1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS LEGISLATION AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Industry, Technology and Regional Development, the Hon Alan Griffiths MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE SENATE TO THE CUSTOMS LEGISLATION AMENDMENT BILL 1993 AS INTRODUCED

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CUSTOMS LEGISLATION AMENDMENT BILL 1993

OUTLINE

This Bill is an omnibus measure proposing a series of amendments to the *Customs Act 1901*, the *Anti-Dumping Authority Act 1988*, the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* and the *Customs Legislation (Anti-Dumping Amendments) Act 1992.*

The Bill's major purpose is to refine the rules of origin as a consequence of the 1992 Closer Economic Relations review. The proposed amendments are intended to provide greater guidance on the use of the relevant provisions and to close loopholes in the legislation which had enabled some claimants for preference to abuse the spirit of the rules of origin requirements. The revised rules of origin are to be contained in a new Division 1A of Part VIII of the *Customs Act 1901* which retains most of the elements of the old section 151 whilst introducing significant changes to the rules relating to goods of mixed origin (new sections 153D and 153E refer).

The Bill also proposes a number of technical amendments to:

i) the *Customs Act 1901* to substitute a new definition for a "place outside Australia" to ensure tighter Customs control over people and goods moving between Australia and installations in Area A of the Zone of Co-operation in the Timor Gap;

ii) the *Customs Act 1901* to allow computer transmission of encoded information in the process of entering and clearing goods;

iii) the *Customs Act 1901* to clarify that the undeclared possessions of ship's crew are forfeited to the Crown; and

iv) the *Customs Act 1901*, the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendments Act 1992* and the *Customs Legislation (Anti- Dumping Amendments) Act 1992* to effect a number of minor technical amendments consequential on the new Electronic Lodgement import entry regime introduced by Act No. 34 of 1992 and amendments to the Tariff Concessions and Anti-Dumping Legislation in Acts No. 89 and 206 of 1992.

FINANCIAL IMPACT STATEMENT

The proposed amendments in this Bill have no direct financial implications.

CUSTOMS LEGISLATION AMENDMENT BILL 1993

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1- Short title

1. This is a machinery clause which provides for the Act to be cited as the *Customs Legislation Amendment Act 1993*.

Clause 2 - Commencement

2. Subclause 2(1) provides for Royal Assent commencement of the following provisions:

- clauses 1 and 2, which are the short title and commencement provisions;
- clause 3, which is an application provision relating to the substantive amendments to Division 1A of the *Customs Act 1901* effected by clause 10 of this Bill;
- clause 4, which cites the *Customs Act 1901* as the Principal Act to which Part 2 relates;
- clause 5, which amends the definition of "place outside Australia" to ensure tighter Customs control over people and goods moving between Australia and installations in Area A of the Zone of Co-operation in the Timor Gap;
- clause 6, which amends section 64AA of the *Customs Act 1901* to clarify that the undeclared possessions of ship's crew are forfeited to the Crown;
- clause 7, which remakes the import entry advice and payment procedures for imported goods in section 71B of the *Customs Act 1901*;
- clause 14 and subclause 16(1), which introduce new *Gazette* notification requirements in the Tariff Concessions System in Part XVA of the *Customs Act 1901*;
- clause 18, which effects a technical change to correct a cross reference to the *Customs Tariff Act 1987*; and
- clause 21 which is a machinery clause relating to the *Anti-Dumping Authority Act 1988*.

3. Subclause 2(2) provides for the retrospective commencement on 1 September 1992 of clause 8. Clause 8 effects a technical amendment to section 71F of the *Customs Act 1901*, consequential on the introduction of Electronic Lodgment in 1992, to provide for the deemed withdrawal of an import entry in certain circumstances where duty remains unpaid. 1 September 1992 was the commencement date of the

principal Electronic Lodgement amendments to the import entry regime effected by the *Customs and Excise Legislation Amendment Act 1992* (Act No. 34 of 1992).

4. Subclause 2(3) provides for clauses 11, 12 and 13 to commence 28 days after the day on which this Act receives the Royal Assent. This is the standard minimum commencement period where a new offence provision is to operate, or where new obligations or liabilities are created. These clauses amend sections 214AA, 214AB and 240, respectively, of the *Customs Act 1901* to extend the audit powers, commercial document keeping obligations and penalties in those sections to goods delivered into home consumption without entry under sections 69 and 70 of that Act.

5. Subclause 2(4) provides for clause 15, subclause 16(2) and item 3 of Schedule 2 to be taken to have commenced on 1 November 1992. These provisions are technical corrections to cross references in the new Tariff Concessions System in Part XVA of the *Customs Act 1901* introduced by the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* (Act No. 89 of 1992). The principal Tariff Concessions amendments in that Act commenced on 1 November 1992.

