



Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992

No. 89 of 1992

An Act to amend the *Customs Act 1901*, the *Anti-Dumping Authority Act 1988*, and for related purposes

[Assented to 30 June 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992*.

Commencement

2.(1) This Part and sections 3, 9, 11 and 22 commence on the day on which this Act receives the Royal Assent.

10 (2) Sections 4 to 8 (inclusive), 10 and 12 to 21 (inclusive), commence on a day or days to be fixed by Proclamation.

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(3) Section 23 is to be taken to have commenced on 1 January 1988.

(4) If the commencement of a provision referred to in subsection (2) is not fixed by Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that provision commences on the first day after the end of that period.

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**PART 2—AMENDMENTS OF THE ANTI-DUMPING
AUTHORITY ACT 1988**

Principal Act

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3. In this Part, “Principal Act” means the *Anti-Dumping Authority Act 1988*¹.

Interpretation

4. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definition:

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“‘approved form’ means a form approved under section 3AA;”.

Insertion of new section

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

Approved forms

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“3AA.(1) In this Act, a reference to an approved form is a reference to a form that is approved, by instrument in writing, by the member.

“(2) The instrument by which a form is approved under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

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Functions

6. Section 5 of the Principal Act is amended:

(a) by omitting from paragraph (c) “and” (last occurring);

(b) by inserting after paragraph (c) the following paragraph:

“(ca) to recommend to the Minister under section 8A whether an anti-dumping measure within the meaning of that section should be continued; and”.

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Insertion of new section

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

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Authority may make recommendations of continuation of dumping duty notices etc.

“8A.(1) Not later than 8 months before an anti-dumping measure expires, the Authority must publish in the *Gazette* and in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory, a notice:

(a) informing that the dumping duty notice, countervailing duty notice or undertaking is due to expire on a specified day (the ‘**specified expiry day**’); and

(b) inviting interested parties to apply to the Authority in accordance with this section, within 60 days, for the continuation of the anti-dumping measure.

“(2) If no application is received by the Authority within the period specified in the notice then, on the specified expiry day:

(a) the dumping duty notice expires; or

(b) the countervailing duty notice expires; or

(c) the person who gave the undertaking is taken to be released from the undertaking;

as the case requires.

“(3) 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.

“(4) If:

(a) an application is received for the continuation of an anti-dumping measure; and

(b) the Authority is satisfied that the application complies with the requirements of this section;

the Authority must, within 120 days or such other period as is prescribed after the receipt of the application, give the Minister a report recommending whether the measure should be continued.

“(5) For the purpose of giving the Minister a report in respect of a matter, the Authority may hold an inquiry into the matter.

“(6) If an inquiry is held under subsection (5), the Authority must, in any notice given under section 23 in relation to that inquiry and by any other means it considers appropriate in the circumstances, invite submissions from the public on matters relevant to the recommendation that might be made in the report.

“(7) If an inquiry is held under subsection (5), the Authority must have regard to all the submissions it receives within 40 days after the

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issuing by the Authority of the last invitation for submissions from the public but may disregard any submission received more than 40 days after the issuing of that last invitation.

“(8) The Minister may, after having regard to the report in relation to the continuation of an anti-dumping measure and before the specified expiry day, take steps to secure the continuation of the measure. 5

“(9) If the Minister does not take steps to secure the continuation of an anti-dumping measure before the specified expiry day, the measure expires in accordance with section 269TM of the *Customs Act 1901*.

“(10) If the Minister decides to secure the continuation of an anti-dumping measure, the continuation of that measure is so secured: 10

- (a) if the measure is a dumping duty notice or a countervailing duty notice—by the Minister determining, in writing, that the notice continues in force after the specified expiry day; and
- (b) if the measure is an undertaking—by the person who gave that 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 that undertaking. 15
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“(11) If the Minister secures the continuation of an anti-dumping measure in accordance with this section, the measure continues in force for a period of 5 years after the specified expiry day unless:

- (a) in the case of a dumping duty notice or countervailing duty notice—it is revoked before the end of that period; or 25
- (b) in the case of an undertaking—provision is made for its earlier expiration.

“(12) In this section:

‘anti-dumping measure’ means:

- (a) a dumping duty notice or a countervailing duty notice; or 30
- (b) an undertaking given under subsection 269TG(4) or 269TJ(3) of the *Customs Act 1901*;

that is in force when this section commences or that comes into force after this section commences.”.

Cessation of Act 35

8. Section 35 of the Principal Act is amended by omitting from subsection (1) “at the expiration of 5 years after the day on which it commences” and substituting “on 31 August 2001”.

PART 3—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

9. In this Part, “Principal Act” means the *Customs Act 1901*².

Repeal and substitution of Part

5 10. Part XVA of the Principal Act is repealed and the following Part is substituted:

“PART XVA—TARIFF CONCESSION ORDERS

“Division 1—Preliminary

Interpretation

10 “269B.(1) In this Part, unless the contrary intention appears:

‘capital equipment’ means goods, which if imported into Australia, would be goods to which Chapters 84, 85, 86, 87, 89 or 90 of Schedule 3 to the *Customs Tariff Act 1987* would apply;

15 ‘*Customs Tariff Act 1987*’ includes that Act as proposed to be altered by a customs tariff alteration proposed, or intended to be proposed, in the Parliament;

‘gazettal day’, in relation to a TCO application, means:

20 (a) unless paragraph (b) applies—the day on which the Comptroller publishes a notice in respect of the application in the *Gazette* under subsection 269K(1); or

(b) if, in accordance with section 269N, the Comptroller publishes a notice in respect of the application in the *Gazette* under subsection 269K(1) in substitution for an earlier notice—the day on which the Comptroller publishes that substituted notice;

25 ‘goods produced in Australia’ has the meaning given by section 269D;

