





# **Customs Amendment (Anti-dumping Improvements) Act (No. 3) 2012**

**No. 196, 2012**

**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 Improvements) Act (No. 3) 2012

No. 196, 2012

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

[Assented to 12 December 2012]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Customs Amendment (Anti-dumping Improvements) Act (No. 3) 2012*.

## Schedule 1 Subsidies

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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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 December 2012
2. Schedules 1 to 3	A single day to be fixed by Proclamation. However, if 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.	
3. Schedule 4, items 1 to 7	The day after this Act receives the Royal Assent.	13 December 2012
4. Schedule 4, item 8	The later of: (a) the start of the day this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 1 to the <i>Customs Amendment (Anti-dumping Improvements) Act (No. 1) 2012</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 4, item 9	The day after this Act receives the Royal Assent.	13 December 2012

Note: This table relates only to the provisions of this Act as originally enacted.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—Subsidies

### *Customs Act 1901*

#### **1 Subsection 269T(1) (definition of *subsidy*)**

Repeal the definition, substitute:

*subsidy*, in respect of goods exported to Australia, means:

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

if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.

Note 1: See also subsection (2AA).

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Note 2: Section 269TACC deals with whether a financial contribution or income or price support confers a benefit.

## **2 Subsections 269T(2AA), (2AB) and (2AC)**

Repeal the subsections, substitute:

- (2AA) Without limiting the definition of *subsidy* in subsection (1), a financial contribution or income or price support may confer a benefit in relation to goods exported to Australia if that contribution or support is made in relation to goods or services used in relation to the production, manufacture or export of the goods exported to Australia.

## **3 Subsection 269TAAC(3)**

Repeal the subsection, substitute:

- (3) Subject to subsection (4), a subsidy is not specific if:
- (a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and
  - (b) eligibility for the subsidy is automatic; and
  - (c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and
  - (d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

## **4 Subsection 269TAAC(4)**

Omit “Despite the fact that access to a subsidy is established by objective criteria, the”, substitute “The”.

## **5 Section 269TACC**

Repeal the section, substitute:

### **269TACC Working out whether a financial contribution or income or price support confers a benefit**

- (1) Subject to subsections (2) and (3), the question whether a financial contribution or income or price support confers a benefit is to be

**Schedule 1**Subsidies

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determined by the Minister having regard to all relevant information.

- (2) A direct financial payment received from any of the following is taken to confer a benefit:
- (a) a government of a country;
  - (b) a public body of a country;
  - (c) a public body of which a government of a country is a member;
  - (d) a private body entrusted or directed by a government of a country or by such a public body to carry out a governmental function.

*Guidelines for financial contributions*

- (3) In determining whether a financial contribution confers a benefit, the Minister must have regard to the following guidelines:
- (a) the provision of equity capital from a government or body referred to in subsection (2) does not confer a benefit unless the decision to provide the capital is inconsistent with normal investment practice of private investors in the country concerned;
  - (b) the making of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the loan requires the enterprise receiving the loan to repay a lesser amount than would be required for a comparable commercial loan which the enterprise could actually obtain;
  - (c) the guarantee of a loan by a government or body referred to in subsection (2) does not confer a benefit unless the enterprise receiving the guarantee is required to repay on the loan a lesser amount than would be required for a comparable commercial loan without that guarantee;
  - (d) the provision of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the goods or services are provided for less than adequate remuneration;
  - (e) the purchase of goods or services by a government or body referred to in subsection (2) does not confer a benefit unless the purchase is made for more than adequate remuneration.

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- (4) For the purposes of paragraphs (3)(d) and (e), the adequacy of remuneration in relation to goods or services is to be determined having regard to prevailing market conditions for like goods or services in the country where those goods or services are provided or purchased.

**269TACD Amount of countervailable subsidy**

- (1) If the Minister is satisfied that a countervailable subsidy has been received in respect of goods, the amount of the subsidy is an amount determined by the Minister in writing.
- (2) After the amount of the countervailable subsidy received in respect of goods has been worked out, the Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit.

