

Customs Legislation Amendment Act (No. 1) 2003

No. 119, 2003

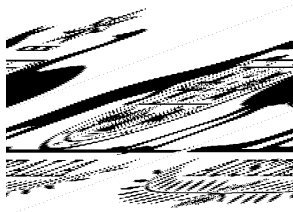
**An Act to amend the *Customs Act 1901* and the
Passenger Movement Charge Collection Act 1978,
and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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No. 119, 2003

**An Act to amend the *Customs Act 1901* and the
Passenger Movement Charge Collection Act 1978,
and for related purposes**

[Assented to 4 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Legislation Amendment Act
(No. 1) 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedule 1, Part 1	A single day to be fixed by Proclamation, subject to subsection (3)	
3. Schedule 1, Parts 2 and 3	The day on which this Act receives the Royal Assent	
4. Schedule 1, Part 4	A single day to be fixed by Proclamation, subject to subsection (3)	
5. Schedule 1, Parts 5, 6 and 7	The day on which this Act receives the Royal Assent	
6. Schedule 2	1 December 2002	
7. Schedule 3, Part 1	The day on which this Act receives the Royal Assent	
8. Schedule 3, items 4 to 7	The day on which this Act receives the Royal Assent, subject to subsection (4)	
9. Schedule 3, items 8 and 9	The day on which this Act receives the Royal Assent, subject to subsection (5)	
10. Schedule 3, Part 3	1 July 2003	
11. Schedule 3, Part 4	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 62 of Schedule 3 to the <i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i>	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 or 4 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (4) If this Act does not receive the Royal Assent before the commencement of item 39 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, the provisions covered by item 8 of the table do not commence at all.
- (5) If this Act does not receive the Royal Assent before the commencement of item 62 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, the provisions covered by item 9 of the table do not commence at all.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Anti-dumping measures

Part 1—Economies in transition

Customs Act 1901

1 Subsection 269T(1)

Insert:

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

2 After subsection 269T(5B)

Insert:

(5C) A country has an *economy in transition* at a time if:

- (a) before the time, the Government of the country had a monopoly, or a substantial monopoly, of the trade of that country and determined, or substantially influenced, the domestic price of goods in that country; and
- (b) at the time, that Government does not:
 - (i) have a monopoly, or a substantial monopoly, of the trade of that country; or
 - (ii) determine, or substantially influence, the domestic price of goods in that country.

3 Subsections 269TAC(5D) and (5E)

Repeal the subsections, substitute:

(5D) The normal value of goods (the *exported goods*) is the amount determined by the Minister, having regard to all relevant information, if the exported goods are exported to Australia and the Minister is satisfied that the country of export has an economy in transition and that at least one of the following paragraphs applies:

- (a) both of the following conditions exist:
 - (i) the exporter of the exported goods sells like goods in the country of export;
 - (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
- (b) both of the following conditions exist:

- (i) the exporter of the exported goods does not sell like goods in the country of export but others do;
- (ii) market conditions do not prevail in that country in respect of the domestic selling price of those like goods;
- (c) the exporter of the exported goods does not answer questions in a questionnaire given to the exporter by the CEO under subsection 269TC(8) within the period described in that subsection or subsection 269TC(9) for answering questions;
- (d) the answers given within the period mentioned in subsection 269TC(8), or the further period mentioned in subsection 269TC(9), by the exporter of the exported goods to a questionnaire given to the exporter under subsection 269TC(8) do not provide a reasonable basis for determining that paragraphs (a) and (b) of this subsection do not apply.

Note: Subsection 269TC(8) deals with the CEO giving an exporter of goods to Australia a questionnaire about evidence of whether or not paragraphs (a) and (b) of this subsection apply, with a specified period of at least 30 days for the exporter to answer the questions. Under subsection 269TC(9) the CEO may allow the exporter a further period for answering the questions.

- (5E) To be satisfied that the conditions in paragraph (5D)(a) or (b) exist, the Minister must have regard to the matters (if any) prescribed by the regulations.

4 Subsections 269TAC(5G) and (5H)

Repeal the subsections.

5 Subsections 269TAC(5J) and (7A)

Omit “or (5G)”.

6 Saving of regulations

- (1) Regulations that were in force for the purposes of subsection 269TAC(5J) of the *Customs Act 1901* immediately before the commencement of this Part continue to have effect after that commencement for the purposes of that subsection, so far as it relates to subsection 269TAC(5D) of that Act after that commencement.
- (2) This item has effect despite the amendments of section 269TAC of the *Customs Act 1901* by this Part.