‘last day for submissions’, in relation to a TCO application, means:

30 (a) so far as concerns a person invited by the Comptroller under section 269M to lodge a submission in respect of a TCO application—the day fixed in the notice inviting that submission; and

(b) so far as concerns any other person—the day occurring 50 days after the gazettal day;

‘lodged’, in relation to a TCO application, includes taken to be lodged because of the operation of section 269J;

35 ‘ordinary course of business’ has the meaning given by section 269E;

‘prescribed item’ means an item in Schedule 4 to the *Customs Tariff Act 1987* that is expressed to apply to goods that a TCO declares are goods to which the item applies;

‘repair’, in relation to goods, includes renovate;

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'substitutable goods', in respect of goods the subject of a TCO application or of a TCO, means goods produced in Australia that are put to a use that corresponds with a use (including a design use) to which the goods the subject of the application or of the TCO can be put;

'TCO' means a tariff concession order made under section 269P or 269Q or taken to be made under section 269P or 269Q because of the operation of section 269SC; 5

'TCO application' means:

- (a) an application for a TCO under section 269F; or
- (b) an application for a TCO under section 269F as amended under section 269L; or 10
- (c) a proposal for the issue of a TCO that is to be taken under section 269J to be a TCO application.

“(2) Despite the definition of ‘days’ in section 4, Sundays and public holidays are counted as days for the purpose of computing a period for the purposes of this Part but nothing in this subsection derogates from the operation of section 36 of the *Acts Interpretation Act 1901*. 15

Interpretation—core criteria

“269C. For the purposes of this Part, a TCO application is to be taken to meet the core criteria if, on the day occurring 28 days before the day on which the application was lodged: 20

- (a) no substitutable goods were produced in Australia in the ordinary course of business; or
- (b) substitutable goods were produced in Australia in the ordinary course of business but the granting of the TCO was not likely to have a significant adverse effect on the market for the substitutable goods. 25

Interpretation—goods produced in Australia

“269D.(1) For the purposes of this Part, goods, other than unmanufactured raw products, are taken to be produced in Australia if: 30

- (a) the goods are wholly or partly manufactured in Australia; and
- (b) not less than $\frac{1}{4}$ of the factory or works costs of the goods is represented by the sum of: 35
 - (i) the value of Australian labour; and
 - (ii) the value of Australian materials; and
 - (iii) the factory overhead expenses incurred in Australia in respect of the goods.

“(2) For the purposes of this Part, goods are to be taken to have been partly manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia. 40

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“(3) Without limiting the meaning of the expression ‘substantial process in the manufacture of the goods’, any of the following operations or any combination of those operations does not constitute such a process:

- 5 (a) operations to preserve goods during transportation or storage;
- (b) operations to improve the packing or labelling or marketable quality of goods;
- (c) operations to prepare goods for shipment;
- (d) simple assembly operations;
- 10 (e) operations to mix goods where the resulting product does not have different properties from those of the goods that have been mixed.

“(4) For the purposes of this section, the Comptroller may, by instrument in writing published in the *Gazette*:

- 15 (a) direct that the factory or works cost of goods is to be determined in a specified manner; and
- (b) direct that the value of Australian labour, the value of Australian materials or the factory overhead expenses incurred in Australia in respect of goods is to be determined in a specified manner;
- 20 and those directions have effect accordingly.

“(5) The provisions of sections 48 (other than paragraphs (1)(a) and (b) and subsection (2)), 48A, 48B, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to directions given under subsection (4) as if:

- 25 (a) references in those provisions to regulations were references to directions; and
- (b) references in those provisions to the repeal of a regulation were references to the revocation of a direction.

Interpretation—the ordinary course of business

30 “269E.(1) For the purposes of this Part, other than section 269Q, goods (other than made-to-order capital equipment) that are substitutable goods in relation to goods the subject of a TCO application are taken to be produced in Australia in the ordinary course of business if:

- 35 (a) they have been produced in Australia in the 2 years before the application was lodged; or
- (b) they have been produced, and are held in stock, in Australia; or
- 40 (c) they are produced in Australia on an intermittent basis and have been so produced in the 5 years before the application was lodged.

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and a producer in Australia is prepared to accept an order to supply them.

“(2) For the purposes of this Part, goods that:

- (a) are substitutable goods in relation to goods the subject of a TCO application; and
- (b) are made-to-order capital equipment;

are taken to be produced in Australia in the ordinary course of business if:

- (c) a producer in Australia:
 - (i) has made goods requiring the same labour skills, technology and design expertise as the substitutable goods in the 2 years before the application was lodged; and
 - (ii) could produce the substitutable goods with existing facilities; and
- (d) the producer is prepared to accept an order to supply the substitutable goods.

“(3) In this section:

‘**made-to-order capital equipment**’ means capital equipment that is made in Australia to meet a specific order rather than being the subject of regular or intermittent production.

“Division 2—Making and processing TCO applications

Making a TCO application

“269F.(1) A person may apply to the Comptroller for a tariff concession order in respect of goods.

“(2) 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.

“(3) Without limiting the generality of paragraph (2)(c), a TCO application must contain:

- (a) a full description of the goods to which the application relates; and
- (b) a statement of the tariff classification that, in the opinion of the applicant, applies to the goods.

“(4) A TCO application may be lodged with Customs:

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

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(b) by posting it by prepaid post to a postal address specified by Customs in the approved form; or

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

5 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.

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

10 Withdrawing a TCO application

“269G.(1) A person who has lodged a TCO application under section 269F may withdraw the application at any time before a decision is made under section 269P or 269Q in relation to that application.

15 “(2) A withdrawal of a TCO application:

(a) must be in writing; and

(b) must be lodged with the Comptroller in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and

20 (c) must have the day of its lodgement recorded.