6. Subclause 2(5) provides for clause 17, which effects a cross reference amendment consequential on amendments in the Tariff Amendment Bill (No. 2) 1993, to commence 14 days after the day on which that Bill receives the Royal Assent.

7. Subclause 2(6) provides for item 1 of Schedule 2, which corrects a citation error in the *Customs Legislation Amendment Act 1992*, to be taken to have commenced on 18 August 1992, the date on which the original amendment was intended to take effect.

8. Subclause 2(7) provides for item 2 of Schedule 2, which corrects a citation error in the *Customs Legislation (Anti-Dumping Amendments) Act 1992*, to be taken to have commenced on 1 January 1993, the date on which the original amendment was intended to take effect.

9. Subclause 2(8) provides for the remaining provisions of the Act to commence on a day to be fixed by Proclamation. The relevant clauses mainly relate to the new Preference arrangements in Division 1A of Part VIII of the *Customs Act 1901*. These provisions are to commence by proclamation primarily to allow Regulations subsidiary to the Principal Act amendments to be prepared and brought into operation. The new arrangements are expected to be operational before the end of 1993.

10. The Proclamation commencement is subject to the standard "sunset" provision in Acts which are expressed to commence by Proclamation; namely, that if they are not proclaimed within a period of six months after the date on which the Act receives the Royal Assent, the provisions are deemed to commence on the first day after that period (subclause (4) refers).

Clause 3 - Application of Division 1A of Part VIII of the Customs Act

11. This clause provides that the revised rules of origin contained in new Division 1A of Part VIII of the *Customs Act 1901* will apply in respect of goods entered for home consumption after the commencement of that new Division by Proclamation.

PART 2 - AMENDMENTS OF THE CUSTOMS ACT 1901

Clause 4 - Principal Act

12. This provision identifies the *Customs Act 1901* as the Principal Act for the purposes of this Part.

Clause 5 - Definitions

13. This clause amends sub-section 4(1) of the Principal Act by omitting the present definition of "place outside Australia" and substituting a new definition which provides that waters or resource installations in Area A of the Zone of Cooperation are included as a "place outside Australia" and therefore subject to the normal barrier controls over movement of persons and goods to and from that area.

. Area A of the Zone of Cooperation was created as a result of the treaty signed on 11 December 1989 between Australia and Indonesia, under which the respective Governments agreed to cooperate in the exploration for and exploitation of the petroleum resources of the continental shelf in the area known as the 'Timor Gap' between Australia and East Timor.

14. The amendments effected by this clause are a response to concerns that the Customs barrier controls (reporting of cargo, passengers and crew), do not extend to movement of persons and goods to and from that area. The relevant barrier control provisions in Division 3 of Part IV of the Act operate by reference to the phrase "place outside Australia". The definition of that phrase did not include an area of waters outside Australia, thereby creating difficulties in extending the controls to Area A. The proposed amendments are intended to overcome those difficulties.

Clause 6 - Arrival Report

15. This clause amends section 64AA of the Act to specifically provide that the ships arrival report to be communicated to Customs by the master or owner of a ship within 24 hours of arrival at an Australian port must contain particulars of the personal effects of the crew. This amendment corrects an oversight when the cargo reporting provisions (sections 64 to 64AE) of the Act were remade by the *Customs and Excise Legislation Amendment Act 1990*. The ability to require information in accordance with the requirements of an approved form (subsection 64AA(2) refers) did not extend as far as the previous requirements under the Regulations. As a consequence the undeclared possessions of ship's crew could not be considered forfeited to the Crown under paragraph 229(1)(e) of the Act.

16. The proposed amendment to section 64AA gives Customs a specific head of power to require such information and therefore triggers the forfeiture provision in paragraph 229(1)(e) of the Act if such goods are not properly accounted for.

Clause 7 - Authority to deal with goods entered under section 71A

17. This clause amends section 71B of the Act to remake the import entry advice and payment procedures for imported goods to reflect the actual administrative procedures which occur before goods are released from Customs control.

18. Paragraphs (a) and (b) amend subparagraphs 71B(2)(b)(i) and 71B(3)(c)(i) of the Act to remove the requirement that an import entry advice communicated to an importer by Customs in either documentary or electronic form contain a statement as to the actual amount of duty payable before the goods can be delivered into home consumption. Now, the import entry advice need only contain a statement to the effect that the goods have been cleared for home consumption, warehousing or transhipment.

