)(b).
- (3) In making a decision under this section, the Review Officer must have regard only to information that was before the CEO when the CEO made the reviewable decision.

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- (4) The Review Officer's decision must be made within 60 days after the receipt of the application for the review or such longer period allowed by the Minister in writing because of special circumstances.

269ZZT The review of a termination decision

- (1) If an application for the review of a termination decision is not rejected under section 269ZZR, the Review Officer must make a decision on the application by:
 - (a) affirming the reviewable decision; or
 - (b) revoking the reviewable decision.
- (2) As soon as practicable after the Review Officer has revoked a reviewable decision under subsection (1), the CEO must publish a statement of essential facts under section 269TDAA in relation to the application for a dumping duty notice or countervailing duty notice that is related to the review.
- (3) Following the publication of the statement of essential facts under subsection (2), the investigation of the application concerned resumes under this Part.
- (4) In making a decision under this section, the Review Officer must have regard only to information that was before the CEO when the CEO made the reviewable decision.
- (5) The Review Officer's decision must be made within 60 days after the receipt of the application for the review or such longer period allowed by the Minister in writing because of special circumstances.
- (6) The Review Officer must publish his or her decision under this section in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory.

269ZZU The review of a negative preliminary decision

- (1) The Review Officer must make a decision on an application for the review of a negative preliminary decision by:
 - (a) affirming the reviewable decision; or
 - (b) revoking the reviewable decision and substituting a new decision under subsection 269X(6).
-

- (2) If the Review Officer revokes a reviewable decision and substitutes a new decision under subsection 269X(6), the Review Officer must, within 7 days after making the new decision, recommend that the Minister give effect to that decision.
- (3) In making a decision under this section, the Review Officer must have regard only to information of the kinds referred to in subsection 269X(5) that was before the CEO when the CEO made the reviewable decision.
- (4) The Review Officer's decision must be made within 60 days after the receipt of the application for the review or such longer period allowed by the Minister in writing because of special circumstances.

269ZZUA The review of a rejection decision

- (1) The Review Officer must make a decision on an application for the review of a rejection decision by:
 - (a) affirming the rejection decision; or
 - (b) revoking the rejection decision.
- (2) If the Review Officer revokes a rejection decision relating to an application under section 269V, subsection 269YA(5) ceases to apply in relation to the application.
- (3) If the Review Officer revokes a rejection decision relating to rejection under subsection 269YA(2) or (3) of an application under section 269V:
 - (a) the CEO must resume the examination of the application with a view to complying with subsections 269X(5) and (6) within 110 days after being informed of the revocation; and
 - (b) the revocation does not prevent the CEO from terminating the examination under subsection 269YA(4).
- (4) If the Review Officer revokes a rejection decision relating to termination under subsection 269YA(4) of the examination of an application under section 269V, the CEO must comply with subsections 269X(5) and (6) within 110 days after being informed of the revocation.

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- (5) In making a decision under this section, the Review Officer must have regard only to information that was before the CEO when the CEO made the rejection decision.
- (6) The Review Officer's decision must be made within 60 days after the receipt of the application for the review or such longer period allowed by the Minister in writing because of special circumstances.

269ZZV Effect of the Review Officer's decision

The Review Officer's decision on a review:

- (a) has effect as if it were a decision made by the CEO; and
- (b) takes effect from the time the Review Officer makes the decision.

Subdivision D—Public record in relation to reviews

269ZZW Application

This Subdivision applies only to:

- (a) an application for a review of a reviewable decision under Subdivision B; and
- (b) an application for a review of a termination decision under Subdivision C.

269ZZX Public record maintained by Review Officer

- (1) The Review Officer must, in relation to each application for a review:
 - (a) maintain a public record containing:
 - (i) a copy of the application; and
 - (ii) if the Review Officer seeks further information from the applicant—any such information given to the Review Officer by the applicant; and
 - (iii) if the application is an application for a review under Subdivision B—any submissions from interested parties concerning the application that were received by the Review Officer under section 269ZZI; and

- (b) at the request of an interested party in respect of the reviewable decision concerned, make that record available to that party for inspection.
- (2) The public record must not contain any information in respect of which a summary is given to the Review Officer under subsection 269ZZY(1).

269ZZY Confidential and sensitive commercial information

- (1) To the extent that information provided to the Review Officer by a person is claimed by the person to be:
 - (a) confidential; or
 - (b) information whose publication would adversely affect a person's business or commercial interest;the person giving that information must, at the time the information is given to the Review Officer, also give a summary of that information to the Review Officer for inclusion in the public record maintained under section 269ZZX.
- (2) The summary must:
 - (a) contain sufficient detail to allow a reasonable understanding of the substance of the information; but
 - (b) does not breach the confidentiality or adversely affect the interests concerned.

Note: For the consequences of failing to comply with subsection (1), see sections 269ZZG and 269ZZQ and subsection 269ZZJ(5).

Part XVI—Regulations, by-laws and business rules

270 Regulations

- (1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Customs, and in particular for prescribing:
 - (a) the nature, size, and material of the packages in which imported goods or goods for export, or goods for conveyance coastwise from any State to any other State, are to be packed, or the coverings in which they are to be wrapped;
 - (b) the maximum or minimum weight or quantity of imported goods, or goods for export, or goods for conveyance coastwise from any State to any other State which may be contained in any one package;
 - (d) the conditions as to purity, soundness, and freedom from disease to be conformed to by goods for export; and
 - (e) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.
- (2) The regulations may prescribe penalties not exceeding \$1,000 in respect of any contravention of any of the regulations.
- (3) The power to make regulations for the purposes of the definition of *airport shop goods* in subsection 4(1) extends to making regulations that:
 - (a) declare local use goods to be airport shop goods for the purposes of section 96B; or
 - (b) declare a class of local use goods, or a class of goods that includes local use goods, to be a class of airport shop goods for the purposes of that section.
- (3A) Where, in any regulations made for the purposes of this Act, reference is made to the document known as the Australian Harmonized Export Commodity Classification published by the Australian Bureau of Statistics, that reference shall, unless the

contrary intention appears in those regulations, be read as a reference to that document as so published and as in force from time to time.