“(3) If a notice informing of the lodgement of a TCO application is published in the *Gazette* before that application is withdrawn, the Comptroller must publish in the *Gazette*, as soon as practicable after the withdrawal is lodged, a notice:

25 (a) stating that the TCO application has been withdrawn; and

(b) describing the goods to which the TCO application related; and

(c) specifying the *Gazette* number and date of the previous notice relating to the TCO application; and

(d) specifying the date of withdrawal of the TCO application.

30 Screening the application

“269H.(1) Not later than 28 days after a TCO application is lodged, the Comptroller must:

35 (a) if he or she is satisfied that the application complies with section 269F, by notice in writing given to the applicant, inform the applicant that the application is accepted as a valid application; and

(b) if he or she is not so satisfied, by notice in writing given to the applicant, inform the applicant that the application is rejected and of the reasons for the rejection.

40 “(2) If the Comptroller has not, within that period, accepted or rejected the application, this Part has effect as if the Comptroller had,

immediately before the end of that period, informed the applicant, by notice in writing, that the application is accepted as a valid application.

Applications taken to be lodged in certain circumstances

“269J.(1) If the Comptroller decides that it is desirable to consider making a TCO despite the absence of a TCO application, the Comptroller may declare, in writing, that he or she has so decided. 5

“(2) A declaration under subsection (1) must include a proposal for the issue of the TCO in respect of the goods referred to in the declaration.

“(3) If the Comptroller makes a declaration under this section, this Part has effect as if: 10

(a) the proposal contained in the declaration were a TCO application lodged under section 269F on the day on which the declaration is made; and

(b) the application had been accepted under section 269H as a valid application on that day. 15

Processing a valid application

“269K.(1) As soon as practicable after accepting a TCO application as a valid application, the Comptroller must publish a notice in the *Gazette*: 20

(a) stating that the application has been lodged; and

(b) providing a description of the goods to which the application relates including a reference to the Customs tariff classification that, in the opinion of the Comptroller, applies to the goods; and 25

(c) inviting any persons who consider that there are reasons why the TCO should not be made to lodge a submission with the Comptroller not later than 50 days after the gazettal day.

“(2) A submission must:

(a) be in writing; and 30

(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.

“(3) A submission:

(a) must be lodged with the Comptroller in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and 35

(b) must have the day of its lodgement recorded.

“(4) If a person lodges a submission later than 50 days after the gazettal day in respect of a TCO application without being invited by 40

the Comptroller to do so under section 269M, the Comptroller must not take the submission into account in determining whether to make a TCO.

Amendment of TCO applications

5 “269L.(1) If a person lodges a submission in respect of a TCO application within 50 days after the gazettal day, the Comptroller must, within 14 days after the end of that 50 day period, give the applicant for the TCO a notice in writing setting out:

- 10 (a) the name and address of each person who has lodged a submission within that period; and
(b) a short statement of the grounds on which each submission is based.

15 “(2) The applicant may, within 14 days of receiving a notice under subsection (1) and having regard to the grounds on which each submission was made, notify the Comptroller, in writing, that he or she proposes to amend the application by altering the description of the goods the subject of the application, and set out in that notice the proposed amendment.

20 “(3) The applicant must not, under subsection (2), propose an amendment of an application that would cause the goods concerned to be covered by a different Customs tariff classification to the one notified by the Comptroller in the *Gazette* under section 269K.

“(4) If the applicant notifies the Comptroller of a proposed amendment of an application:

- 25 (a) the TCO application is to be dealt with under this Part as if:
(i) it had always contained the amended description of the goods; and
(ii) the notice published in the *Gazette* in relation to the
30 application had been a notice setting out the amended description; and
(b) the Comptroller must notify the proposed amendment, in writing, to each person who lodged a submission referred to in subsection (1), within 14 days after the proposed amendment is notified to the Comptroller.

35 “(5) If a person who lodged a submission referred to in subsection (1) notifies the Comptroller, in writing, within 14 days after being notified of a proposed amendment, that he or she no longer objects to the TCO application, the submission is taken to have been withdrawn.

40 “(6) If a person who lodged a submission referred to in subsection (1) does not so notify the Comptroller, he or she is taken to wish to proceed with the submission as if it were a submission made in respect of the amended application.

**Customs may invite submissions or seek other information, documents
or material**

“269M.(1) If the Comptroller considers that, in relation to a particular TCO application, a person may have reason to oppose the making of the TCO to which the application relates, he or she may, by notice in writing, invite the person to lodge a written submission with the Comptroller within a period specified in the notice ending not later than 150 days after the gazettal day. 5

“(2) A submission must: 10

- (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.

“(3) A submission: 15

- (a) must be lodged with the Comptroller in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and
- (b) must have the day of its lodgement recorded.

“(4) If the Comptroller considers that, in relation to a particular TCO application, any person (including the applicant or a person who has lodged a submission with the Comptroller) may be able to supply information or produce a document or material relevant to the consideration of the application, the Comptroller may, by notice in writing, request the supply of the information in writing or the production of the document or material within a period specified in the notice and ending not later than 150 days after the gazettal day. 20 25

“(5) If a person refuses or fails to lodge a submission under subsection (1) or to supply information or produce a document or material under subsection (4) within the period allowed but subsequently lodges that submission, supplies the information or produces the document or material, the Comptroller must not take that submission, information, document or material into account in determining whether to make a TCO. 30

Reprocessing of TCO applications

“269N.(1) If, after gazettal day in respect of a TCO application but before a decision is made on the application, the Comptroller is satisfied that: 35

- (a) because of an amendment of a Customs Tariff; or
- (b) having regard to a decision of a court or of the Administrative Appeals Tribunal; or 40
- (c) having regard to written advice on the matter given by an officer or employee of the Commonwealth performing duties in

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the Attorney-General's Department who is entitled, under section 55D of the *Judiciary Act 1903*, to practise as a barrister and solicitor in any Territory;

5 the tariff classification that was stated in the notice published in the *Gazette* under section 269K to apply to the goods the subject of the application has not, with effect from the gazettal day or a later day, applied to the goods, the Comptroller must take action to reprocess the application.