19. Paragraph (c) then amends subsection (4) to replace previous paragraph (4)(b), (which requires that payment of the amount specified in the import entry advice be made before Customs can issue an authority to deal), with a new paragraph (b) which simply requires the payment of any duty, sales tax, or other charges associated with the entry of goods to be paid before those goods will be released. These amounts are in fact "self-assessed" by the importer and appear on the import entry originally communicated to Customs. The amendment to paragraph (4)(b) will require those self-assessed amounts, rather than an amount specified by Customs in the import entry advice, to be paid before an importer is entitled to an authority to deal with the goods the subject of an entry.

20. New paragraph (b) also requires the payment of any administrative charges associated with the making of an entry before an authority to deal can be given. Such charges include charges associated with the use of the Customs computer system to lodge entries electronically; charges that Customs collects on behalf of the communications network provider; charges collected on behalf of other Commonwealth agencies; as well as any fee specified in the Regulations for assistance with the preparation of documentary import entries (see paragraph 21 below).

21. Paragraph (d) inserts a new subsection (4A) into section 71B which reintroduces the power to specify in the Regulations an administrative charge for assistance provided in preparing documentary import entries for use in a Customs computer system. The power to prescribe such a fee was inadvertently omitted when the principal Electronic Lodgement amendments were made by the *Customs and Excise Legislation Amendment Act 1992* (Act No. 34 of 1992).

Clause 8 - Withdrawal of import entries

22. This clause amends section 71F of the Act, which deals with the withdrawal of import entries, to insert a new subsection (6) to provide for certain entries to be deemed to have been withdrawn.

23. Old section 38 of the Act, which provided for the withdrawal of import entries, was replaced by new section 71F when the principal Electronic Lodgement amendments were made by the *Customs and Excise Legislation Amendment Act 1992* (Act No. 34 of 1992). New subsection 71F(6) is in similar terms to old subsection 38(3) and provides a mechanism where, if duty has not been paid within 30 days of an entry being lodged; the Collector has given notice requiring the payment within a period specified in the notice and at the expiration of that period duty still has not been paid, then the entry is taken to be withdrawn under subsection 71F(1).

24. This amendment is taken to have commenced on 1 September 1992, the date of commencement of the principal Electronic Lodgement amendments (see Clause Note 2, paragraph 3). The amendment will solve the problem of entries which have remained unpaid, clogging up the entry record on the COMPILE computer data base.

Clause 9 - Repeal of section 151

25. This clause repeals section 151 of the Principal Act as a consequence of the insertion of the new Division 1A of Part VIII by Clause 10 below.

Clause 10 - Insertion of new Division

26. This clause inserts a new Division 1A in Part VIII of the Principal Act dealing with rules of origin for preference claim goods as follows:

Division 1A - Rules of origin of preference claim goods

New section 153A - Purpose of Division

27. This section outlines the purpose of the Division as setting out the rules for determining whether goods are the produce or manufacture of countries other than Australia when claiming a preferential rate of duty in respect of those goods when imported (new subsections 153A(1) and (2)). The section also directs the reader's attention to certain diagrams and explanatory notes which illustrate the operation of the rules of origin in their application to New Zealand (new subsection 153A(3)).

New section 153B - Definitions

28. This section defines certain expressions which appear in the rules of origin for the purposes of Division 1A. In particular,

- **'preference claim goods'** means goods that are claimed to be the produce or manufacture of a preference country upon their entry for home consumption;

- **'allowable factory cost'** and **'total factory cost'**, in relation to preference claim goods is the sum of certain allowable expenditure provided for in new sections 153C, 153D, 153F and 153G;

- **'factory'** and **'manufacturer'** are defined by reference to the last process in the manufacture of the preference claim goods;

- **'materials'** are essentially defined as all inputs into the manufacturing process (other than those treated as overheads), used or consumed in the manufacture of the preference claim goods. They also include the inner containers in which the goods are packed (other than shipping or airline containers, pallets or similar articles).

New section 153C - Total expenditure of factory on materials

29. In order to gain the benefit of a preferential rate of duty it is first necessary to establish that the goods in question are the produce or manufacture of a country in respect of which preferential duty rates apply. One way in which preference claim goods will be regarded as the manufacture of a particular country is if the last process in their manufacture takes place in the particular country and having regard to their qualifying area (defined in new section 153B), their *allowable factory cost* is not less than the specified percentage of their *total factory cost*. This rule can be termed the **'percentage rule'**, and is provided for in new sections 153M and 153N and in new subsections 153J(2), 153L(2), 153P(2) and 153Q(2).

30. *'Total factory cost'* in relation to preference claim goods, is the sum of the *allowable* expenditure on labour and overheads by the factory where the last process of manufacture occurred together with the *total* expenditure of that factory on materials in respect of the goods.

31. As part of that equation, new section 153C provides a mechanism for calculating the total expenditure of the factory on materials, in conjunction with new section 153E (referred to in these Notes at paragraphs 38 - 40 below). It provides that it is the cost to the manufacturer of the materials *in the form they are received at the factory*, worked out under section 153E.