- (3) This item does not prevent the amendment or repeal of regulations covered by subitem (1).

7 At the end of section 269TC

Add:

- (8) If the CEO is satisfied that a country whose exporters are nominated in an application for a dumping duty notice or a countervailing duty notice has an economy in transition, the CEO must, as soon as practicable after deciding not to reject the application:
- (a) give each nominated exporter from such a country a questionnaire about evidence of whether or not paragraphs 269TAC(5D)(a) and (b) apply; and
 - (b) inform each such exporter that the exporter has a specified period of not less than 30 days for answering questions in the questionnaire; and
 - (c) inform each such exporter that the investigation of the application will proceed on the basis that subsection 269TAC(5D) applies to the normal value of the exporter's goods that are the subject of the application if:
 - (i) the exporter does not give the answers to the CEO within the period; or
 - (ii) the exporter gives the answers to the CEO within the period but they do not provide a reasonable basis for determining that paragraphs 269TAC(5D)(a) and (b) do not apply.
- Note: Paragraph 269TAC(5D)(a) or (b) applies if a government of the country of export significantly affects the selling price in that country of like goods to the goods that are the subject of the application.
- (9) Despite the fact that, under subsection (8), the CEO has informed an exporter given a questionnaire that the exporter has a particular period to answer the questions in the questionnaire, if the CEO is satisfied, by representation in writing by the exporter:
- (a) that a longer period is reasonably required for the exporter to answer the questions; and
 - (b) that allowing a longer period will be practicable in the circumstances;

the CEO may notify the exporter, in writing, that a specified further period will be allowed for the exporter to answer the questions.

8 Application

The amendments of the *Customs Act 1901* made by this Part apply in relation to:

- (a) applications under section 269TB of that Act that are made or lodged after the commencement of this Part; and
- (b) things done as a result of such an application.

Part 2—Cumulative effect of exports to Australia

Customs Act 1901

9 Subsection 269TAE(2C)

Repeal the subsection, substitute:

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

Part 3—References to domestic industry

Customs Act 1901

10 Paragraph 269TB(4)(e)

Omit “domestic”, substitute “Australian”.

11 Subsection 269TB(6)

Omit “domestic”, substitute “Australian”.

Part 4—Assessment of duty

Customs Act 1901

12 Subsection 269V(2)

Omit “made” (wherever occurring), substitute “lodged”.

13 Paragraph 269W(1)(c)

Omit “and information to establish those amounts”.

14 Paragraph 269W(1)(d)

Omit “and information to establish those amounts;”.

15 After subsection 269W(1)

Insert:

- (1A) The application must also contain either:
- (a) sufficient evidence to establish that the applicant’s opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct; or
 - (b) both of the following:
 - (i) the evidence the applicant has to establish that the applicant’s opinion of the amounts described in whichever of paragraphs (1)(c) and (d) apply is correct;
 - (ii) a commitment that someone else will give the CEO further evidence within 30 days after lodgment or such longer period as the CEO allows, so that the CEO will then have sufficient evidence to establish that the applicant’s opinion of those amounts is correct.
- (1B) If the interim duty on the goods covered by the application was calculated using the export price of the goods worked out (under paragraph 269TAB(1)(b) or otherwise) as the difference between:
- (a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and
 - (b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods;

the requirement in subsection (1A) of this section is met only if the evidence referred to in that subsection includes evidence of the things described in paragraphs (a) and (b) of this subsection.

16 At the end of subsection 269X(1)

Add:

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

17 After subsection 269X(3)

Insert:

- (3A) However, the CEO must not give the applicant information that the exporter of goods covered by the application supplied to the CEO (whether as a result of a request under subsection (2) or otherwise) that is relevant to working out:
- (a) the normal value of the goods; or
 - (b) the countervailable subsidy relating to the goods; or
 - (c) the export price of the goods;
- unless the exporter indicates that he or she is willing for the CEO to give the information to the applicant under paragraph (3)(a).

18 Subsection 269X(5)

After “the information”, insert “and evidence”.

19 After subsection 269X(5)

Insert:

- (5A) Subsection (5B) of this section applies if the CEO proposes to ascertain provisionally, for the purposes of paragraph (5)(a) of this section, the export price of goods (under paragraph 269TAB(1)(b) or otherwise) as the difference between:
- (a) the price at which the importer of the goods sold them, in the condition in which they were imported, to someone who was not an associate of the importer; and
 - (b) the prescribed deductions (as defined in subsection 269TAB(2)) relating to the goods.