10 “(2) If the Comptroller is satisfied that, in publishing a notice in the *Gazette* under section 269K in relation to a TCO application, there has been a transcription error in the description of the goods the subject of the application including the tariff classification that is stated to apply to the goods, the Comptroller must take action to reprocess the application.

15 “(3) Where the Comptroller is required to take action under subsection (1) or (2), he or she must, as soon as practicable after becoming so required, notify:

- (a) the applicant; and
- 20 (b) all persons from whom submissions in relation to the application have been received; and
- (c) all persons from whom submissions in relation to the application have been sought;

25 that, for the reasons specified in subsection (1) or (2), it is necessary to reprocess the application and that a new notice of the application will be published in the *Gazette* for that purpose.

“(4) As soon as practicable after giving a notice under subsection (3), the Comptroller must publish in the *Gazette* a new notice under subsection 269K(1) in relation to the TCO application in substitution for the notice previously published.

30 “(5) A person who had lodged a submission in relation to the original notice published under section 269K in respect of a TCO application may notify the Comptroller in writing, not later than 50 days after the day of publication of the substituted notice under that section, that he or she wishes to proceed with the submission, or wishes
35 to proceed with it subject to stated modifications, as if it had been provided in response to the substituted notice and, where the Comptroller is so notified, the submission is to be treated as if it had been so provided on the day of that notification.

40 “(6) If a TCO is made in respect of a TCO application that is reprocessed in accordance with this section, the day on which the TCO is to be taken to come into force is unaffected by the decision to reprocess that application.

“Division 3—Making and operation of TCOs

The making of a standard TCO

“269P.(1) If a TCO application in respect of goods, other than goods sent out of Australia for repair, has been accepted as a valid application under section 269H, the Comptroller must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

- (a) the application; and
- (b) all submissions lodged with the Comptroller before the last day for submissions; and
- (c) all information supplied and documents and material produced to the Comptroller in accordance with a notice under subsection 269M(4);

that the application meets the core criteria.

“(2) If the Comptroller fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the Comptroller is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not satisfied that the application meets the core criteria.

“(3) If the Comptroller is satisfied that the application meets the core criteria, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

“(4) The TCO must include:

- (a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the Comptroller, applies to the goods; and
- (b) a statement of the day on which the TCO is to be taken to have come into force; and
- (c) if subsection 269SA(1) applies in relation to the TCO—a statement of the day on which it ceases to be in force.

The making of a TCO for goods requiring repair

“269Q.(1) If a TCO application in respect of goods sent out of Australia for repair has been accepted as a valid application under section 269H, the Comptroller must decide, not later than 150 days after the gazettal day, whether or not he or she is satisfied, having regard to:

- (a) the application; and
- (b) all submissions lodged with the Comptroller before the last day for submissions; and
- (c) all information supplied and documents and material produced

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to the Comptroller in accordance with a notice under subsection 269M(4);

that there is no one in Australia capable of repairing those goods in the ordinary course of business.

5 “(2) If the Comptroller fails to make a decision under subsection (1) in respect of a TCO application within 150 days after the gazettal day, the Comptroller is taken, for the purposes of subsection (1), at the end of that period, to have made a decision that he or she is not
10 satisfied of the matters referred to in that subsection in relation to the application.

 “(3) If the Comptroller is satisfied of the matters referred to in subsection (1) in relation to the application, he or she must make a written order declaring that the goods the subject of the TCO application are goods to which a prescribed item specified in the order applies.

15 “(4) The TCO must include:

 (a) a description of the goods the subject of the order including a reference to the Customs tariff classification that, in the opinion of the Comptroller, applies to the goods; and

20 (b) a statement of the day on which the TCO is to be taken to have come into force.

 “(5) For the purposes of this section, a person is taken to be capable of repairing goods in the ordinary course of business if, in the ordinary course of business, the person is prepared to accept orders to repair those goods.

25 **Notification of TCO decisions**

 “269R.(1) As soon as practicable after the Comptroller makes a decision under subsection 269P(1) or 269Q(1), the Comptroller must:

 (a) by notice in writing, inform the applicant of the decision; and

30 (b) by notice published in the *Gazette*, inform all other interested persons of the decision.

 “(2) If the decision has led to the making of a TCO, the notice given to the applicant and published in the *Gazette* must include full particulars of the TCO.

35 “(3) A failure to comply with subsection (1) or (2) does not affect the validity of the TCO concerned.

Operation of TCOs

 “269S.(1) Subject to the operation of subsection 269SA(2), a TCO is to be taken to have come into force 28 days before:

40 (a) unless paragraph (b) applies—the day on which the application for the TCO was lodged; or

(b) if there was more than one application for the TCO—the day on which the earliest application for the TCO was lodged.

“(2) Subject to section 269SG, a TCO applies in relation to the goods the subject of the TCO that were or are first entered for home consumption on or after the day on which the TCO is taken to have come into force. 5

“(3) Subject to the operation of subsection 269SA(1), a TCO continues in force until it is revoked under section 269SC or 269SD.

Consequence of commencement or cessation of production before TCO decision 10

“269SA.(1) If the Comptroller is satisfied, in relation to a TCO application:

(a) that the application meets the core criteria; and

(b) that on a day (the ‘**production start-up day**’) occurring later than 28 days before the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application commenced to be produced in Australia; and 15

(c) that if the production start-up day had occurred 28 days before the application was lodged, the Comptroller would not have been satisfied that the application met the core criteria; 20

the TCO that the Comptroller makes continues in force only until the production start-up day.