**6 Subsections 269TAE(1) and (2)**

Omit “, (2B) and”, substitute “to”.

**7 After subsection 269TAE(2A)**

Insert:

- (2AA) A determination for the purposes of subsection (1) or (2) must be based on facts and not merely on allegations, conjecture or remote possibilities.

**8 After paragraph 269TAE(2C)(d)**

Insert:

- (da) if the determination is being made for the purposes of section 269TJ or 269TK:
- (i) the amount of the countervailable subsidy in respect of the goods the subject of each of the exportations exceeds the negligible level of countervailable subsidy worked out under subsection 269TDA(16); and
  - (ii) the volume of each of those exportations is not negligible; and

**9 At the end of section 269TC**

Add:

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**Schedule 1**Subsidies

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- (10) If, during an investigation in respect of goods the subject of an application under section 269TB, the CEO becomes aware of an issue as to whether a countervailable subsidy (other than one covered by the application) has been received in respect of the goods, the CEO may examine that issue as part of the investigation.

**10 Subparagraph 269TDA(2)(b)(ii)**

Omit “after the start of”, substitute “during”.

**11 Subsection 269TDA(14) (heading)**

Repeal the heading, substitute:

*CEO must terminate countervailable subsidy investigation if export causes negligible injury*

**12 Paragraph 269TDA(14)(b)**

Repeal the paragraph, substitute:

- (b) in an investigation, for the purpose of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the CEO is satisfied that the injury, if any, to an Australian industry or an industry in a third country that has been, or may be, caused by that export is negligible;

**13 Application provisions**

- (1) The amendments made by items 1 to 8 apply in relation to investigations that are initiated, or to reviews or inquiries that begin, on or after the commencement of those items.
- (2) The amendment made by item 9 applies in relation to:
- (a) investigations that are initiated on or after the commencement of that item; and
  - (b) investigations that were initiated before that commencement but that were not completed before that commencement.
- (3) The amendments made by items 10 to 12 apply in relation to investigations that are initiated on or after the commencement of those items.

## **Schedule 2—Circumvention activity**

### *Customs Act 1901*

#### **1 After subsection 269SM(5)**

Insert:

- (5A) Division 5A deals with the rights of persons to ask the CEO to conduct an anti-circumvention inquiry in relation to certain dumping duty notices or countervailing duty notices.

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

Insert:

*circumvention activity* has the meaning given by section 269ZDBB.

#### **3 Subsection 269T(1) (after paragraph (b) of the definition of *interested party*)**

Insert:

- (c) an application under subsection 269ZDBC(1), or a request under subsection 269ZDBC(2), for the conduct of an anti-circumvention inquiry in relation to a notice published under subsection 269TG(2) or 269TJ(2) in respect of goods; or

#### **4 Subsection 269T(4E)**

Omit “review, under Division 5, of anti-dumping measures taken”, substitute “review under Division 5 of anti-dumping measures, or to the conduct of an anti-circumvention inquiry in relation to a notice published under subsection 269TG(2) or 269TJ(2),”.

#### **5 Subsection 269TE(1) (paragraph (a) of the definition of *recommendation*)**

After “269ZDA,”, insert “269ZDBG,”.

#### **6 After Division 5 of Part XVB**

Insert:

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## Division 5A—Anti-circumvention inquiries

### 269ZDBA What this Division is about

If a notice has been published under subsection 269TG(2) or 269TJ(2) in respect of goods, this Division allows a person representing, or representing a portion of, the Australian industry producing like goods to apply for the conduct of an anti-circumvention inquiry in relation to the notice. This Division also allows the Minister to request such an inquiry. It:

- sets out when applications may be made; and
- sets out the procedure to be followed by the CEO in dealing with applications or requests and preparing reports for the Minister; and
- empowers the Minister, after consideration of such reports, to leave the notice unaltered or to alter the notice as appropriate.