- (4) The power to make regulations for the purposes of paragraph 96B(3)(b) or (c) extends to making regulations that prescribe quantities in relation to airport shop goods that are local use goods.
- (5) In subsections (3) and (4), **local use goods** means goods:
 - (a) that have not been, and are not proposed to be, imported into Australia; and
 - (b) that have not been, and are not proposed to be, exported from Australia.

271 CEO may make by-laws

Where:

- (a) an item of a Customs Tariff, or a proposed item of a Customs Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law; or
 - (b) under an item of a Customs Tariff, or a proposed item of a Customs Tariff, any matter or thing is expressed to be, or is to be determined, as prescribed or defined by by-law;
- the CEO may, subject to the succeeding sections of this Part, make by-laws for the purposes of that item or proposed item.

272 By-laws specifying goods

The CEO may specify in a by-law made for the purposes of an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law:

- (a) the goods, or the class or kind of goods, to which that item or proposed item applies;
- (b) the conditions, if any, subject to which that item or proposed item applies to those goods or to goods included in that class or kind of goods; and
- (c) such other matters as are necessary to determine the goods to which that item or proposed item applies.

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273 Determinations

- (1) The CEO may determine, by instrument in writing, that, subject to the conditions, if any, specified in the determination, an item, or a proposed item, of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-laws shall apply, or shall be deemed to have applied, to the particular goods specified in the determination.
- (2) The CEO may make a determination under the last preceding subsection for the purposes of an item, or a proposed item, of a Customs Tariff whether or not he has made a by-law for the purposes of that item or proposed item.
- (3) Where, under this section, the CEO determines that an item, or a proposed item, of a Customs Tariff shall apply, or shall be deemed to have applied, to goods, that item or proposed item shall, subject to this Part and to the conditions, if any, specified in the determination, apply, or be deemed to have applied, to those goods as if those goods were specified in a by-law made for the purposes of that item or proposed item and in force on the day on which those goods are or were entered for home consumption.

273A By-laws and determinations for purposes of repealed items

The CEO may make a by-law or determination for the purposes of an item of a Customs Tariff notwithstanding that the item has been repealed before the making of the by-law or determination, but the by-law shall not apply to, and the determination shall not be made in respect of, goods entered for home consumption after the repeal of that item.

273B Publication of by-laws and notification of determinations

- (1) A by-law made under this Part:
 - (a) shall be published in the *Gazette*, and has no force until so published;
 - (b) shall, subject to this Part:
 - (i) take effect, or be deemed to have taken effect, from the date of publication, or from a date (whether before or after the date of publication) specified by or under the by-law; or

- (ii) have effect or be deemed to have had effect, for such period (whether before or after the date of publication) as is specified by or under the by-law; and
 - (c) shall not be deemed to be a Statutory Rule within the meaning of the *Rules Publication Act 1903-1939*.
- (2) Notice of the making of a determination under this Part shall be published in the *Gazette* as soon as practicable after the making of the determination and the notice shall specify:
- (a) the kind of goods to which the determination applies;
 - (b) the conditions, if any, specified in the determination; and
 - (c) the item or proposed item for the purposes of which the determination was made.

273C Retrospective by-laws and determinations not to increase duty

This Part does not authorize the making of a by-law or determination which has the effect of imposing duty, in relation to goods entered for home consumption before the date on which the by-law is published in the *Gazette* or the determination is made, as the case may be, at a rate higher than the rate of duty payable in respect of those goods on the day on which those goods were entered for home consumption.

273D By-laws and determinations for purposes of proposals

Where:

- (a) a by-law or determination is made for the purposes of a Customs Tariff proposed in the Parliament or of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament; and
- (b) the proposed Customs Tariff becomes a Customs Tariff or the proposed alteration is made, as the case may be;

the by-law or determination shall have effect for the purposes of that Customs Tariff or of that Customs Tariff as so altered, as the case may be, as if the by-law or determination had been made for those purposes and the proposed Customs Tariff or the Customs Tariff as proposed to be altered, as the case may be, had been in force on the day on which the by-law or the determination was made.

Section 273EA

273EA Notification of proposals when House of Representatives is not sitting

- (1) The Minister may, at any time when the Parliament is prorogued or the House of Representatives has expired by effluxion of time, has been dissolved or is adjourned otherwise than for a period not exceeding 7 days, publish in the *Gazette* a notice that it is intended, within 7 sitting days of the House of Representatives after the date of the publication of the notice, to propose in the Parliament a Customs Tariff or Customs Tariff alteration in accordance with particulars specified in the notice and operating as from such time as is specified in the notice, not being:
 - (a) in the case of a Customs Tariff or Customs Tariff alteration that could have the effect of making the duty payable by any person importing goods greater than the duty that would, but for that Customs Tariff or Customs Tariff alteration, be payable—a time earlier than the time of publication of the notice; or
 - (b) in any other case—a time earlier than 6 months before the time of publication of the notice.
- (2) Where notice of intention to propose a Customs Tariff or a Customs Tariff alteration has been published in accordance with this section, the Customs Tariff or Customs Tariff alteration shall, for the purposes of this Act (other than section 226) and any other Act, be deemed to be a Customs Tariff or Customs Tariff alteration, as the case may be, proposed in the Parliament.