“(2) If the Comptroller is satisfied, in relation to a TCO application:

(a) that the application does not meet the core criteria; and 25

(b) that on a day (the ‘**production close-down day**’) occurring later than 28 days before the application was lodged but before the making of the decision on the application, substitutable goods in relation to the goods the subject of the application ceased to be produced in Australia; and 30

(c) that if the production close-down day had occurred 28 days before the application was lodged the Comptroller would have been satisfied that the application met the core criteria;

the Comptroller must make a TCO in accordance with section 269P, but the TCO is in force only from the production close-down day. 35

“Division 4—Revocation of TCOs

Request for revocation of TCOs

“269SB.(1) If:

(a) a TCO is in force on a particular day; and

(b) a person claiming to be a producer in Australia of substitutable 40

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goods in relation to the goods covered by the order is of the view that if:

- (i) the TCO were not in force on that particular day; and
- (ii) that particular day had occurred 28 days before the TCO application was lodged;

the TCO would not have been made;

the person may request the Comptroller to revoke the order.

“(2) A request 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.

“(3) A request for revocation may be lodged with Customs:

- (a) by leaving it at a place that has been allocated for the lodgement of TCO applications at Customs House, Canberra; or
- (b) by posting it by prepaid post to a postal address specified by Customs in the approved form; or
- (c) by sending it by electronic facsimile to a facsimile number specified by Customs in the approved form;

and the request is taken to have been lodged when the request, or a facsimile of the request, is first received by an officer of Customs.

“(4) The day on which the request is to be taken to be lodged, must be recorded on the request.

Processing requests for revocation of TCOs

“269SC.(1) Not later than 60 days after lodgement of a request for revocation of a TCO, and after having regard to the request and to any other information, document or material given to the Comptroller under section 269SF, the Comptroller must decide whether or not he or she is satisfied:

- (a) that, on the day of lodgement of the request, the person requesting the revocation of the TCO is a producer in Australia of goods that are substitutable goods in relation to the goods the subject of the order; and
- (b) that, if the TCO were not in force on that day but that day had occurred 28 days before an application for that TCO were lodged, the Comptroller would not have made the TCO.

“(2) If the Comptroller fails to make a decision in respect of a request for the revocation of a TCO within 60 days after lodgement of the request, the Comptroller is taken, for the purposes of subsection (1), at the end of that period, to have decided that he or she is not

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satisfied of the matters referred to in that subsection in relation to the request.

“(3) If the Comptroller is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the Comptroller must make an order revoking the TCO. 5

“(4) If the Comptroller is satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO but is also satisfied that if:

(a) the TCO were not in force on the day of lodgement of the request; and 10

(b) that day were a day occurring 28 days before an application for another TCO (the ‘narrower TCO’) in respect only of goods covered by the TCO that are not produced in Australia by the person making the request;

the Comptroller would have made such a narrower TCO, he or she must: 15

(c) revoke the TCO; and

(d) make, in its place, such a narrower TCO.

“(5) If the Comptroller is not satisfied of the matters referred to in subsection (1) in relation to a request for revocation of a TCO, the Comptroller must refuse the request. 20

“(6) An order under subsection (3) or (4) revoking a TCO comes into force on the day on which the request to revoke the TCO was lodged.

“(7) If a narrower TCO is made in place of another TCO that is revoked in subsection (4), that narrower TCO comes into force, for the purposes of this Part, from the date of effect of the revocation of the other TCO, as if it had been made under section 269P or 269Q. 25

Revocation at the initiative of Customs

“269SD.(1) If the Comptroller is satisfied that a TCO is no longer required because the general tariff rate in respect of the goods the subject of the order has been reduced to ‘Free’, the Comptroller may make an order revoking the TCO with effect from the day the tariff rate was so reduced. 30

“(2) If the Comptroller is satisfied that: 35

(a) because of an amendment of a Customs tariff; or

(b) having regard to a decision of a court or of the Administrative Appeals Tribunal; or

(c) having regard to written advice on the matter given by an officer or employee of the Commonwealth performing duties in the Attorney-General’s Department who is entitled, under 40

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section 55D of the *Judiciary Act 1903*, to practise as a barrister and solicitor in any Territory;

the tariff classification that is stated in a TCO to apply to the goods the subject of the TCO has not, with effect from a particular day, applied to those goods, the Comptroller must:

(d) make an order revoking the TCO with effect from that day; and

(e) make a new TCO in respect of the goods with effect from the revocation.

“(3) If the Comptroller is satisfied that, in making a TCO, there has been a transcription error in the description of goods the subject of the TCO including the tariff classification that is stated in the TCO to apply to the goods, the Comptroller may:

(a) make an order revoking the TCO with effect from the day the TCO came into force; and

(b) make a new TCO in respect of goods that corrects the error with effect from the revocation.

“(4) The particular day referred to in subsection (2) may be the day on which the TCO that is revoked came into force or a later day.

Notification of revocation decisions

“269SE.(1) As soon as practicable after the Comptroller makes a decision under subsection 269SC(1), the Comptroller must:

(a) by notice in writing, inform the applicant of the decision; and

(b) by notice published in the *Gazette*, inform all other interested persons of the decision.

“(2) As soon as practicable after the Comptroller makes a decision to make an order under subsection 269SD(1) or (2), the Comptroller must, by notice published in the *Gazette*, inform all interested persons of the decision.

“(3) If the decision referred to in subsection (1) or (2) has led to the making of an order revoking a TCO or both to the making of an order revoking a TCO and the making of a new TCO, the notice of that decision given to the applicant and published in the *Gazette* must include full particulars of the order or orders.