- The emphasis on the form in which the materials are received into the factory is intended to make clear that in determining the origin and cost of particular materials to the manufacturer, it is the origin and cost of materials in that particular form that is important rather than that relating to what might be the raw ingredients of the material received into the factory.

New section 153D - Allowable expenditure of factory on materials

32. This section provides the mechanism for calculating the allowable expenditure of the factory on materials as a component of allowable factory cost, for the purposes of the 'percentage rule' referred to earlier in the clause note for new section 153C (see paragraph 27 above).

33. The allowable expenditure of the factory on materials differs according to the source of the materials received at the factory. Details of the allowable expenditure in each case are as follows:

- If preference claim goods are wholly or partly manufactured from materials imported from outside the qualifying area (other than goods wholly manufactured from unmanufactured raw products) there is *no* allowable expenditure of the factory on those particular materials (new subsection 153D(2)). An example of the application of this rule is illustrated in Diagram 2 in new Schedule VII of the Principal Act via Plants 1, 4 and 7.

- If preference claim goods are wholly or partly manufactured from unmanufactured raw products (defined in section 4 of the Principal Act), of a country inside the qualifying area, the allowable expenditure is the cost to the manufacturer of those materials, worked out under section 153E (new subsection 153D(3)).

- If preference claim goods are wholly or partly manufactured from particular materials and, as a result of a process or processes of manufacture within the qualifying area there is incorporated in those particular materials other *contributing materials* imported from outside the qualifying area, the allowable expenditure on the particular materials (in the form they are received at the factory) does not include any part of the cost attributable to the contributing material (in the form it was received by the manufacturer who performed the first process of manufacture within the qualifying area) - (new subsection 153D(4)).

  - The application of this rule is illustrated in Diagram 2 of new Schedule VII of the Principal Act by reference to the Plant 2, 5 and 7 example. It is a rule intended to ensure that only the value added to preference claim goods within the qualifying area will count towards establishing grounds for preferential treatment of the goods in question, with the exception of the qualification in new subsection 153D(6) below.

34. New subsection 153D(5) provides that for the purposes of subsection 153D(4), if an intervening exportation to a place outside the qualifying area occurs in respect of contributing material prior to its incorporation in particular materials, subsection 153D(4) applies to those contributing materials on reimportation as if they had been imported for the first time.

35. New subsection 153D(6) provides an exception to the general rule in subsection 153D(4) excluding costs incurred in relation to contributing material outside the qualifying area. This exception relates only to New Zealand and provides that if the value added to particular materials in New Zealand constitutes at least 50% of the total expenditure of the factory on materials, then despite the rule in subsection 153D(4), the allowable expenditure can include the total expenditure of the factory on materials; that is, inclusive of the cost of contributing materials from outside the qualifying area.

The application of this rule is illustrated in Diagram 2 of new Schedule VII of the Principal Act by reference to the Plant 3, 6 and 7 example.

36. New subsection 153D(7) is intended to contribute to the fulfilment of Australia's obligations under the Kyoto Convention. It allows any raw material that is recovered from waste or scrap generated from material which undergoes a process of manufacture in a country, to be treated as if it were the unmanufactured raw product of that country (regardless of the actual source of the original material that underwent the process which resulted in the waste or scrap).

37. New subsection 153D(8) requires you to disregard any transhipment of materials that occurs, for the purposes of determining the country from which the materials were exported.

New section 153E - Calculation of the cost of materials received at a factory

38. This section sets out the rules for working out the cost of materials in the form they are received at a factory, for the purposes of new sections 153C and 153D (paragraphs 29 and 32 of the clause notes above refer).

39. The general rule is that the eligible cost will be the amount payable by the manufacturer in respect of the materials in the form they are received at the factory where the last process of manufacture occurs (new subsection 153E(2)). In essence this will be the invoice price of the materials into the factory and will therefore include any freight payable in respect of the materials and any profit component forming part of the price payable for the materials at that point. The eligible cost to the manufacturer does not however, include any customs or excise duty, sales tax, goods and services tax, anti-dumping or countervailing duty imposed on the materials by a country in the qualifying area (new subsection 153E(3)). Such duties imposed by countries outside the qualifying area are in any case excluded by the operation of new subsection 153D(4) (paragraph 33 above refers).

40. New subsections 153E(4) - (7) are anti-avoidance provisions that are intended to prevent importers of preference claim goods from manipulating the cost of materials so as to meet the 'percentage rule' and thereby obtain a preferential rate of duty.

New section 153F - Allowable expenditure of factory on labour

41. This section provides the mechanism for calculating the allowable expenditure of the factory on labour as a component of 'allowable factory cost' and 'total factory cost', for the purposes of the 'percentage rule' referred to in paragraph 29 of these Notes on Clauses.