273EB Business rules

- (1) The CEO may, in writing, make business rules that are to be complied with by persons who wish to enter into, or are parties to, import information contracts or export information contracts.
 - Note 1: If a party to an import information contract fails to comply with any business rules, the CEO may terminate the contract: see paragraph 71DD(4)(c).
 - Note 2: If a party to an export information contract fails to comply with any business rules, the CEO may terminate the contract: see paragraph 114BB(4)(c).
- (2) The matters that may be dealt with by business rules include, but are not limited to:

- (a) the qualifications to be held, and the conditions and standards to be complied with, by persons who wish to enter into, or are parties to, import information contracts or export information contracts; and
 - (b) the persons who are eligible to be chosen to carry out audits in respect of persons who wish to enter into such contracts.
- (3) An instrument making, varying or revoking any business rules is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

273F Interpretation

- (1) In this Part:

proposed item of a Customs Tariff means:

- (a) an item of a Customs Tariff proposed in the Parliament; or
 - (b) an item of a Customs Tariff as proposed to be altered by a Customs Tariff alteration proposed in the Parliament.
- (2) Unless the contrary intention appears, a reference in this Part to an item of a Customs Tariff includes a reference to a heading and a subheading in Schedule 3 to the *Customs Tariff Act 1995*.

Part XVII—Miscellaneous

273G Briefing of Leader of Opposition on certain matters

The Minister shall, from time to time, and not less frequently than once each year, arrange for the Leader of the Opposition in the House of Representatives to be briefed on matters relating to contraventions of this Act in respect of narcotic substances.

273GAA Notices

- (1) Where a person makes a decision to which subsection (2) applies in relation to a warehouse licence or a broker's licence, the person shall cause to be served, either personally or by post, on the applicant or the holder of the licence, as the case requires, a notice in writing setting out the decision.
- (2) For the purposes of subsection (1), the following decisions are decisions to which this subsection applies:
 - (a) a decision under Part V refusing to grant a warehouse licence;
 - (b) a decision under subsection 82(5) refusing to vary the conditions specified in a warehouse licence;
 - (c) a decision under subsection 84(3) refusing to renew a warehouse licence;
 - (d) a decision under Division 3 of Part XI refusing to grant a broker's licence;
 - (e) a decision under subsection 183CF(1) or (2) refusing to vary the endorsements on a broker's licence;
 - (f) a decision under subsection 183CG(7) refusing to vary the conditions specified in a broker's licence.
- (3) Where a Collector makes:
 - (a) a decision under section 95 refusing to cancel a valuation of warehoused goods and to revalue the goods; or

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- (b) a decision under subsection 97(1) refusing to grant permission to the owner of warehoused goods;
the Collector shall cause to be served, either personally or by post, on the owner of the goods, a notice in writing setting out the decision.
- (4) Where the CEO makes a decision under subsection 119(2) not to grant a Certificate of Clearance, he shall cause to be served, either personally or by post, on the applicant for the Certificate, a notice in writing setting out the decision.
- (5) Where a Collector makes a decision under section 126 refusing to allow the export of goods by a person, he shall cause to be served, either personally or by post, a notice in writing setting out the decision on the person.
- (7) A notice in accordance with section 86 to the holder of a warehouse licence shall state the ground or grounds on which the notice is given.
- (8) A notice under subsection 87(2) of the cancellation by the CEO of a warehouse licence shall set out the CEO's findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for the cancellation.
- (9) A notice under subsection 183CS(1) shall set out the ground or grounds of the decision of the CEO to which the notice relates.
- (10) A reference in this section to a notice in writing setting out the decision of a person is a reference to a notice in writing setting out the decision and the person's findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

273GAB Authorisation to disclose information to Customs

- (1) A person may disclose to an officer information about any matter relating to actual or proposed travel:
- (a) of any person or goods on the way (directly or indirectly) to Australia; or
 - (b) involving the departure from Australia of any person or goods;

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even if the information is personal information (as defined in the *Privacy Act 1988*).

Note: The Australian Customs Service (including the officer) is obliged to handle personal information in accordance with the *Privacy Act 1988*. Section 16 of the *Customs Administration Act 1985* also limits the recording and disclosure of information disclosed to the officer under this section.

- (2) To avoid doubt, this section does not:
- (a) require anyone to disclose information to an officer; or
 - (b) affect a requirement of or under another provision of this Act for a person to disclose information to an officer (whether by answering a question, by providing a document or by other means).

273GA Review of decisions

- (1) Subject to this section, applications may be made to the Administrative Appeals Tribunal for review of:
- (aa) a determination by the CEO for the purposes of subsection 28(2);
 - (ab) a determination by the CEO for the purposes of subsection 28(3);
 - (a) a decision of a Collector under section 35A making a demand;
 - (aaa) a decision by the CEO for the purposes of paragraph 58A(6)(c) refusing to authorise a journey;
 - (aaaa) a decision by the CEO under subsection 64AB(14) refusing to grant a further moratorium period;
 - (aaac) a decision by the CEO under section 67ED to refuse to register a person as a special reporter;
 - (aaad) a decision by the CEO under section 67EK to refuse to renew a person's registration as a special reporter;
 - (aaae) a decision by the CEO under section 67EM to cancel the registration of a special reporter generally or in relation to low value cargo of a particular kind;
 - (aaaf) a decision by the CEO under section 67G to refuse to register a person or a partnership as a re-mail reporter;
 - (aaag) a decision by the CEO under section 67G or 67J to impose a condition on a re-mail reporter's registration;

