



# **Customs Amendment (Anti-dumping Measures) Act 2011**

**No. 124, 2011**

**An Act to amend the *Customs Act 1901*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Customs Amendment (Anti-dumping Measures) Act 2011

No. 124, 2011

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## An Act to amend the *Customs Act 1901*, and for related purposes

[Assented to 17 October 2011]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Customs Amendment (Anti-dumping Measures) Act 2011*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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 this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Customs Act 1901**

### ***Customs Act 1901***

#### **1 Subsection 269T(1)**

Insert:

***revocation declaration***, in relation to particular anti-dumping measures, means:

- (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice—a declaration by the Minister that the notice is taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods; or
- (b) to the extent that the measures involved the acceptance by the Minister of an undertaking under section 269TG or 269TJ—a declaration by the Minister that the person who gave the undertaking is released from it and that the investigation giving rise to the undertaking is terminated.

#### **2 Subsection 269T(1)**

Insert:

***revocation recommendation***, in relation to particular anti-dumping measures, means any of the following:

- (a) to the extent that the measures involved the publication of a dumping duty notice or a countervailing duty notice—a recommendation by the CEO in a report under section 269ZDA that the notice be taken to be, or to have been, revoked either in relation to a particular exporter or to exporters generally or in relation to a particular kind of goods;
- (b) to the extent that the measures involved the acceptance by the Minister of an undertaking under section 269TG or 269TJ—a recommendation by the CEO in a report under section 269ZDA that the Minister indicate to the person who

gave the undertaking that the person is released from it and that the investigation giving rise to the undertaking is terminated.

### 3 Subsection 269T(1)

Insert:

*revocation review notice*, in relation to a review of anti-dumping measures, means any of the following:

- (a) a notice relating to the review that is published under subsection 269ZC(4), (5) or (6) and includes information under paragraph 269ZC(7)(bb);
- (b) a notice relating to the review that is published under subsection 269ZCC(4) or (7) and includes information under paragraph 269ZCC(8)(c).

### 4 Subparagraph 269ZA(1)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) the anti-dumping measures are no longer warranted;

### 5 Subparagraph 269ZA(3)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) the anti-dumping measures are no longer warranted;

### 6 Subsection 269ZA(5)

Omit “affect”, substitute “effect”.

### 7 Paragraph 269ZB(2)(d)

Repeal the paragraph, substitute:

- (d) if the application is based on circumstances that in the applicant’s view indicate that the anti-dumping measures are no longer warranted—evidence, in accordance with the approved form, of the circumstances.

### 8 Subsections 269ZC(1) and (2)

Repeal the subsections, substitute:

- (1) If an application under subsection 269ZA(1) for review of anti-dumping measures is lodged with Customs, the CEO must, within 20 days after Customs receives the application:



- (a) examine the application; and
  - (b) if the CEO is not satisfied, having regard to the application and to any other information that the CEO considers relevant, of one or more of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.
- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
- (a) that the application complies with section 269ZB; and
  - (b) that there appear to be reasonable grounds for asserting either, or both, of the following:
    - (i) that the variable factors relevant to the taking of anti-dumping measures have changed;
    - (ii) that the anti-dumping measures are no longer warranted.

## **9 Paragraph 269ZC(4)(b)**

Repeal the paragraph, substitute:

- (b) if the CEO considers that the review applied for should be extended to include any additional matter—recommend to the Minister that the review be extended accordingly.

## **10 After paragraph 269ZC(7)(b)**

Insert:

- (ba) if the review will examine whether the variable factors relevant to the taking of the measures have changed—state that fact; and
- (bb) if the review will examine whether the measures are no longer warranted—state that fact; and

## **11 After section 269ZC**

Insert:

### **269ZCA Application to extend a review of anti-dumping measures to include revocation**

If:

- (a) a notice was published by the CEO under subsection 269ZC(4), (5) or (6); and

- (b) the notice did not state the review will examine whether the measures are no longer warranted (see paragraph 269ZC(7)(bb)); and
  - (c) an affected party considers that it can provide evidence that may satisfy the CEO that there are reasonable grounds for determining that the anti-dumping measures described in the notice are no longer warranted;
- the affected party may, by application lodged with Customs, request that the CEO consider that evidence.