### 269ZDBB Circumvention activities

- (1) This section sets out when circumvention activity, in relation to a notice published under subsection 269TG(2) or 269TJ(2), occurs.

*Assembly of parts in Australia*

- (2) **Circumvention activity**, in relation to the notice, occurs if the following apply:
- (a) goods in the form of individual parts (the ***circumvention goods***) are exported to Australia;
  - (b) those parts are manufactured in a foreign country in respect of which the notice applies;
  - (c) those parts are assembled in Australia, whether or not with other parts, to create goods (the ***assembled goods***) that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;
  - (d) the total value of the parts manufactured in that foreign country is a significant proportion of the value of the assembled goods;

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- (e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

*Assembly of parts in third country*

- (3) **Circumvention activity**, in relation to the notice, occurs if the following apply:
  - (a) goods in the form of individual parts are manufactured in a foreign country (the **original country**) in respect of which the notice applies;
  - (b) those parts are assembled in a foreign country in respect of which the notice does not apply, whether or not with other parts, to create goods (the **circumvention goods**) that would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;
  - (c) the circumvention goods are exported to Australia;
  - (d) the total value of the parts manufactured in the original country is a significant proportion of the customs value (within the meaning of section 159) of the circumvention goods;
  - (e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

*Export of goods through one or more third countries*

- (4) **Circumvention activity**, in relation to the notice, occurs if the following apply:
  - (a) goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice does not apply;
  - (b) before that export, there were one or more other exports of the goods from a foreign country to another foreign country;
  - (c) the first of those other exports was from a foreign country in respect of which the notice applies;
  - (d) the circumvention goods would be the subject of the notice if they were exported to Australia by an exporter in respect of which the notice applies;

**Schedule 2** Circumvention activity

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- (e) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia.

*Arrangements between exporters*

- (5) **Circumvention activity**, in relation to the notice, occurs if the following apply:
  - (a) goods (the **circumvention goods**) are exported to Australia from a foreign country in respect of which the notice applies;
  - (b) the exporter exported the circumvention goods under an arrangement with another exporter from that foreign country;
  - (c) the other exporter is an exporter in respect of which the notice applies;
  - (d) the circumvention goods would be the subject of the notice if they were exported to Australia by the other exporter;
  - (e) either:
    - (i) section 8 or 10 of the Dumping Duty Act, as the case requires, does not apply to the export of the circumvention goods to Australia; or
    - (ii) section 8 or 10 of the Dumping Duty Act, as the case requires, applies to the export of the circumvention goods to Australia, but the interim duty payable in relation to that export is less than the interim duty that would have been payable if the other exporter had exported the goods to Australia.

*Regulations*

- (6) **Circumvention activity**, in relation to the notice, occurs in the circumstances prescribed by the regulations for the purposes of this subsection.

**269ZDBC Applications and requests for conduct of an anti-circumvention inquiry**

*Applications by Australian industry*

- (1) If:
  - (a) a notice (an **original notice**) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and

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(b) a person representing, or representing a portion of, the Australian industry producing like goods considers that one or more circumvention activities in relation to the notice have occurred; and

(c) the person considers that it may be appropriate to alter the notice because of the circumvention activities;

the person may, by application lodged with the CEO, request that the CEO conduct an anti-circumvention inquiry in relation to the notice.

*Requests by Minister*

(2) If:

(a) a notice (an *original notice*) has been published under subsection 269TG(2) or 269TJ(2) in respect of goods; and

(b) the Minister considers that one or more circumvention activities in relation to the notice have occurred; and

(c) the Minister considers that it may be appropriate to alter the notice because of the circumvention activities;

the Minister may, by notice in writing, request that the CEO conduct an anti-circumvention inquiry in relation to the original notice.

**269ZDBD Content and lodgement of applications for conduct of an anti-circumvention inquiry**

*Content of application*

(1) An application under subsection 269ZDBC(1) for the conduct of an anti-circumvention inquiry in relation to an original notice must:

(a) be in writing; and

(b) be in an approved form; and

(c) contain such information as the form requires; and

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

Note: For *original notice*, see section 269ZDBC.