- (aaah) a decision by the CEO under section 67J to vary a condition of a re-mail reporter's registration;
- (aaai) a decision by the CEO under section 67K to cancel a re-mail reporter's registration;
- (aab) a decision by an officer under section 69 to refuse to grant a permission under that section;
- (aac) a decision by an officer under section 69 to revoke a permission granted under that section;
- (aad) a decision by an officer under section 70 to refuse to grant a permission under that section;
- (aae) a decision by an officer under section 70 to revoke a permission granted under that section;
- (aaf) a decision by an officer under section 71 to refuse to authorise the delivery of goods into home consumption;
- (aafa) a decision by an officer under section 71AAAC or 71AAAM to suspend an authority to deliver goods into home consumption;
- (aafb) a decision by an officer under section 71AAAN to cancel an authority to deliver goods into home consumption;
- (aag) a decision by an officer under section 71C, 71DE or 71DJ to cancel or suspend an authority to deal with goods;
- (aah) a decision by an officer under section 71E to refuse an application of a permission to move goods;
- (aaq) a decision by the CEO under section 77G not to grant a depot licence;
- (aar) a decision by the CEO under section 77J not to extend the period within which further information concerning a depot licence application is to be supplied;
- (aara) a decision by the CEO under subsection 77LA(1) not to vary a depot licence;
- (aarb) a decision by the CEO under subsection 77LA(3) not to allow a further period;
- (aas) a decision by the CEO under section 77P not to grant an extension of time;
- (aat) a decision by the CEO under section 77Q to vary the conditions of a depot licence;
- (aau) a decision by the CEO under section 77V to revoke a depot licence;

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- (b) a decision of the CEO or a Collector for the purposes of Part V;
- (baa) a decision of the CEO giving an approval, or refusing to give an approval, under paragraph 105(2)(a);
- (ba) a decision by the CEO under section 114B to refuse to grant a person confirming exporter status;
- (bb) a decision by the CEO under section 114B to cancel or modify a person's status as a confirming exporter;
- (bc) a decision by an officer under section 114C to cancel or suspend an authority to deal with goods;
- (c) a decision by the CEO under section 119 not to grant a Certificate of Clearance;
- (d) a decision by a Collector under section 126 refusing to allow the export of goods;
- (e) a decision of the CEO under section 132B making a quota order;
- (f) a decision of the CEO under section 132C varying a quota order;
- (h) a decision of the CEO under subsection 161J(2) specifying a rate of exchange;
- (haaa) a decision of a Collector under section 163 in relation to an application for a refund, rebate or remission of duty;
- (j) a decision of the CEO under section 164B;
- (ja) a decision of the CEO under subsection 165(3) demanding repayment of the whole or a part of a rebate of duty;
- (jb) a decision of a Collector under section 168 in relation to an application for a drawback of duty;
- (k) a decision of the Minister, the CEO, or a Collector for the purposes of Part XI;
- (m) a decision under subsection 269H(1) to reject an application for a TCO;
- (maa) a decision under subsection 269L(4) to the effect that the CEO is not satisfied that a proposed amendment of a description of goods to be covered by a TCO does not contravene subsection 269L(3);
- (ma) a decision of the CEO under section 269HA rejecting a TCO application;

- (n) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269P(1);
 - (o) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269Q(1);
 - (p) a decision of the CEO under subsection 269SA(1) or (2);
 - (q) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269SC(1);
 - (r) a decision of the CEO under section 269SH on a reconsideration of a decision of the CEO under subsection 269SC(4);
 - (s) a decision by the CEO under subsection 269SD(1AB), (1), (1A), (2) or (5).
- (2) Where a dispute referred to in subsection 167(1) has arisen and the owner of the goods has, in accordance with that subsection, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the decision to make that demand and of any other decision forming part of the process of making, or leading up to the making of, that first-mentioned decision.
- (3) Subsection 119(3) does not apply where a Certificate of Clearance is granted to the ship or aircraft referred to in that subsection as a result of a review by the Tribunal.
- (5) An application may not be made to the Tribunal under subsection (2) unless the application is made within the time specified in paragraph 167(4)(a) or (b), whichever is appropriate.
- (6) Where the owner of goods has made an application to the Tribunal under subsection (2), he is not entitled to bring an action under subsection 167(2).
- (6A) An application may not be made to the Tribunal in respect of a decision under section 269SH on a reconsideration of a decision of the CEO under subsection 269P(1), 269Q(1) or 269SC(1) or (4) unless the person who makes the application to the Tribunal is:
- (a) an affected person within the meaning of section 269SH; and
 - (b) is adversely affected by the decision on the reconsideration.

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- (7) Where, on an application made under subsection (2), the Tribunal has made a decision reviewing a demand made by the Collector, the proper duty payable in respect of the goods concerned shall be deemed to be:
- (a) the sum determined to be the proper duty by, or ascertained to be the proper duty in accordance with:
 - (i) the decision of the Tribunal; or
 - (ii) an order of a court on appeal from that decision; or
 - (b) the sum paid under protest;
- whichever is the less.
- (8) In this section, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

273H Review of decisions under Customs Tariff Act

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the CEO under section 9 of the *Customs Tariff Act 1995*.
- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

273HA Review of decisions under the Customs Tariff (Miscellaneous Amendments) Act 1996

- (1) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the CEO to remake a Commercial Tariff Concession Order or Tariff Concession Order under paragraph (5)(d) of item 3 of Schedule 2 to the *Customs Tariff (Miscellaneous Amendments) Act 1996*.
- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

273J Review of decisions under Customs Tariff (Coal Export Duty) Act

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of a Collector made for the purposes of the definition of **high quality coking coal** in section 4 of the *Customs Tariff (Coal Export Duty) Act 1975* or for the purposes of section 7

of that Act and for review of decisions of the Minister for Resources and Energy made for the purposes of section 8 of that Act.

- (2) In subsection (1), **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

273JA Review of decisions relating to Customs Tariff (Stand-By Duty) Act

- (1) Applications may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision of the Minister for Resources and Energy that he or she is satisfied, or not satisfied, of a matter for the purposes of the definition of **list of eligible importers** in subsection 4(1) of the *Customs Tariff (Stand-By Duty) Act 1985*;
 - (b) a decision of that Minister under paragraph 10(1)(b) of that Act that he or she is satisfied, or not satisfied, of a matter; or
 - (c) a decision of that Minister under paragraph 11(1)(b) of that Act that he or she is satisfied, or not satisfied, of a matter.
- (2) In this section, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

273K Statement to accompany notification of decisions

- (1) Where notice in writing of the making of a decision of a kind referred to in subsection 273GA(1) or (2) or section 273H or subsection 273J(1) or 273JA(1) is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.
- (2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

Section 273L

273L Entry and transmission of information by computer

If this Act requires or permits information (including information in the form of particular words) to be entered or transmitted by computer, the information may be entered or transmitted by computer in an encoded form chosen by Customs.