42. The allowable expenditure is the sum of the part of each prescribed cost incurred by the manufacturer on labour, in relation to the manufacture of preference claim goods, which can be reasonably allocated to that manufacture. The regulations prescribing specific items of cost may also specify the manner of working out that cost (new subsection 153F(2) refers).

New section 153G - Allowable expenditure of factory on overheads

43. This section provides the mechanism for calculating the allowable expenditure of the factory on overheads as a component of 'allowable factory cost' and 'total factory cost', for the purposes of the 'percentage rule' referred to earlier. The mechanism is sufficiently explained in the clause note for new section 153F, paragraph 42 above.

New section 153H - Unmanufactured goods

44. This section provides that goods which are claimed to be the produce of a country are the produce of that country if they are its unmanufactured raw products. The latter term is defined in section 4 of the Principal Act. This provision is a restatement of the rule which previously appeared in subsection 151(5) of the Principal Act.

New section 153J - Manufactured goods originating in New Zealand

45. This section, together with new sections 153L - 153Q are largely restatements of the rules of origin previously appearing in section 151 with regard to particular preference countries.

46. Goods claimed to be the manufacture of New Zealand will be so regarded if they meet either of two rules set out in the new provision: the 'wholly manufactured rule' or the 'percentage rule', as follows:

. <u>the 'wholly manufactured rule' - new subsection 153J(1)</u>

Goods claimed to be the manufacture of New Zealand are its manufacture if they are *wholly manufactured* in New Zealand from one or more of :

- unmanufactured raw products;
- materials wholly manufactured in Australia or New Zealand or Australia and New Zealand;
- materials imported into New Zealand that the Comptroller-General has determined, by Gazette notice, to be manufactured raw materials of New Zealand.

. <u>the 'percentage rule' - new subsections 153J(2) and (3)</u>

Goods claimed to be the manufacture of New Zealand are also its manufacture if:

- the last process in their manufacture was performed in New Zealand; <u>and</u>

- having regard to their qualifying area, their allowable factory cost is not less than 50% (or another gazetted percentage, if relevant) of their total factory cost.

The qualifying area in this case is New Zealand and Australia (see the definition of 'qualifying area' in new section 153B).

New section 153K - Modification of section 153J in special circumstances

47. This section implements the agreement between Australia and New Zealand as part of the 1992 CER Review; that, in recognition of difficulties which may arise when unforeseen circumstances (such as an adverse movement in exchange rates), result in a shipment failing to qualify under the 'percentage rule', Australia and New Zealand agree to apply a "margin of tolerance" of 2 percentage points. This means that if the allowable factory cost of the preference claim goods gets to 48% it will be deemed to have met the (50%) percentage rule.

48. The "margin of tolerance" power is exercisable by the Comptroller by way of determination which may be revoked at any time (new subsections 153K(2) and (3) refer).

New section 153L - Manufactured goods originating in Papua New Guinea or a Forum Island Country

49. Goods claimed to be the manufacture of Papua New Guinea will be so regarded if they meet either of two rules set out in the new provision: the 'wholly manufactured rule' or the 'percentage rule', as follows:

. the 'wholly manufactured rule' - new subsection 153L(1)

Goods claimed to be the manufacture of Papua New Guinea are its manufacture if they are *wholly manufactured* in Papua New Guinea from one or more of :

- unmanufactured raw products;
- materials wholly manufactured in Australia or Papua New Guinea or Australia and Papua New Guinea;
- materials imported into Papua New Guinea that the Comptroller-General has determined, by Gazette notice, to be manufactured raw materials of Papua New Guinea.

. the 'percentage rule' - new subsection 153L(2)

Goods claimed to be the manufacture of Papua New Guinea are also its manufacture if:

- the last process in their manufacture was performed in Papua New Guinea; and

- having regard to their qualifying area, their allowable factory cost is not less than 50% (or another gazetted percentage, if relevant) of their total factory cost.

50. Goods claimed to be the manufacture of a Forum Island country will be so regarded if they meet the 'percentage rule' set out in subsection 153L(2) above, but with the last process occurring in the Forum Island Country rather than Papua New Guinea.

51. New subsection 153L(3) qualifies the general rules outlined above, if the preference claim goods are partly manufactured from materials of New Zealand origin which, if imported into Australia attract a "Free" rate of duty. In that case the goods will be of Papua New Guinea or Forum Island origin if the Papua New Guinea / Forum Island content is at least 25% of total factory cost (provided that the overall percentage rule in new subsection 153L(2) has been met). In other words, it allows New Zealand sourced material to contribute to Papua New Guinea / Forum Island origin.