(2) Without limiting subsection (1), the application must include:

(a) a description of the kind of goods that are the subject of the original notice; and

**Schedule 2** Circumvention activity

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- (b) a description of the original notice the subject of the application; and
- (c) a description of the circumvention activities in relation to the original notice that the applicant considers have occurred; and
- (d) a description of the alterations to the original notice that the applicant considers should be made.

*Lodgement of application*

- (3) An application may be lodged with Customs:
  - (a) by leaving it at a place allocated for lodgement 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.
- (4) 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 the conduct of anti-circumvention inquiries.
- (5) The day on which the application is taken to have been lodged must be recorded on the application.

**269ZDBE Consideration of applications and requests for conduct of an anti-circumvention inquiry**

*Applications*

- (1) If an application under subsection 269ZDBC(1) for the conduct of an anti-circumvention inquiry in relation to an original notice 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 any other information that the CEO considers relevant, of either or both of the matters referred to in subsection (2)—reject the application and inform the applicant, by notice in writing, accordingly.

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Note: For *original notice*, see section 269ZDBC.

- (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 269ZDBD; and
  - (b) that there appear to be reasonable grounds for asserting that one or more circumvention activities in relation to the original notice have occurred.
- (3) The notice informing the applicant of the rejection of the application must set out the reasons why the CEO was not satisfied of either or both of the matters referred to in subsection (2).
- (4) If the CEO does not reject an application for the conduct of an anti-circumvention inquiry in relation to the original notice, the CEO must publish a notice in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory indicating that such an inquiry is to be conducted.

#### *Requests*

- (5) If, under subsection 269ZDBC(2), the Minister requests the CEO to conduct an anti-circumvention inquiry in relation to an original notice, 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 such an inquiry is to be conducted.

Note: For *original notice*, see section 269ZDBC.

#### *Content of notice*

- (6) A notice (the *inquiry notice*) published by the CEO under subsection (4) or (5) must:
  - (a) describe the kind of goods to which the inquiry relates; and
  - (b) describe the original notice the subject of the inquiry; and
  - (c) state that the inquiry will examine whether circumvention activities in relation to the original notice have occurred; and
  - (d) indicate that a report will be made to the Minister:
    - (i) within 155 days after the day of publication of the inquiry notice; or
    - (ii) within such longer period as the Minister allows under section 269ZHI; and

- (e) invite interested parties to lodge with the CEO, within a specified period of not more than 40 days after the day of publication of the inquiry notice, submissions concerning the inquiry; and
- (f) state that:
  - (i) within 110 days after the publication of the inquiry notice; or
  - (ii) within such longer period as the Minister allows under section 269ZHI;the CEO will place on the public record a statement of the essential facts on which the CEO proposes to base a recommendation to the Minister in relation to the original notice; and
- (g) invite interested parties to lodge with the CEO, within 20 days of that statement being placed on the public record, submissions in response to that statement; and
- (h) indicate the address at which, or the manner in which, submissions under paragraph (e) or (g) may be lodged.

**269ZDBF Statement of essential facts in relation to conduct of an anti-circumvention inquiry**

- (1) If the CEO publishes a notice under subsection 269ZDBE(4) or (5) about the conduct of an anti-circumvention inquiry in relation to an original notice, the CEO must:
  - (a) within 110 days after the publication of the notice under subsection 269ZDBE(4) or (5); or
  - (b) within such longer period as the Minister allows under section 269ZHI;

place on the public record a statement of the facts (the *statement of essential facts*) on which the CEO proposes to base a recommendation to the Minister in relation to the original notice.

Note: For *original notice*, see section 269ZDBC.

- (2) In formulating the statement of essential facts, the CEO:
  - (a) must have regard to:
    - (i) the application or request; and
    - (ii) any submissions concerning the inquiry that are received by Customs within 40 days after the

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publication of the notice under subsection 269ZDBE(4) or (5); and

- (b) may have regard to any other matters that the CEO considers relevant.