274 Commissioned ships and aircraft to be reported

The person in command of any ship or aircraft holding commission from His Majesty or from any foreign State having on board any goods other than ship's or aircraft's stores laden in a place outside Australia or in Australia shall when called upon by the CEO or an authorised officer so to do:

- (a) deliver an account in writing of the quantity of such goods, the marks and numbers thereof, and names of the shippers and consignees, and declare to the truth thereof;
- (b) answer questions relating to such goods.

275 Commissioned ships and aircraft may be searched

Ships or aircraft under commission from His Majesty or any foreign State having on board any goods other than ship's or aircraft's stores laden in a place outside Australia or in Australia may be boarded and searched by the CEO or an authorised officer in the same manner as other ships or aircraft, and the CEO or the authorised officer may secure any such goods and for that purpose bring them ashore.

275A Direction not to move a ship or aircraft from a boarding station

- (1) Where a Collector considers that it is desirable, for the purposes of the Customs, to hold a ship or aircraft at a boarding station, the Collector may, by notice in writing delivered to the master of the ship or the pilot of the aircraft before it leaves the boarding station, direct the master or pilot not to move the ship or aircraft from the boarding station until the master or pilot receives permission, in writing, from a Collector to do so.
- (2) A person shall not disobey a direction given to him, and in force, under this section.

Penalty: 100 penalty units.

(2A) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) Where a direction not to move a ship or aircraft from a boarding station has been given under subsection (1):

- (a) the direction ceases to have any force or effect at the expiration of a period of 3 days after the day on which the direction is given; and
- (b) no further direction in respect of the ship or aircraft shall be given while the ship or aircraft remains at the boarding station.

(4) Where a Collector (not being the CEO or the Regional Director for a State or Territory) gives a direction under subsection (1) not to move a ship or aircraft from a boarding station, the Collector shall forthwith notify:

- (a) where the boarding station is in the Australian Capital Territory—the CEO;
- (b) where the boarding station is in a State—the Regional Director for the State; or
- (c) where the boarding station is in the Northern Territory—the Regional Director for the Northern Territory;

of the giving of the direction.

(5) Where:

- (a) a ship or aircraft is held at a boarding station by virtue of a direction given under subsection (1); and
- (b) the CEO or the Regional Director for a State or Territory is satisfied that no purpose of the Customs is served by holding the ship or aircraft at the boarding station;

he shall forthwith revoke the direction.

(6) In proceedings for an offence under this section with respect to a direction, a certificate by a person referred to in the last preceding subsection that he is satisfied that, up to the time the offence is alleged to have been committed:

- (a) the permission referred to in the direction had not been given; and

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(b) the direction had not been revoked;
is evidence of the matters as to which the person has certified that he is satisfied.

276 Collector's sales

As to sales by the Collector:

- (a) The goods shall be sold by auction or by tender and after such public notice as may be prescribed, and where not prescribed after reasonable public notice.
- (b) The goods may be sold either subject to duty and charges or at a price that includes duty and charges and the price shall be paid in cash on the acceptance of the bidding or tender.
- (c) No bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

277 Proceeds of sales

- (1) The proceeds of any goods sold by the Collector shall be applied as follows:

Firstly, in the payment of the expenses of the sale.

Secondly, where the price for the goods includes duty, in payment of the duty.

Thirdly, in payment of the warehouse rent and charges.

Fourthly, in payment of the harbour and wharfage dues and freight if any due upon the goods if written notice of such harbour and wharfage dues and freight shall have been given to the Collector.

And the balance if any shall be paid to the Minister for Finance on account of the person entitled thereto.

- (2) For the purposes of section 132, goods to which subsection (1) of this section applies on which duty has not been paid shall be taken to have been entered for home consumption on the day on which the goods are sold by the Collector.

277A Jurisdiction of courts

- (1) A provision of the *Judiciary Act 1903* by which a court of a State is invested with federal jurisdiction has effect, in relation to matters

arising under this Act, as if that jurisdiction were so invested without limitation as to locality other than the limitation imposed by section 80 of the Constitution.

- (2) Subject to the Constitution, jurisdiction is conferred on the several courts of the Territories, within the limits of their several jurisdictions, other than limits as to locality, with respect to matters arising under this Act.
- (3) The trial of an offence against a provision of this Act not committed within a State may be held by a court of competent jurisdiction at any place where the court may sit.

Schedules

Schedule I—The Commonwealth of Australia

Security to the Customs

By this Security the subscribers are, pursuant to the Customs Act 1901, bound to the Customs of the Commonwealth of Australia in the sum of—[here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition]—subject only to this condition that if—[here insert the condition of the security]—then this security shall be thereby discharged.*

Dated the _____ day of _____ 19. _____

Names and descriptions of subscribers	Signatures of subscribers	Signatures of witnesses

*NOTE—If liability is not intended to be joint and several and for the full amount, here state what is intended as, for example, thus—“The liability of the subscribers is joint only,” or “the liability of (mentioning subscriber) is limited to (here state amount of limit of liability or mode of ascertaining limit).”