“(4) A failure to comply with subsection (1), (2) or (3) does not affect the validity of the decision concerned or of any order or orders to which it has led.

Customs may seek information, documents or material relating to revocation

“269SF.(1) If the Comptroller considers that, in relation to a request for revocation of a TCO, any person (including the person who made the request) may be able to supply information or produce a document

or material relevant to the consideration of the request, the Comptroller may, by notice in writing, request the supply of the information or the production of the document or material within a period specified in the notice and ending not later than 60 days after receiving the request.

“(2) Any information provided in satisfaction of a request under subsection (1) must be provided in writing. 5

“(3) If a person refuses or fails to supply information or produce a document or material under subsection (1) within the period allowed but subsequently supplies the information or produces the document or material, the Comptroller must not take that information, document or material into account in determining whether to revoke a TCO. 10

Effect of revocation upon goods in transit and capital equipment on order

“269SG.(1) Subject to subsection (2), if a TCO is revoked under subsection 269SC(3), the TCO ceases to apply in relation to goods entered for home consumption on or after the day on which the revocation comes into effect. 15

“(2) Despite the revocation of a TCO under subsection 269SC(3) in respect of goods, the TCO continues to apply in relation to:

(a) goods that: 20

(i) were imported into Australia on or before the day on which the revocation came into effect; and

(ii) are entered for home consumption, before, on, or within 28 days after, that day; and

(b) goods that: 25

(i) were in transit to Australia on that day; and

(ii) are entered for home consumption before, on, or within 28 days after, the day on which they were imported into Australia.

“(3) For the purposes of subparagraph (2)(b)(i), goods shall be taken to be in transit to Australia if, and only if, they have left for direct shipment to Australia from a place of manufacture, or a warehouse, in the country from which they are being exported. 30

“(4) Where the Comptroller is satisfied that, after a TCO in relation to capital equipment comes into force but before its revocation under subsection 269SC(3), a firm order had been placed for the purchase of any such equipment, the TCO continues to apply in relation to the importation into Australia of that capital equipment. 35

“Division 5—Miscellaneous

Internal review

5 “269SH.(1) Not later than 28 days after gazettal of a decision (the ‘original decision’) on a TCO application or on a request for revocation of a TCO, any affected person within the meaning of subsection (13) who objects to the making of the decision may apply to the Comptroller for its reconsideration.

“(2) An application for reconsideration must:

- 10 (a) be in writing; and
(b) include the grounds on which the person objects to the decision (whether or not those grounds had previously been considered).

“(3) An application for reconsideration:

- 15 (a) must be lodged with the Comptroller in the same manner, and is taken to be lodged on the same day, as is specified in relation to a TCO application; and
(b) must have the day of its lodgement recorded.

“(4) Where application is made for reconsideration of a decision made on a TCO application, the Comptroller, having regard to:

- 20 (a) the TCO application; and
(b) the submissions, information, documents and materials which the Comptroller was entitled to take into account in considering the TCO application; and
25 (c) any new matter produced to the Comptroller by the applicant for reconsideration which, under subsection (6), the Comptroller is not prevented from taking into account for that purpose;

must decide, not later than 90 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the Comptroller might have made.

30 “(5) Where application is made for reconsideration of a decision on a request for revocation, the Comptroller, having regard to:

- (a) the request for revocation; and
(b) the information, documents and materials which the Comptroller was entitled to take into account in considering the request;
35 and
(c) any new matter produced to the Comptroller by the applicant for reconsideration which, under subsection (7), the Comptroller is not prevented from taking into account for that purpose;

40 must decide, not later than 60 days after the last day for lodgement of the application for reconsideration, whether to affirm the original decision or to substitute any other decision that the Comptroller might have made.

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“(6) If the Comptroller fails to make a decision under subsection (4) or (5) within the period referred to in that subsection, the Comptroller is taken, for the purposes of the reconsideration, at the end of that period, to have made a decision to affirm the original decision.

5

“(7) For the purposes of subsections (4) and (5), the Comptroller must not take into account any new material that is not produced to him or her by the applicant for reconsideration of an original decision within the period of 28 days after notification of the original decision in the *Gazette*.

10

“(8) Where the Comptroller, on reconsidering an original decision, decides to substitute for that decision any decision that he or she might have made, the substituted decision is to be taken to have been made when the original decision was made.

“(9) If the substituted decision involves the making of a TCO, or of an order revoking a TCO, that TCO or revocation order comes into force on the day on which, if the original decision had involved making the TCO or order revoking a TCO, that TCO or order would have come into force.

15

“(10) As soon as practicable after the Comptroller makes a decision under subsection (4) or (5) on an application for reconsideration, the Comptroller must:

20

- (a) by notice in writing inform the applicant for reconsideration of the decision made on the reconsideration; and
- (b) by notice published in the *Gazette*, inform all other interested persons of the decision made on that reconsideration.

25

“(11) If the decision on an application for reconsideration has led to the making of an order or orders, the notice of the decision given to the applicant for reconsideration and published in the *Gazette* must include full particulars of the order or orders.

30

“(12) A failure to comply with subsection (9) does not affect the validity of any decision on a reconsideration or of any order or orders to which it has led.

“(13) In subsection (1):
‘affected person’ means:

35

- (a) in relation to a decision on a TCO application:
 - (i) the applicant for the TCO; or
 - (ii) any person who lodged a submission before the last day for submissions in relation to the TCO application; or
 - (iii) any person who, in the opinion of the Comptroller, was not reasonably able to lodge a submission in relation to

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the TCO application within 50 days of the gazettal day;
and

(b) in relation to a decision on a request for revocation:

(i) the person requesting the revocation; or

5 (ii) any other person whose interests are affected by the
decision made on the request.

TCOs not to apply to prescribed goods

10 “269SJ.(1) The Comptroller must not make a TCO in respect of
goods declared by the regulations to be goods to which a TCO should
not extend.