- *The qualifying area in this case is Papua New Guinea, Forum Island Countries, New Zealand and Australia (see the definition of 'qualifying area' in new section 153B).*

New section 153M - Manufactured goods originating in a particular Developing Country

52. Goods claimed to be the manufacture of a particular Developing Country will be so regarded if they meet the 'percentage rule' as follows:

- the last process in their manufacture was performed in that country; and

- having regard to their qualifying area, their allowable factory cost is not less than 50% of their total factory cost.

- *The qualifying area in this case is the Developing Country, Papua New Guinea, Forum Island Countries, the other Developing Countries and Australia (see the definition of 'qualifying area' in new section 153B).*

New section 153N - Manufactured goods originating in a Developing Country but not in any particular Developing Country

53. Goods claimed to be the manufacture of a Developing Country, but not of any particular Developing Country, will be so regarded if they meet the 'percentage rule' as follows:

- the last process in their manufacture was performed in Papua New Guinea or a Forum Island Country; and

- they are not the manufacture of Papua New Guinea or a Forum Island Country under section 153L; and

- having regard to their qualifying area, their allowable factory cost is not less than 50% of their total factory cost.

. *The qualifying area in this case is Papua New Guinea, Forum Island Countries, the other Developing Countries and Australia (see the definition of 'qualifying area' in new section 153B).*

New section 153P - Manufactured Goods originating in Canada

54. Goods claimed to be the manufacture of Canada will be so regarded if they meet either the 'wholly manufactured rule' in relation to Australia and Canada (new subsection 153P(2) refers) or the 'percentage rule', provided also that the preference claim goods have not been transhipped (new subsection 153P(1) refers). In relation to satisfaction of the 'percentage rule':

. the last process in their manufacture must have been performed in Canada; and

. having regard to their qualifying area, their allowable factory cost must be at least 75% of their total factory cost (if the goods are of a kind commercially manufactured in Australia) or 25% of their total factory cost (if the goods are of a kind not commercially manufactured in Australia).

55. The notion of commercial manufacture is dealt with in new section 153R below.

. *The qualifying area in this case is Canada and Australia (see the definition of 'qualifying area' in new section 153B).*

New section 153Q - Manufactured goods originating in a country that is not a preference country

56. Goods claimed to be the manufacture of a country that is not a preference country will be so regarded if they meet either the 'wholly manufactured rule' in relation to Australia and that country (new subsection 153Q(1) refers) or the 'percentage rule' (new subsection 153Q(2) refers), as follows:

. the 'wholly manufactured rule' - new subsection 153Q(1)

Goods claimed to be the manufacture of a country that is not a preference country are its manufacture if they are *wholly manufactured* in that country from one or more of :

- unmanufactured raw products;
- materials wholly manufactured in Australia or the country or Australia and the country;
- materials imported into that country that the Comptroller-General has determined, by Gazette notice, to be manufactured raw materials of the country.

the 'percentage rule' - new subsections 153Q(2) and (3)

Goods claimed to be the manufacture of a country that is not a preference country are also its manufacture if:

- the last process in their manufacture was performed in that country; and

- having regard to their qualifying area, their allowable factory cost is at least 75% of their total factory cost (if the goods are of a kind commercially manufactured in Australia) or 25% of their total factory cost (if the goods are of a kind not commercially manufactured in Australia).

57. New subsection 153Q(4) provides that in the case of Christmas Island, Cocos (Keeling) Islands and Norfolk Island the percentage referred to in subsection 153Q(3) will be 50% (commercially manufactured) and 25% (non-commercially manufactured) rather than the higher percentages otherwise specified.

New section 153R - Are goods commercially manufactured in Australia?

58. This section provides that the Comptroller may determine by Gazette notice, that goods of a specified kind are, or are not, commercially manufactured in Australia for the purposes of new sections 153P and 153Q.

New section 153S - Rule against double counting

59. This section is intended to ensure that in calculating the allowable factory cost or total factory cost of preference claim goods, relevant costs are not taken into account more than once.

New section 153T - May be different rules of origin for anti-dumping purposes so far as New Zealand is concerned

60. This section is a restatement of the provision that previously appeared in subsections 151(14A) and (14B) in relation to the determination of the origin of goods for anti-dumping purposes.

Clauses 11, 12 and 13 -Power of officers to inspect commercial documents in certain circumstances
Power of officers to inspect commercial documents in other circumstances
Commercial documents to be kept

61. These clauses provide for related amendments to sections 214AA, 214AB and 240, respectively, of the Act to extend the audit powers, commercial document keeping obligations and penalties in those sections to goods delivered into home consumption without entry under sections 69 and 70 of that Act. The extension of the powers and obligations is necessary as a consequence of the Electronic Lodgement amendments to the import entry regime in the *Customs and Excise Legislation*

Amendment Act 1992 (Act No. 34 of 1992), which created a new concept of "returns" for certain goods which are delivered into home consumption without entry.