Schedule VI

Section 4

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
ACETORPHINE	2.000	2.0
ACETYL-ALPHA-METHYLFENTANYL	0.005	0.005
ACETYLCODEINE	2.0	2.0
ACETYLDIHYDROCODEINE	2.0	2.0
ACETYLMETHADOL	2.0	2.0
ALLYLPRODINE	2.0	2.0
ALPHACETYLMETHADOL	10.0	10.0
ALPHAMEPRODINE	0.2	0.2
ALPHAMETHADOL	0.2	0.2
ALPHA-METHYLFENTANYL	0.005	0.005
ALPHA-METHYLTHIOFENTANYL	0.005	0.005
ALPHAPRODINE	25.0	25.0
AMPHECOLORAL	2.0	2.0
3- (2-AMINOPROPYL) INDOLE	2.0	2.0
AMPHETAMINE	2.0	0.75
ANILERIDINE	25.0	25.0
BARBITURATES	50.0	5.0
BENZETHIDINE	10.0	10.0
BENZYMORPHINE	5.0	5.0
BETACETYLMETHADOL	5.0	5.0
BETA-HYDROXYFENTANYL	0.005	0.005
BETA-HYDROXY-3-METHYLFENTANYL	0.005	0.005
BETAMEPRODINE	5.0	5.0
BETAMETHADOL	5.0	5.0
BETAPRODINE	5.0	5.0
BEZITRAMIDE	5.0	5.0
4-BROMO-2, 5-DIMETHOXYAMPHETAMINE	0.5	0.5
BUFOTENINE	2.0	2.0
CANNABINOIDS	2.0	2.0
CANNABIS	100.0	100.0
CANNABIS RESIN	20.0	50.0
CHLORPHENTERMINE	2.0	2.0
CLONITAZENE	5.0	5.0

Schedule VI

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
COCAINE	2.0	2.0
CODEINE	10.0	10.0
CODEINE-N-OXIDE	10.0	10.0
CODOXIME	10.0	10.0
DESOMORPHINE	2.0	2.0
DIAMPROMIDE	5.0	5.0
DIETHYLPROPION	5.0	5.0
DIETHYLTHIAMBUTENE	5.0	5.0
N, N-DIETHYLTRYPTAMINE	2.0	2.0
DIHYDROCODEINE	10.0	10.0
DIHYDROMORPHINE	10.0	10.0
DIMENOXADOL	10.0	10.0
DIMEPHEPTANOL	10.0	10.0
2, 5-DIMETHOXY-4-METHYLAMPHETAMINE	2.0	0.75
DIMETHYLTHIAMBUTENE	20.0	20.0
N, N-DIMETHYLTRYPTAMINE	2.0	2.0
DIOXAPHETYL BUTYRATE	2.0	2.0
DIPHENOXYLATE	2.0	2.0
DIPIPANONE	10.0	10.0
ECGONINE	10.0	10.0
ETHYLMETHYLTHIAMBUTENE	10.0	10.0
ETHYLMORPHINE	2.0	2.0
ETONITAZENE	5.0	5.0
ETORPHINE	5.0	5.0
ETOXERIDINE	5.0	5.0
FENTANYL	0.005	0.005
FURETHIDINE	1.0	1.0
HARMALINE	2.0	5.0
HARMINE	2.0	5.0
HEROIN	2.0	1.5
HYDROCODONE	2.0	2.0
HYDROMORPHINOL	2.0	2.0
HYDROMORPHONE	2.0	2.0
HYDROXYAMPHETAMINE	2.0	2.0
HYDROXYPETHIDINE	5.0	5.0
KETOBEMIDONE	2.0	2.0
LEVORPHANOL	1.0	1.0

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
LYSERGAMIDE	0.1	0.01
LYSERGIC ACID	0.002	0.002
LYSERGIDE	0.002	0.002
MESCALINE	7.5	7.5
METAZOCINE	7.0	7.0
METHADONE	2.0	2.0
METHAQUALONE	50.0	5.0
METHORPHAN	2.0	2.0
METHYLAMPHETAMINE	2.0	0.75
3, 4-METHYLENEDIOXYAMPHETAMINE	0.5	0.75
3, 4-METHYLENEDIOXYMETHAMPHETAMINE	0.50	0.50
METHYLDESORPHINE	2.0	2.0
METHYLDIHYDROMORPHINE	2.0	2.0
3-METHYLFENTANYL	0.005	0.005
METHYLPHENIDATE	2.0	2.0
1-METHYL-4-PHENYL-4-PROPIONOXYPIPERIDINE (MPPP)	2.0	2.0
3-METHYLTHIOFENTANYL	0.005	0.005
METOPON	2.0	2.0
MONOACETYLMORPHINES	2.0	2.0
MORAMIDE	2.0	2.0
MORPHERIDINE	2.0	2.0
MORPHINE	2.0	1.5
MORPHINE-N-OXIDE	2.0	2.0
MYROPHINE	20.0	20.0
NICOCODINE	2.0	2.0
NICODICODINE	2.0	2.0
NICOMORPHINE	2.0	2.0
NORACYMETHADOL	2.0	2.0
NORCODEINE	2.0	2.0
NORLEVORPHANOL	2.0	2.0
NORMETHADONE	5.0	5.0
NORMORPHINE	20.0	20.0
NORPIANONE	10.0	10.0
OPIUM	20.0	20.0
OXYCODONE	5.0	5.0
OXYMORPHONE	2.0	2.0