*Late submissions*

- (3) The CEO is not obliged to have regard to a submission concerning the inquiry that is received by Customs after the end of the period referred to in subparagraph (2)(a)(ii) if to do so would, in the CEO's opinion, prevent the timely placement of the statement of essential facts on the public record.

## **269ZDBG Report on anti-circumvention inquiry**

*CEO recommendations*

- (1) The CEO must, after conducting an anti-circumvention inquiry in relation to an original notice and within 155 days after the day of publication of the notice under subsection 269ZDBE(4) or (5) about the inquiry or such longer period as the Minister allows under section 269ZHI, give the Minister a report recommending:
- (a) the original notice remain unaltered; or
  - (b) the following:
    - (i) the original notice be altered because the CEO is satisfied that circumvention activities in relation to the original notice have occurred;
    - (ii) the alterations to be made to the original notice.

Note: For *original notice*, see section 269ZDBC.

- (2) In deciding on the recommendations to be made to the Minister in the report, the CEO:
- (a) must have regard to:
    - (i) the application or request for the inquiry; and
    - (ii) any submission concerning the inquiry to which the CEO has had regard for the purpose of formulating the statement of essential facts in relation to the inquiry; and
    - (iii) that statement of essential facts; and

**Schedule 2** Circumvention activity

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- (iv) any submission made in response to that statement that is received by Customs within 20 days after the placing of that statement on the public record; and
- (b) may have regard to any other matter that the CEO considers to be relevant to the inquiry.

*Late submissions*

- (3) The CEO is not obliged to have regard to a submission made in response to the statement of essential facts that is received by Customs after the end of the period referred to in subparagraph (2)(a)(iv) if to do so would, in the CEO's opinion, prevent the timely preparation of the report to the Minister.

*Reasons for CEO recommendations*

- (4) The report to the Minister must include a statement of the CEO's reasons for any recommendation contained in the report that:
  - (a) sets out the material findings of fact on which that recommendation is based; and
  - (b) provides particulars of the evidence relied on to support those findings.

**269ZDBH Minister's powers in relation to anti-circumvention inquiry**

*Minister's decision*

- (1) After considering the report of the CEO and any other information that the Minister considers relevant, the Minister must declare, by notice published in accordance with subsection (9), that for the purposes of this Act and the Dumping Duty Act:
  - (a) the original notice is to remain unaltered; or
  - (b) the alterations specified in the declaration are taken to have been made to the original notice, with effect on and after a day specified in the declaration.

Note: For *original notice*, see section 269ZDBC.

- (2) Without limiting subsection (1), the alterations may be of the following kind:
  - (a) the specification of different goods that are to be the subject of the original notice;

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- (b) the specification of different foreign countries that are to be the subject of the original notice;
  - (c) the specification of different exporters that are to be the subject of the original notice;
  - (d) in relation to existing exporters that are the subject of the original notice—the specification of different variable factors in respect of one or more of those exporters;
  - (e) in relation to exporters that are to be the subject of the original notice—the specification of variable factors in respect of those exporters.

*Timing of decision*

- (3) The Minister must make a declaration under subsection (1) within:
  - (a) 30 days after receiving the report; or
  - (b) if the Minister considers there are special circumstances that prevent the declaration being made within that period—such longer period as the Minister considers appropriate.
- (4) If paragraph (3)(b) applies, the Minister must give public notice of the longer period.

*Declaration has effect according to its terms*

- (5) If the Minister makes a declaration under subsection (1), that declaration has effect according to its terms.

*Notification of declaration*

- (6) The Minister must, as soon as practicable after the making of a declaration under subsection (1) that affects an exporter, inform that exporter of the terms of the declaration.

*Declaration may cover more than one exporter*

- (7) Nothing in this section is taken to imply that the Minister cannot simultaneously make the same declaration in relation to more than one exporter.