62. Section 39 of Act No. 34 amended section 214AA of the Act to refer to the new import entry provisions to which the power relates. Section 214AA specifically ties the audit power to goods for which an authority to deal has been given under section 71B after they have been entered. Sections 69 and 71 of the new import entry regime provide for delivery without entry of certain classes of goods known as 'like customable' and 'special clearance' goods with the permission of an officer of Customs. In these cases no authority to deal is ever given under section 71B, but a return is required to be given to Customs within a specified amount of time after the goods have been delivered (paragraphs 69(5)(c) and 70(7)(a) of the Act refer).

63. In both these situations no entry is ever made in relation to the goods, and despite the fact that returns under section 69 and 70 contain exactly the same information as an entry, there was no ability to audit the commercial documents which would support that information because section 214AA only referred to goods which had been authorised to be taken into home consumption under section 71B.

64. Likewise, the additional audit powers in section 214AB(2) only applied to commercial documents which related to goods which had been entered, and the obligation to keep commercial documents in section 240 only related to documents necessary to enable the Collector to satisfy himself or herself of the correctness of the particulars shown in an entry.

65. Clauses 11, 12 and 13 amend sections 214AA, 214AB and 240 respectively, to extend the relevant powers, obligations and penalties to commercial documents relating to goods delivered into home consumption without entry under sections 69 and 70.

66. The amendment to section 240 effected by clause 13 also provides for a penalty of 20 penalty units for failure to comply with the five year document retention obligations in new subsection (1AA). As new obligations and penalties are created by this group of amendments; these clauses are to commence 28 days after the day on which this Act receives the Royal Assent (see Clause Note 2, paragraph 4).

Clause 14 - Processing requests for revocation of TCOs

67. This clause amends Section 269C of the Act to insert a new subsection (1A) which requires the Comptroller to publish a notice in the *Gazette* stating that a request for revocation for a Tariff Concession Order (TCO) has been lodged; the date on which it was lodged; and the TCO number to which the request relates.

68. This amendment is considered necessary, as the effective date of a decision to revoke a TCO is always retrospective (being the date the request for revocation was lodged - subsection 269SC(6) refers), and importers should be put on notice that a particular TCO is at risk and they may be required to pay duty at a later stage should the decision on the request for revocation have the result of the TCO not being in force on the day the goods were entered for home consumption.

69. The change does not affect in any way the grounds upon which a decision on such a request will be made by the Comptroller; it merely puts importers on notice that a particular TCO is at risk from a particular date.

Clause 15 - Effect of revocation on goods in transit and capital equipment on order

70. Section 269SG of the Principal Act makes provision for TCOs to continue to apply to certain goods already in transit to Australia or capital equipment on order at the time a TCO is revoked. Section 269SG currently only refers to TCOs revoked under subsection 269SC(3). That subsection is the principal provision under which TCOs may be revoked, however, in certain circumstances they are also revoked under subsection 269SC(4). Paragraphs (a), (b) and (d) of this clause amend subsection 269SG(1), (2) and(4) respectively to insert a cross reference to revocations under subsection 269SC(4).

71. Paragraph (c) of this clause further amends subsection 269SG(4) to omit the words "The Comptroller" and substitute "an officer of Customs". This amendment allows a discretion to determine whether a firm order has been placed for capital equipment before a TCO in relation to those goods is revoked. The discretion can be exercised by any officer of Customs, instead of only those specifically delegated the power by the Comptroller, as the discretion is one which needs to be exercised by a wide range of officers on a daily basis.

72. This clause is to be taken to have commenced on 1 November 1992, being the date on which the principal changes to the Tariff Concessions System effected by the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* (Act No. 89 of 1992) took effect.

Clause 16 - Internal Review

73. Subclause 16(1) amends section 269SH of the Principal Act to insert a new subsection (1A) which requires the Comptroller to publish a notice in the *Gazette* stating that a request for reconsideration of a decision that leads to the making of a TCO, or that refuses to revoke a TCO, has been lodged; the date on which it was lodged and the TCO number to which the request relates.

74. This amendment is considered necessary, as the effective date of such decisions to revoke a TCO is always retrospective (being the date of effect of the original decision), and importers should be put on notice that a particular TCO is at risk and they may be required to pay duty at a later stage should the decision on the request for revocation have the result of the TCO not being in force on the day the goods were entered for home consumption.

75. The change does not affect in any way the grounds upon which a decision on such a request will be made by the Comptroller, it merely puts importers on notice that a particular TCO is at risk from a particular date.