Schedule VI

Column 1 Substance	Column 2 Trafficable quantity (grams)	Column 3 Commercial quantity (kilograms)
PARA-FLUOROFENTANYL	0.005	0.005
PENTAZOCINE	20.0	20.0
PETHIDINE	10.0	10.0
PHENADOXONE	10.0	10.0
PHENAMPROMIDE	10.0	10.0
PHENAZOCINE	1.0	1.0
PHENDIMETRAZINE	5.0	5.0
PHENMETRAZINE	5.0	5.0
PHENOMORPHAN	5.0	5.0
PHENOPERIDINE	1.0	1.0
1-PHENYLETHYL-4-PHENYL-4-ACETOXYPIPERI- DINE (PEPAP)	2.0	2.0
PHOLCODINE	5.0	5.0
PIMINODINE	10.0	10.0
PIPRADROL	1.0	1.0
PIRITRAMIDE	1.0	1.0
PROHEPTAZINE	1.0	1.0
PROPERIDINE	25.0	25.0
PSILOCIN	0.1	0.1
PSILOCYBIN	0.1	0.1
TETRAHYDROCANNABINOLS	2.0	5.0
THEBACON	2.0	2.0
THEBAINE	2.0	2.0
THIOFENTANYL	0.005	0.005
TRIMEPERIDINE	10.0	10.0
A substance (“drug analogue”) which is, in relation to another substance (being a substance specified elsewhere in this Schedule, or a stereoisomer, a structural isomer (with the same constituent groups) or an alkaloid of such a substance):		
(a) a stereoisomer; or		
(b) a structural isomer having the same constituent groups; or		
(c) an alkaloid; or		
(d) a structural modification obtained in 1 or more of the following ways:		
(i) by the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;		
(ii) by the addition of hydrogen atoms to 1 or more unsaturated bonds;		

Column 1	Column 2	Column 3
Substance	Trafficable quantity (grams)	Commercial quantity (kilograms)
<p>(iii) by the addition of 1 or more of the following groups, namely alkoxy, cyclic diether, acyl, acyloxy, mono-amino and dialkylamino groups with up to 6 carbon atoms in any alkyl residue; alkyl, alkenyl and alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen (for example, an ester or an ether group), nitrogen, sulphur or carbon; and halogen, hydroxy, nitro and amino groups;</p> <p>(iv) by the replacement of 1 or more of the groups specified in subparagraph (iii) with another such group or groups;</p> <p>(v) by the conversion of a carboxyl or an ester group into an amide group; or</p> <p>(e) otherwise an homologue, analogue, chemical derivative or substance substantially similar in chemical structure; however obtained, except where the drug analogue is separately specified in this Schedule</p>	<p>The minimum trafficable quantity of:</p> <p>(a) that other substance in relation to which the substance is a drug analogue; or</p> <p>(b) if there is more than 1 such other substance— that other substance having the least minimum trafficable quantity</p>	<p>The minimum commercial quantity, if any, of:</p> <p>(a) that other substance in relation to which the substance is a drug analogue; or</p> <p>(b) if there is more than 1 such other substance— that other substance having the least minimum commercial quantity.</p>

Schedule VII—Diagrams and explanatory notes illustrating operation of Division 1A of Part VIII

Section 153A

Diagram 1

Decision diagram for working out whether preference claim goods are the produce or manufacture of New Zealand

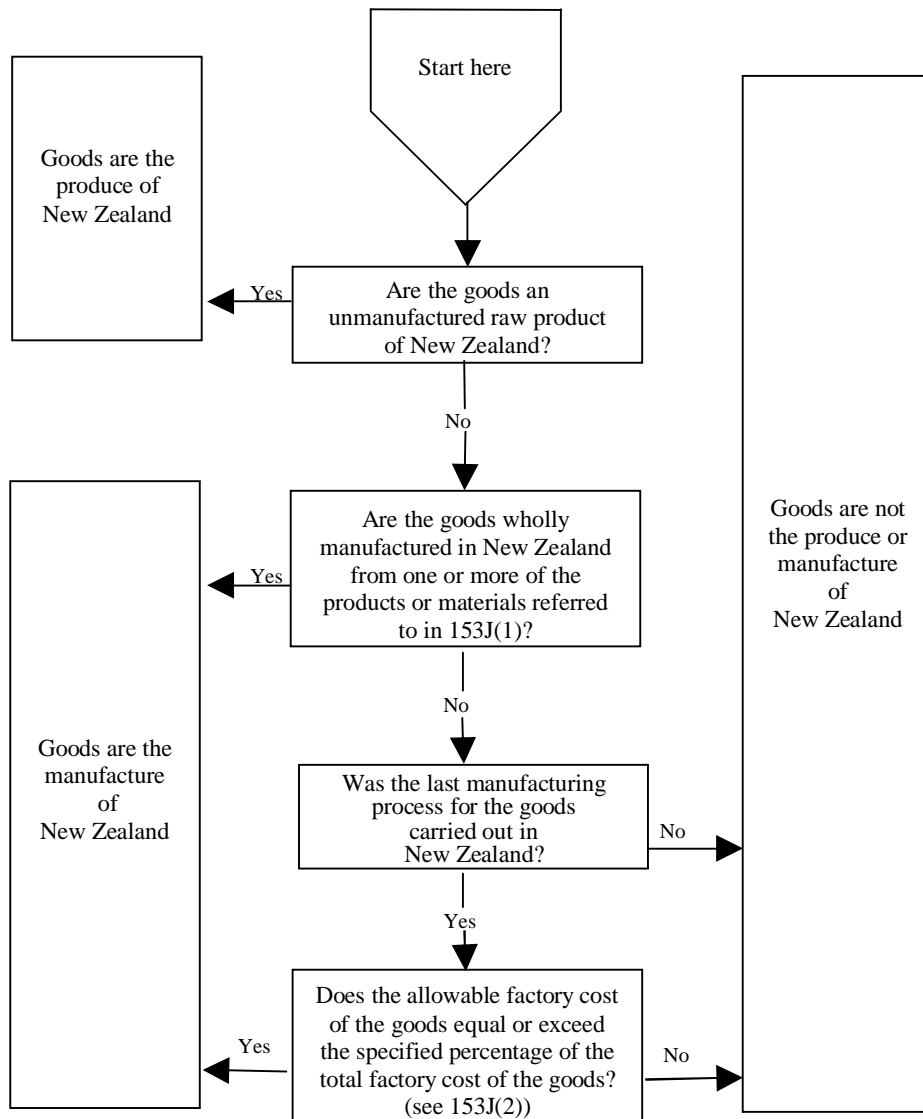
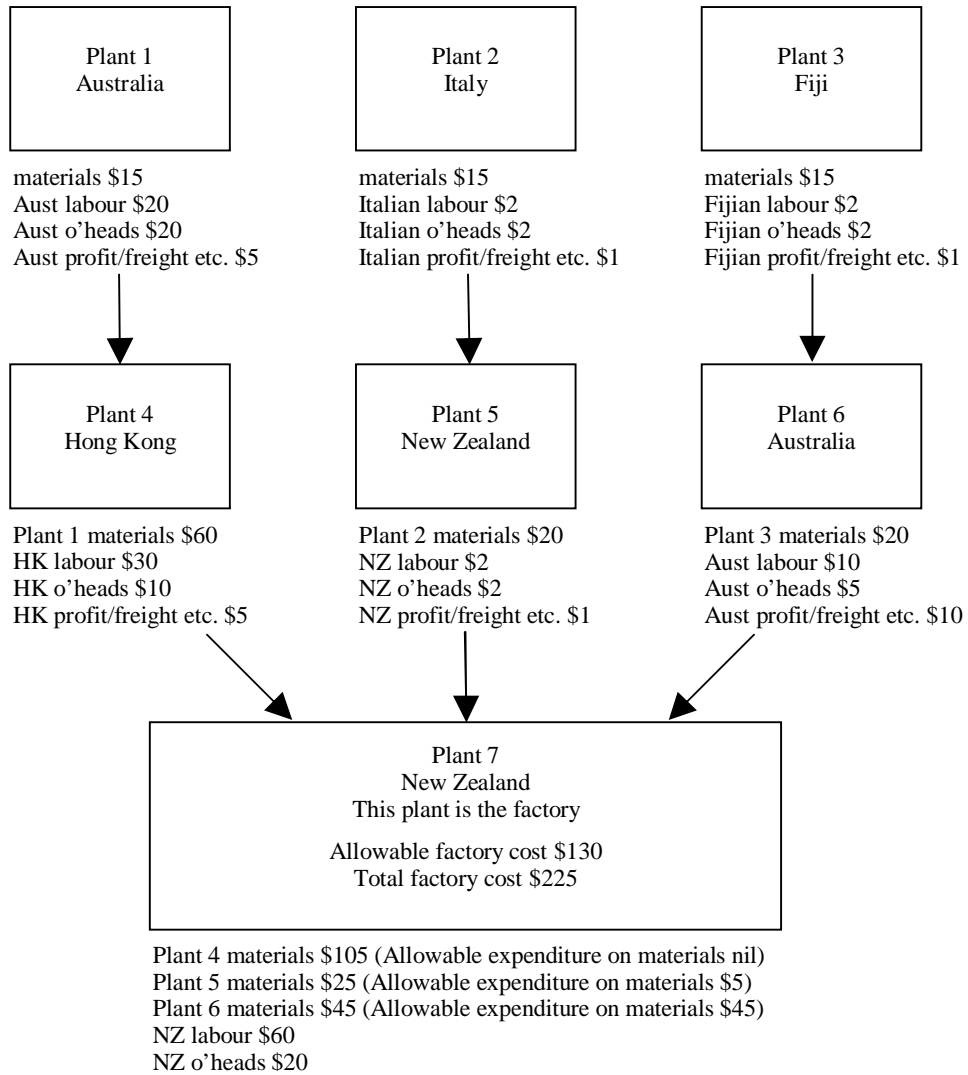