*When declaration takes effect*

- (8) A day specified in a declaration as mentioned in paragraph (1)(b) must not be earlier than the day of publication of the notice under

**Schedule 2** Circumvention activity

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subsection 269ZDBE(4) or (5) about the conduct of an anti-circumvention inquiry in relation to the original notice.

*Manner of publication*

- (9) A notice under subsection (1) must be published in:
- (a) the *Gazette*; and
  - (b) a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory.

**7 After paragraph 269ZHI(1)(e)**

Insert:

- (ea) an extension of the 110-day period referred to in subsection 269ZDBF(1);
- (eb) an extension of the 155-day period referred to in subsection 269ZDBG(1);

**8 Subsection 269ZJ(1)**

After “each application or request under section 269ZA that leads to a review”, insert “, each application or request under section 269ZDBC that leads to an inquiry”.

**9 Paragraph 269ZJ(5)(a)**

Omit “or 269ZA(1) or section 269ZHB or a request under subsection 269ZA(3)”, substitute “, 269ZA(1) or 269ZDBC(1) or section 269ZHB or to a request under subsection 269ZA(3) or 269ZDBC(2)”.

**10 Paragraph 269ZJ(6)(a)**

Omit “or 269ZA(1) or section 269ZHB or a request under subsection 269ZA(3)”, substitute “, 269ZA(1) or 269ZDBC(1) or section 269ZHB or to a request under subsection 269ZA(3) or 269ZDBC(2)”.

**11 Section 269ZX (after paragraph (aa) of the definition of *interested party*)**

Insert:

- (aaa) if there was an application under subsection 269ZDBC(1) that led to the making of the reviewable decision—the applicant in relation to that application;

**12 After paragraph 269ZZA(1)(c)**

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Insert:

- (ca) a decision by the Minister under subsection 269ZDBH(1);

### **13 After paragraph 269ZZD(b)**

Insert:

- (ba) for a decision referred to in paragraph 269ZZA(1)(ca)—a notice of the decision is first published in a newspaper under subsection 269ZDBH(1); or

### **14 Subsection 269ZZK(6) (after paragraph (c) of the definition of relevant information)**

Insert:

- (ca) if the reviewable decision was made because of an application under subsection 269ZDBC(1) or a request under subsection 269ZDBC(2)—the information the CEO had regard to, or was, under paragraph 269ZDBG(2)(a), required to have regard to, when making the findings set out in the report under section 269ZDBG to the Minister in relation to the making of the reviewable decision; and

### **15 Application provisions**

- (1) Paragraphs 269ZDBC(1)(a) and (2)(a) of the *Customs Act 1901*, as inserted by this Act, apply in relation to notices published under subsection 269TG(2) or 269TJ(2) of that Act before, on or after the commencement of this item.
- (2) Division 5A of Part XVB of the *Customs Act 1901*, as inserted by this Act, applies in relation to:
- (a) conduct constituting circumvention activity occurring wholly after the commencement of this item; and
  - (b) conduct constituting circumvention activity occurring wholly before the commencement of this item; and
  - (c) conduct constituting circumvention activity occurring partly before and partly after the commencement of this item.

## Schedule 3—Sampling

### *Customs Act 1901*

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

Insert:

*cooperative exporter*, in relation to:

- (a) an investigation under this Part in relation to whether a dumping duty notice should be published; or
- (b) a review under Division 5 in relation to the publication of a dumping duty notice; or
- (c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

- (d) the exporter's exports were examined as part of the investigation, review or inquiry; and
- (e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

#### **2 Subsection 269T(1) (definition of *residual exporter*)**

Repeal the definition, substitute:

*residual exporter*, in relation to:

- (a) an investigation under this Part in relation to whether a dumping duty notice should be published; or
- (b) a review under Division 5 in relation to the publication of a dumping duty notice; or
- (c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

- (d) the exporter's exports were not examined as part of the investigation, review or inquiry; and
- (e) the exporter was not an uncooperative exporter in relation to the investigation, review or inquiry.