**269ZCB Content and lodgment of application to extend a review of anti-dumping measures to include revocation**

- (1) An application under section 269ZCA must:
  - (a) be lodged within 40 days of the publication of the relevant notice under subsection 269ZC(4), (5) or (6); and
  - (b) be in writing; and
  - (c) be in an approved form; and
  - (d) contain such information as the form requires; and
  - (e) be signed in the manner indicated by the form.
- (2) Without otherwise limiting the matters that can be required by the approved form to be included, the application must include evidence of the circumstances that in the applicant's view indicate that the anti-dumping measures are no longer warranted.
- (3) An application may be lodged with Customs:
  - (a) by leaving it at a place allocated for lodgment of such applications at Customs House in Canberra; or
  - (b) by posting it by prepaid post to a postal address specified in the approved form; or
  - (c) by sending it by fax to a fax number specified in the approved form;and the application is taken to have been lodged when the application, or a fax of the application, is first received by an officer of Customs doing duty in relation to applications for review of anti-dumping measures.
- (4) The day on which the application is taken to have been lodged must be recorded on the application.

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**269ZCC Consideration of applications and requests for extensions of reviews**

- (1) If an application under section 269ZCA is lodged with Customs, the CEO must, within 20 days after Customs receives the application:
  - (a) examine the application; and
  - (b) if the CEO is not satisfied, having regard to the application and to any other information that the CEO considers relevant, of one or more of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.
- (2) For the purposes of subsection (1), the matters to be considered in relation to an application are:
  - (a) that the application complies with section 269ZCB; and
  - (b) that the CEO is satisfied that there appear to be reasonable grounds for recommending that the anti-dumping measures are no longer warranted.
- (3) The notice informing the applicant of the rejection of the application must set out the reasons why the CEO was not satisfied of one or more of the matters set out in subsection (2).
- (4) If the CEO decides not to reject an application, the CEO must publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory.
- (5) If the CEO considers (either as a result of an application under section 269ZCA or on the CEO's own initiative) that the review applied for should be extended to include any additional matter, the CEO may, within 40 days after the publication of the notice under subsection 269ZC(4), (5) or (6) relating to the review, recommend to the Minister that the review be extended accordingly.
- (6) If:
  - (a) anti-dumping measures have been taken in respect of goods; and
  - (b) an application under subsection 269ZA(1) for review of anti-dumping measures has been made; and
  - (c) the Minister considers (either as a result of a recommendation from the CEO under subsection (5) of this section or on the

Minister's own initiative) that there appear to be reasonable grounds to extend the review applied for to include any additional matter;

the Minister may, within 60 days of the publication of the relevant notice under subsection 269ZC(4), (5) or (6), by notice in writing, request that the CEO extend the review applied for accordingly.

- (7) If the CEO is requested under this section by the Minister to extend a review of anti-dumping measures, the CEO must, on receipt of that request, publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory indicating that it is proposed to so extend the review.
- (8) The notice published by the CEO under subsection (4) or (7) must:
  - (a) describe the kind of goods to which the relevant review of anti-dumping measures relates; and
  - (b) describe the measures to which the review relates; and
  - (c) if the CEO is satisfied that there may be reasonable grounds for the CEO making a revocation recommendation—state that fact; and
  - (d) invite affected parties to lodge with the CEO submissions concerning the extended review.

## **12 At the end of paragraph 269ZD(2)(a)**

Add:

- (iii) any other submission received by Customs relating generally to the review if, in the CEO's opinion, having regard to the submission would not prevent the timely placement of the statement of essential facts on the public record; and

## **13 After subsection 269ZDA(1)**

Insert:

- (1A) After conducting a review of anti-dumping measures under this Division, the CEO:
  - (a) must not make a revocation recommendation in relation to the measures unless a revocation review notice has been published in relation to the review; and
  - (b) otherwise must make a revocation recommendation in relation to the measures, unless the CEO is satisfied as a result of the review that revoking the measures would lead, or

be likely to lead, to a continuation of, or a recurrence of, the dumping or subsidisation and the material injury that the measures are intended to prevent.

**14 After subparagraph 269ZDA(3)(a)(i)**

Insert:

- (ia) any application to extend the review that was not rejected; and
- (ib) any request to extend the review; and

**15 After subsection 269ZDB(1)**

Insert:

- (1A) The Minister must not make a revocation declaration in relation to anti-dumping measures unless a revocation review notice has been published in relation to the relevant review of those measures.

**16 Application**

The amendments made by this Schedule apply in relation to applications lodged, and reviews initiated, on or after the day on which this item commences.

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*[Minister's second reading speech made in—  
House of Representatives on 2 March 2011  
Senate on 14 June 2011]*

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(15/11)