Diagram 2

An example of possible inputs into goods last processed in New Zealand and claimed to be the manufacture of that country

[An explanation of the calculations to determine whether the goods are properly so claimed appears in the notes to the diagram.]



Notes relating to diagram 2

Goods imported into Australia after last process in the factory (ie Plant 7) are claimed to be the manufacture of New Zealand. This claim will be correct if the allowable factory cost of these preference claim goods is at least 50% of their total factory cost.

To work out both of these factory costs, we must first work out the allowable expenditure of the factory on the 3 manufactured materials that make up the preference claim goods. We will also need to take into account 3 other amounts, namely the total expenditure of the factory on materials, and the allowable expenditure of the factory on labour, and on overheads.

Working out allowable expenditure on materials (see section 153D)

- The allowable expenditure of the factory on particular manufactured materials in the form they are received from Plant 4 is nil because the materials are imported from outside the qualifying area (ie Hong Kong). (See subsection 153D (2)). This is so even though the manufactured materials themselves incorporate goods originating inside the qualifying area (ie Plant 1 in Australia).
- The allowable expenditure of the factory on particular manufactured materials in the form they are received from Plant 5 is not \$25 but \$5. This is because:
 - the cost of contributing materials imported into the qualifying area from outside that area (ie Plant 2 in Italy) and subsequently processed is excluded under subsection 153D (4) from the working out of that allowable expenditure; and
 - subsection 153D (6) does not apply.
- The allowable expenditure of the factory on particular manufactured materials in the form they are received from Plant 6 is the full cost to the manufacturer of \$45. It is true that contributing materials are imported into the qualifying area from outside that area (ie Plant 3 in Fiji) and subsequently processed. However, the cost of those contributing materials is not required to be excluded under subsection 153D (4) from the working out of that allowable expenditure because subsection 153D (6) applies.

Working out allowable factory cost (see section 153B)

Allowable expenditure of the factory on materials	\$50
from Plants 4, 5 and 6 (Nil + \$5 + \$45)	
PLUS allowable expenditure of the factory on labour	\$60

PLUS allowable expenditure of the factory on overheads	\$20
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TOTAL	\$130
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Working out total factory cost (see section 153B)

Total expenditure of the factory on materials from Plants 4, 5 and 6 (\$105 + \$25 + \$45)	\$175
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PLUS allowable expenditure of the factory on labour	\$60
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PLUS allowable expenditure of the factory on overheads	\$20
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TOTAL	\$255
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CONCLUSION: Since allowable factory cost is at least 50% of total factory cost, goods **are** the manufacture of New Zealand. (See subsection 153J (2)).