“(2) If a regulation is made for the purposes of subsection (1) in
respect of goods to which a TCO applies, that TCO must be taken, to
the extent that it covers those goods, to have been revoked by the
Comptroller on the day those regulations came into effect.

15 “(3) Where a TCO is taken to have been revoked under subsection
(2) to the extent that it covers goods the subject of a regulation made
for the purposes of subsection (1), the Comptroller must, as soon as
practicable after the making of the regulation, by notice published in
the *Gazette*, inform interested persons:

20 (a) of the fact that the regulation has been made; and

(b) of its effect on the TCO; and

(c) of the day on which the TCO is taken to have been so revoked.

TCOs not to contravene international agreements

25 “269SK. If the Comptroller is satisfied that, in accordance with the
obligations of Australia under an agreement (including a treaty or
convention) between Australia and another country or other countries,
the rate of duty attaching to the importation of goods (whether or not
the produce of a particular country) is not to be less than a particular
30 minimum rate, the Comptroller must not make a TCO that would
result in a contravention of those obligations.

TCOs not to be statutory rules

“269SL. A TCO is not to be taken to be a statutory rule within the
meaning of the *Statutory Rules Publication Act 1903*.”.

Interpretation

35 **11.** Section 269T of the Principal Act is amended:

(a) by omitting from subsection (4B) “Comptroller” and substituting
“Minister”;

(b) by omitting from subsection (4C) “Comptroller” (twice
occurring) and substituting “Minister”.

Application for action under Anti-Dumping Act

12.(1) Section 269TB of the Principal Act is amended:

(a) by omitting from subsection (1) “lodged with the Comptroller” and substituting “lodged with the Customs in accordance with subsection (5)”; 5

(b) by omitting from subsection (2) “lodged with the Comptroller” and substituting “lodged with the Customs in accordance with subsection (5)”; 5

(c) by omitting subsection (3) and substituting the following subsections: 10

“(3) An applicant may, at any time before a preliminary finding is made under section 269TD in respect of the application, by notice in writing lodged with the Customs in accordance with subsection (4), withdraw the application in whole or in part. 15

“(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 20

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

“(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 25

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

(c) by sending it by electronic facsimile to a facsimile number specified by Customs 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.”. 30

(2) Subsection 269TB(3) of the Principal Act and any approved form made for the purposes of that subsection continue to apply in relation to any application under subsection (1) or (2) that is made before this section commences as if the amendments made by this section had not been made. 35

Consideration of application

13. Section 269TC of the Principal Act is amended: 40

(a) by omitting from subsection (1) all the words preceding paragraph (a) and substituting the following:

“The Comptroller shall, within 25 days, or, if another period is

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prescribed, within that other period, after Customs receives an application under subsection 269TB(1) in respect of goods, examine the application and, if the Comptroller is not satisfied, having regard to the matters contained in the application and to any other information that the Comptroller considers relevant:";

5
(b) by omitting paragraph (1)(c) and substituting the following paragraph:

"(c) that there appear to be reasonable grounds:

10 (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

15 (ii) for the publication of such a notice upon the importation into Australia of such goods;"

(c) by omitting from subsection (2) all the words preceding paragraph (a) and substituting the following:

20 "The Comptroller shall, within 25 days, or, if another period is prescribed, within that other period, 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 Comptroller is not satisfied, having regard to the matters contained in the application and to any other information that the Comptroller considers relevant:";

25 **(d)** by omitting paragraph (2)(c) and substituting the following paragraph:

"(c) that there appear to be reasonable grounds:

30 (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;"

(e) by inserting after subsection (2) the following subsection:

35 "(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:

40 (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

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- (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 5
 - (iii) the application had only been received when that further information was received.”.

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

14. Section 269TE of the Principal Act is amended by omitting from subsection (1)(d) “9(5A), 10(5A)” and substituting “8(5AA), 9(5A), 10(5A), 10(5AA)”. 10

Dumping duties

15. Section 269TG of the Principal Act is amended:
- (a) by omitting from paragraph (4)(b) “indefinitely”; 15
 - (b) by inserting after subsection (4) the following subsection:
“(4A) The suspending by the Minister of his or her consideration of the export of a consignment of goods to Australia on the acceptance of an undertaking continues only until such time as the Minister considers that such consideration should be resumed.”. 20

Countervailing duties

16. Section 269TJ of the Principal Act is amended:
- (a) by omitting from paragraph (3)(b) “indefinitely”;
 - (b) by inserting after subsection (3) the following subsection: 25
“(3A) The suspending by the Minister of his or her consideration of the export of a consignment of goods to Australia on the acceptance of an undertaking continues only until such time as the Minister considers that such consideration should be resumed.”. 30

Periods during which certain notices and undertakings to remain in force

17. Section 269TM of the Principal Act is amended:
- (a) by omitting from subsection (1) “after this section commences” and substituting “after section 17 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* commences”; 35
 - (b) by omitting from subsection (1) “3 years” and substituting “5 years”;
 - (c) by omitting from subsection (2) “after this section commences” and substituting “after section 17 of the *Customs Legislation* 40

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commences”;

(d) by omitting from subsection (2) “3 years” and substituting
“5 years”;

5 (e) by inserting after subsection (2) the following subsections:

“(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

10 (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:

15 (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;

20 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.

25 “(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
30 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.”.

Insertion of new section

18. After section 269TJ the following section is inserted:

35 **Concurrent dumping and subsidy**

“269TJA.(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

40 (b) that a subsidy has been paid in relation to those goods in the
country of origin or the country of export of those goods; and

(c) that, because of the combined effect of the difference between

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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; 5

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: 10

(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 15

(b) that a subsidy has been paid in respect of like goods that have already been exported to Australia and that a subsidy may be paid 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): 20

(i) material injury to an Australian industry producing like goods has been or is being caused or is being threatened; or 25

(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. 30

“(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 suspend consideration of the consignment under both of those sections if he or she is given and accepts: 35

(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. 40

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5 “(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.