Clause 17 - Interpretation

76. This clause effects a technical amendment to subsection 273F(2) of the Principal Act to remove any reference to Schedule 5 of the *Customs Tariff Act 1987*, consequential on the proposed repeal of that Schedule in the Customs Tariff Amendment Bill (No. 2) 1993. This change is expressed to commence on the same day as the repeal of Schedule 5 commences (see Clause Note 2, paragraph 6).

Clause 18 - Review of decisions under the Customs Tariff Act

77. This provision amends section 273H of the Principal Act, which provides for review by the Administrative Appeals Tribunal of decisions under section 13 of the *Customs Tariff Act 1987*. Section 273H currently refers to a decision "of the Minister or the Comptroller" under section 13 of that Act, whereas only the Comptroller is empowered to make decisions under that section. This clause removes the redundant reference to decisions of the Minister.

Clause 19 - Insertion of new section:

New section 273L - Entry and transmission of information by computer

78. New section 273L provides that if the Principal Act requires or permits information to be entered or transmitted by computer, then that information may be in an encoded form chosen by Customs. Under proposed enhancements to the Customs computer system, known as EDIFICE 1, it is proposed to allow information to be transmitted by codes (mainly numbers) instead of plain text in order to minimise transmission charges.

79. This new provision is to commence by Proclamation when final refinements of the proposed new system are complete (see Clause Note 2, paragraph 8).

Clause 20 - Insertion of new Schedule

80. This clause inserts a new Schedule VII in the Principal Act, which contains diagrams and explanatory notes illustrating certain operations of the new Division 1A (setting out the rules of origin for preference claim goods) in relation to New Zealand.

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

Clause 21 - Principal Act

81. This provision cites the *Anti-Dumping Authority Act 1988* as the Principal Act to be amended by this Part.

Clause 22 - Anti-dumping measures not to apply to goods of New Zealand origin

82. This clause amends section 3A of the Principal Act to refer to the new Division 1A of Part VIII, consequential on the amendments effected by clause 10 of this Bill.

PART 4 - MISCELLANEOUS

Clause 23 - Further Amendments of other Acts

83. This clause provides for the Acts specified in Schedule 2 to be amended as set out in that Schedule. The proposed amendments are all minor technical amendments which correct drafting errors in the Acts to which they relate.

SCHEDULE 1

This Schedule contains the new Schedule VII referred to in clause 20 above. The new Schedule VII contains diagrams and explanatory notes illustrating the application of the new rules of origin in relation to New Zealand. In particular, Diagram 1 is a decision diagram for working out whether goods are the produce or manufacture of New Zealand. Diagram 2 gives an example of goods that are last processed in New Zealand to show, in particular, how allowable expenditure on materials, allowable factory cost and total factory cost are worked out.

SCHEDULE 2

AMENDMENTS OF OTHER ACTS

Customs Legislation Amendment Act 1992

Paragraph 21(a)

Item 1 corrects the citation of the definition of "mining operations" in the *Customs Legislation Amendment Act 1992* to give proper reference to the definition of "mining operations" in section 164 of the *Customs Act 1901* as originally intended.

Paragraph 21(a) of the *Customs Legislation Amendment Act 1992* purported to amend subsection 164(7) of the Act to insert a new paragraph (d) into the definition of "mining operation" so that ships travelling to Australian ports for repairs would be eligible for diesel fuel rebate for fuel used to travel to and from oil and gas exploration areas off the north-west coast of Australia.

As the actual term in subsection 164(7) is "mining operations", this amendment was not correctly effected. This clause amends the definition with effect from 18 August 1992 (being the commencement date of the original amendment, which reflected the date of the Budget announcement), to give effect to that paragraph as originally intended.

Customs Legislation (Anti-Dumping Amendments) Act 1992

Paragraph 4(a)

Item 2 corrects the citation of the definition of "dumping duty" in the *Customs Legislation (Anti-Dumping Amendments) Act 1992* to give proper reference to the definition of "dumping duty" in section 269T4 of the *Customs Act 1901* as originally intended.

Paragraph 4(a) of the *Customs Legislation (Anti-Dumping Amendments) Act 1992* amended section 269T of the *Customs Act 1901* to omit the definition of "anti-dumping duty" and substitute a new definition "dumping duty". This amendment was incorrect, as the original definition in section 268T referred to "dumping duty", not "anti-dumping duty".

This amendment is to be taken to have commenced on 1 January 1993, the date of Proclamation of the original amendment.

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

Subsection 20(6)

Item 3 omits the words "subsection (4)" and substitutes the words "subsection (5)" in subsection 20(6) of the Principal Act to correct a cross reference to a period of time specified in the transitional provisions for the amendments to the Tariff Concessions System amendments effected by that Act.