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**3 Subsection 296T(1) (definition of *selected exporter*)**

Repeal the definition.

**4 Subsection 269T(1)**

Insert:

*uncooperative exporter*, in relation to:

- (a) an investigation under this Part in relation to whether a dumping duty notice should be published; or
- (b) a review under Division 5 in relation to the publication of a dumping duty notice; or
- (c) an inquiry under Division 6A in relation to the continuation of a dumping duty notice;

means an exporter of goods that are the subject of the investigation, review or inquiry, or an exporter of like goods, where:

- (d) the CEO was satisfied that the exporter did not give the CEO information the CEO considered to be relevant to the investigation, review or inquiry within a period the CEO considered to be reasonable; or
- (e) the CEO was satisfied that the exporter significantly impeded the investigation, review or inquiry.

**5 After section 269TAC**

Insert:

**269TACAA Sampling**

(1) If:

- (a) one of the following applies:
  - (i) there is an investigation under this Part in relation to whether a dumping duty notice or countervailing duty notice should be published;
  - (ii) there is a review under Division 5 in relation to the publication of a dumping duty notice or countervailing duty notice;
  - (iii) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice or countervailing duty notice; and
- (b) the number of exporters from a particular country of export in relation to the investigation, review or inquiry is so large

**Schedule 3** Sampling

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that it is not practicable to examine the exports of all of those exporters;

then the investigation, review or inquiry may be carried out, and findings may be made, on the basis of information obtained from an examination of a selected number of those exporters:

- (c) who constitute a statistically valid sample of those exporters; or
  - (d) who are responsible for the largest volume of exports to Australia that can reasonably be examined.
- (2) If information is submitted by an exporter not initially selected under subsection (1) for the purposes of an investigation, review or inquiry, the investigation, review or inquiry must extend to that exporter unless to so extend it would prevent its timely completion.

**269TACAB Dumping duty notice—export prices and normal values for different categories of exporters**

*Uncooperative exporters*

- (1) If one of the following applies:
- (a) there is an investigation under this Part in relation to whether a dumping duty notice should be published;
  - (b) there is a review under Division 5 in relation to the publication of a dumping duty notice;
  - (c) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice;
- then:
- (d) if the export price of goods for an uncooperative exporter is to be worked out in relation to the investigation, review or inquiry—that export price is to be worked out under subsection 269TAB(3); and
  - (e) if the normal value of goods for an uncooperative exporter is to be worked out in relation to the investigation, review or inquiry—that normal value is to be worked out under subsection 269TAC(6).

*Residual exporters*

- (2) If:
- (a) one of the following applies:

- (i) there is an investigation under this Part in relation to whether a dumping duty notice should be published;
  - (ii) there is a review under Division 5 in relation to the publication of a dumping duty notice;
  - (iii) there is an inquiry under Division 6A in relation to the continuation of a dumping duty notice; and
- (b) the investigation, review or inquiry is carried out on the basis of information obtained from an examination of a selected number of exporters as mentioned in subsection 269TACAA(1);

then:

- (c) if the export price of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that export price must not be less than the weighted average of export prices for like goods of cooperative exporters from the same country of export; and
  - (d) if the normal value of goods for a residual exporter is to be worked out in relation to the investigation, review or inquiry—that normal value must not exceed the weighted average of normal values for like goods of cooperative exporters from the same country of export.
- (3) To the extent that subsection (2) applies in relation to an investigation, the weighted average of export prices, and the weighted average of normal values, of the cooperative exporters must not include any export price or normal value if, in a comparison under section 269TACB involving that export price or normal value, the Minister has determined:
- (a) that there is no dumping; or
  - (b) that the dumping margin, when expressed as a percentage of the export price or weighted average of export prices used to establish that dumping margin, is less than 2%.

## **6 Subsections 269TACB(7), (8) and (9)**

Repeal the subsections.

## **7 Subsections 269TG(3B) and (3C)**

Repeal the subsections.