10 “(5) In this section:
‘subsidy’, in relation to goods, means an amount per unit of the goods that has been paid or granted, directly or indirectly, in the country of origin or the country of export of those goods, on the production, manufacture, carriage or export of the goods by way of subsidy, bounty, reduction or remission of freight or other financial assistance.”.

Review of decisions

19.(1) Section 273GA of the Principal Act is amended:

(a) by omitting paragraphs (1)(m) and (n) and substituting the following paragraphs:

20 “(m) a decision of the Comptroller under paragraph 269H(1)(b);

(n) a decision of the Comptroller under subsection 269P(1);

(o) a decision of the Comptroller under subsection 269Q(1);

25 (p) a decision of the Comptroller under subsection 269SA(1) or (2);

(q) a decision of the Comptroller under subsection 269SC(1);

(r) a decision of the Comptroller under subsection 269SC(4);

(s) a decision by the Comptroller under subsection 269SD(1) or (2).”;

30 (b) by inserting after subsection (6) the following subsection:

“(6A) An application may not be made to the Tribunal in respect of a decision referred to in paragraph (1)(n), (o), (q) or (r) unless:

35 (a) the decision has already been the subject of an application for reconsideration under section 269SH; and

(b) the person who makes the application to the Tribunal is an affected person within the meaning of that section who is adversely affected by the decision on the reconsideration.”.

40 (2) Despite the repeal of Part XVA of the Principal Act and of paragraphs 273GA(1)(m) and (n) of that Act, a person may apply to

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the Administrative Appeals Tribunal for review of a decision referred to in one or other of those paragraphs:

- (a) that was made under that Part before its repeal; or
- (b) that is taken to have been so made under that Part on or after its repeal;

and any review already applied for may continue as if that Part and those paragraphs had not been repealed.

Transitional

20.(1) Despite its repeal by section 10 of this Act, Part XVA of the Principal Act continues in force in relation to each Commercial Tariff Concession Order (“CTCO”) made before that repeal or made after that repeal in accordance with subsection (2).

(2) If an application for a CTCO had been lodged, but not finally determined, under Part XVA of the Principal Act, before the repeal of that Part, that application is to be determined under that Part, not later than 150 days after the repeal, as if that Part had not been repealed.

(3) If the Comptroller fails to determine an application for a CTCO within the period of 150 days referred to in subsection (2), the Comptroller is taken, at the end of that period, to have made a decision not to make the CTCO applied for.

(4) Despite subsection (1), the Comptroller does not have the power under subsection 269K(2) of the Principal Act as continued in force, to reconsider a decision on an application for a CTCO unless:

- (a) the Comptroller had begun to exercise that power before the repeal; or
- (b) in respect of applications for CTCOs that were determined before, but not more than 28 days before, the repeal—a request is made to the Comptroller for the exercise of the power within 28 days after the repeal; or
- (c) in respect of applications for CTCOs that are determined after the repeals—a request is made to the Comptroller for the exercise of the power within 28 days after the application is determined.

(5) The power of the Comptroller under subsection 269K(2) of the Principal Act as continued in force under subsection (1) must be exercised within 60 days of the repeal or within 60 days of the request for the exercise of the power, whichever last occurs.

(6) If the Comptroller fails to exercise his or her power to reconsider a decision on an application for a CTCO within the period referred in subsection (4), the Comptroller is taken, at the end of that period, to have made a decision to affirm the original decision.

*Customs Legislation (Tariff Concessions and
Anti-Dumping) Amendment No. 89, 1992*

Savings

21. The amendments of section 269TB and 269TC do not apply to any application that is lodged with Customs before the commencement of those amendments.

**PART 4—AMENDMENT OF THE CUSTOMS TARIFF
(MISCELLANEOUS AMENDMENTS) ACT 1987**

Principal Act

22. In this Part, “**Principal Act**” means the *Customs Tariff (Miscellaneous Amendments) Act 1987*.

Transitional

23. Section 8 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) If a customs instrument referred to in subsection (2) was a Commercial Tariff Concession Order made after, but purporting to come into effect before, the commencement of this Act, that instrument has effect, in relation to the period of its operation before the commencement of this Act, as if the reference in the instrument to an item in Schedule 4 of the 1987 Act that is expressed to apply to goods that the order declares are goods to which the item applies were a reference to the corresponding item in Schedule 4 of the 1982 Act.”

NOTES

1. No. 72, 1988 as amended. For further amendments, see No. 174, 1989; No. 70, 1990; and No. 122, 1991.
2. No. 6, 1901 as amended. For further amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; Nos. 162 and 216, 1973; Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 19, 92, 116, 155, 177 and 180, 1979; Nos. 13, 15, 110 and 171, 1980; Nos. 45, 61, 64, 67, 152 and 157, 1981; Nos. 48, 51, 80, 81, 108, 115 and 137, 1982; Nos. 19, 39 and 101, 1983; Nos. 2, 22, 63, 72 and 165, 1984; Nos. 39, 40 and 175, 1985; Nos. 10, 34 and 149, 1986; Nos. 51, 76, 81, 104 and 141, 1987; Nos. 63, 66, 76, 99, 120 and 121, 1988; Nos. 23, 24, 78, 108 and 174, 1989; Nos. 5, 6, 11, 37, 70, 79 and 111, 1990; and Nos. 28, 82, 120 and 123, 1991.
3. No. 76, 1987.

[*Minister's second reading speech made in—
House of Representatives on 7 May 1992
Senate on 28 May 1992*]