(5B) In provisionally ascertaining the export price of goods as described in subsection (5A), the CEO must:

- (a) take account of the following in relation to the goods:
 - (i) any change in normal value;
 - (ii) any change in costs incurred between importation and resale;
 - (iii) any movement in resale price which is duly reflected in subsequent selling prices; and
- (b) despite paragraph 269TAB(1)(b), not deduct the amount of interim duty if the CEO has conclusive evidence of the things mentioned in subparagraphs (a)(i), (ii) and (iii) of this subsection.

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

20 Paragraph 269Y(4)(c)

Omit “made”, substitute “lodged”.

21 At the end of Division 4 of Part XVB

Add:

269YA Rejection etc. of application for duty assessment

- (1) This section has effect despite sections 269X and 269Y if an application under section 269V is lodged with the Customs under section 269W.
- (2) The CEO must reject the application if the CEO is satisfied within 20 days after it is lodged that it does not contain everything it must contain under subsections 269W(1) and (1A).
- (3) The CEO must reject the application if:
 - (a) the application contains a commitment described in paragraph 269W(1A)(b); and
 - (b) within 20 days after the time described in that paragraph, the CEO is satisfied that he or she has not received from the applicant and one or more other persons sufficient evidence

to establish that the applicant's opinion of the amounts described in whichever of paragraphs 269W(1)(c) and (d) apply is correct.

- (4) The CEO may terminate examination of the application if he or she is satisfied after the last of the 20 days mentioned in subsection (2) or (3) of this section that he or she does not have enough information to be able to comply with paragraph 269X(5)(a).
- (5) If the CEO rejects the application or terminates examination of it:
 - (a) the CEO must notify the applicant in writing of the following:
 - (i) the rejection or termination;
 - (ii) the reasons for the rejection or termination;
 - (iii) the applicant's right, within 30 days of the receipt of the notification, to apply for a review by the Review Officer under Division 9 of the rejection or termination; and
 - (b) the CEO must not:
 - (i) provisionally ascertain a variable factor or provisionally calculate an amount under subsection 269X(5) in connection with the application; or
 - (ii) decide what recommendation to make to the Minister under subsection 269X(6) in connection with the application; and
 - (c) subsection 269Y(4) has effect as if the application had not been lodged under section 269V.

22 Section 269ZX (paragraph (a) of the definition of *interested party*)

After "section 269TB", insert "or 269V".

23 At the end of section 269ZZN

Add:

- ; (d) a decision (a *rejection decision*):
 - (i) by the CEO that the CEO is satisfied as described in subsection 269YA(2) or (3); or
 - (ii) by the CEO to terminate under subsection 269YA(4) examination of an application.

24 Section 269ZZO (at the end of the table)

Add:

5	A rejection decision	The applicant under section 269V for an assessment of duty whose application was affected by the decision
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25 After section 269ZZU

Insert:

269ZZUA The review of a rejection decision

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

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

26 Application

The amendments of the *Customs Act 1901* made by this Part apply in relation to:

- (a) the lodgment of applications under section 269V of that Act after the commencement of this Part; and
- (b) things done because of the lodgment of such an application after the commencement of this Part.

Part 5—Accelerated review for new exporters only

Customs Act 1901

27 Subsection 269SM(6)

Omit “and exporters not previously investigated”.

28 Subsection 269T(1) (definition of *residual exporter*)

Repeal the definition, substitute:

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

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

29 Section 269ZDC

Omit “or exporters whose exportations were not examined when the notice was published”.

30 Paragraph 269ZE(1)(b)

Omit “residual exporters”, substitute “new exporters”.

31 Subsection 269ZE(1)

Omit “residual exporter”, substitute “new exporter”.

32 Application

The amendments of the *Customs Act 1901* made by this Part apply in relation to:

- (a) applications under section 269TB lodged after the commencement of this Part; and
- (b) applications under section 269ZE lodged after the commencement of this Part; and
- (c) things done because of an application described in paragraph (a) or (b) of this item.

Part 6—Applying to continue anti-dumping measures

Customs Act 1901

33 Paragraph 269ZHB(1)(b)

Repeal the paragraph, substitute:

- (b) inviting the following persons to apply within 60 days to the CEO, in accordance with section 269ZHC, for a continuation of those measures:
 - (i) the person whose application under section 269TB resulted in those measures;
 - (ii) persons representing the whole or a portion of the Australian industry producing like goods to the goods covered by those measures.