## **8 Subsections 269TH(5) and (6)**

### **Schedule 3** Sampling

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Repeal the subsections.

#### **9 Paragraphs 269ZE(2)(b) and (3)(b)**

Omit “who was a selected exporter”, substitute “whose exports were examined”.

#### **10 Subsection 269ZE(4)**

Omit “who is a selected exporter”.

#### **11 Application provision**

The amendments made by this Schedule apply in relation to investigations that are initiated, or to reviews or inquiries that begin, on or after the commencement of this Schedule.

## Schedule 4—Other amendments

### *Customs Act 1901*

#### **1 Subsection 269T(1) (definition of *interested party*)**

Repeal the definition, substitute:

*interested party*, in relation to:

- (a) an application made to the CEO under section 269TB requesting that the Minister publish a dumping duty notice or a countervailing duty notice in respect of the goods the subject of the application; or
- (b) an application under subsection 269ZA(1), or a request under subsection 269ZA(3), for review of anti-dumping measures taken in respect of goods; or
- (d) an application under section 269ZHB for a continuation of anti-dumping measures taken in respect of goods;

means:

- (e) in the case of an application—the applicant; and
- (f) a person or body representing, or representing a portion of, the industry producing, or likely to be established to produce, like goods; and
- (g) any person who is or is likely to be directly concerned with the importation or exportation into Australia of the goods the subject of the application or request or who has been or is likely to be directly concerned with the importation or exportation into Australia of like goods; and
- (h) any person who is or is likely to be directly concerned with the production or manufacture of the goods the subject of the application or request or of like goods that have been, or are likely to be, exported to Australia; and
- (i) a trade organisation a majority of whose members are, or are likely to be, directly concerned with the production or manufacture of the goods the subject of the application or request or of like goods, with their importation or exportation into Australia or with both of those activities; and
- (j) the government of the country of export or country of origin:

**Schedule 4** Other amendments

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- (i) of goods the subject of the application or request that have been, or are likely to be, exported to Australia; or
- (ii) of like goods that have been, or are likely to be, exported to Australia; and
- (k) a trade union representing one or more persons employed in the Australian industry producing, or likely to produce, like goods; and
- (l) a person who uses the goods the subject of the application or request, or like goods, in the production or manufacture of other goods in Australia.

**2 Paragraph 269TAE(2C)(c)**

Before “the dumping”, insert “if the determination is being made for the purposes of section 269TG or 269TH—”.

**3 Paragraph 269TAE(2C)(d)**

Before “for each”, insert “if the determination is being made for the purposes of section 269TG or 269TH—”.

**4 Subsection 269TDA(13) (heading)**

Repeal the heading, substitute:

*CEO must terminate dumping investigation if export causes negligible injury etc.*

**5 Paragraph 269TDA(13)(b)**

Repeal the paragraph, substitute:

- (b) in an investigation, for the purposes of the application, of goods the subject of the application that have been, or may be, exported to Australia from a particular country of export, the CEO is satisfied that the injury, if any, to an Australian industry or an industry in a third country, or the hindrance, if any, to the establishment of an Australian industry, that has been, or may be, caused by that export is negligible;

**6 Paragraph 269ZJ(5)(a)**

After “269ZA(1)”, insert “or section 269ZHB”.

**7 Paragraph 269ZJ(6)(a)**

After “269ZA(1)”, insert “or section 269ZHB”.

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**8 Subsection 269ZZK(6) (paragraph (c) of the definition of relevant information)**

After “subsection 269ZA(1)”, insert “or a request under subsection 269ZA(3)”.

**9 Application provisions**

- (1) The amendments made by items 4 and 5 apply in relation to investigations that are initiated on or after the commencement of those items.
- (2) The amendments made by items 6 and 7 apply in relation to applications that are made on or after the commencement of those items.

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*[Minister’s second reading speech made in—  
House of Representatives on 27 June 2012  
Senate on 16 August 2012]*