34 Application

The amendment of subsection 269ZHB(1) of the *Customs Act 1901* by this Part applies to notices published under that subsection after the commencement of this Part.

Part 7—Reinvestigation by CEO

Customs Act 1901

35 Subparagraph 269ZZL(2)(a)(i)

After “findings”, insert “, having regard only to the information and conclusions to which the Review Officer was permitted to have regard”.

36 Paragraph 269ZZL(4)(a)

Omit “Review Officer”, substitute “CEO”.

37 Application

The amendments of the *Customs Act 1901* made by this Part apply in relation to things done as a result of recommendations made by the Review Officer before, on or after the commencement of this Part.

Schedule 2—Air security officers

Passenger Movement Charge Collection Act 1978

1 At the end of section 5

Add:

; or (m) is a protective service officer (as defined in the *Australian Protective Service Act 1987*) on an aircraft for the purpose of enhancing the security of the aircraft.

Schedule 3—Technical amendments relating to trade modernisation

Part 1—Amendments commencing on Royal Assent

Customs Act 1901

1 Subsection 4(1)

Insert:

monitoring powers has the meaning given by section 214AB.

2 After paragraph 203(3)(e)

Insert:

- (ea) whether action might be taken under Division 5 of Part XIII in connection with any such offence;

3 Application

Paragraph 203(3)(ea) of the *Customs Act 1901* applies in relation to:

- (a) applications for a warrant made after the commencement of this Part; and
- (b) applications for a warrant that were made before the commencement of this Part but are being considered by a judicial officer after that commencement.

Part 2—Amendments commencing on Royal Assent or not at all

Customs Act 1901

4 Paragraph 71H(2)(a)

Omit “, or action taken under section 243T,”.

Note: If this Act does not receive the Royal Assent before the commencement of item 39 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, this item does not commence at all. See subsection 2(4) of this Act.

5 Saving

The amendment of paragraph 71H(2)(a) of the *Customs Act 1901* by this Part does not prevent action from being taken under section 243T of that Act (as that section continues to apply, despite its repeal by item 5 of Schedule 2 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, because of item 5A of that Schedule) in relation to an import entry that:

- (a) was made before that repeal; and
- (b) was withdrawn (whether before or after that repeal).

Note: If this Act does not receive the Royal Assent before the commencement of item 39 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, this item does not commence at all. See subsection 2(4) of this Act.

6 After subsection 71H(2)

Insert:

- (2A) Despite the withdrawal of an import entry, action may be taken under Division 5 of Part XIII in respect of the entry as if it had not been withdrawn.

Note: If this Act does not receive the Royal Assent before the commencement of item 39 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, this item does not commence at all. See subsection 2(4) of this Act.

7 Application

Subsection 71H(2A) of the *Customs Act 1901* applies to an entry made after the commencement of this item.

Note: If this Act does not receive the Royal Assent before the commencement of item 39 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, this item does not commence at all. See subsection 2(4) of this Act.

8 After subsection 119B(2)

Insert:

(2A) Despite the withdrawal of an entry, submanifest or manifest, action may be taken under Division 5 of Part XIII in respect of the entry, submanifest or manifest as if it had not been withdrawn.

Note: If this Act does not receive the Royal Assent before the commencement of item 62 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, this item does not commence at all. See subsection 2(5) of this Act.

9 Application

The amendment of section 119B of the *Customs Act 1901* made by this Part applies to an entry, submanifest or manifest communicated to Customs after the commencement of the amendment.

Note: If this Act does not receive the Royal Assent before the commencement of item 62 of Schedule 3 to the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, this item does not commence at all. See subsection 2(5) of this Act.

Part 3—Amendment commencing on 1 July 2003

Customs Act 1901

10 Paragraph 203(3)(e)

Repeal the paragraph.

Part 4—Amendment commencing after Trade Modernisation Act amendment

Customs Act 1901

11 After subsection 119B(2)

Insert:

- (2A) Despite the withdrawal of an entry, submanifest or manifest, action may be taken under Division 5 of Part XIII in respect of the entry, submanifest or manifest as if it had not been withdrawn.

12 Application

The amendment of section 119B of the *Customs Act 1901* made by this Part applies to an entry, submanifest or manifest communicated to Customs after the commencement of the amendment.

*[Minister's second reading speech made in—
House of Representatives on 12 December 2002
Senate on 3 March 2003]*

(267/03)
