





# **Customs Amendment (Anti-dumping Measures) Act 2013**

**No. 95, 2013**

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

[Assented to 28 June 2013]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Customs Amendment (Anti-dumping Measures) Act 2013*.

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## **2 Commencement**

This Act commences on 1 January 2014.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Customs Act 1901*

#### **1 Paragraph 45(3)(a)**

Repeal the paragraph, substitute:

- (a) in relation to a security in respect of any interim duty that may be payable on goods under section 8 or 9 of the *Customs Tariff (Anti-Dumping) Act 1975*—a period described in subsection (3A) of this section; or

#### **2 After subsection 45(3)**

Insert:

(3A) For the purposes of paragraph (3)(a), the period is:

- (a) unless paragraph (b) of this subsection applies:

- (i) a period of 4 months; or

- (ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period—a period (not exceeding 6 months) that the Commissioner determines to be appropriate; or

- (b) if the security was taken in connection with an investigation under Part XVB and the non-injurious price of goods the subject of the investigation as ascertained, or last ascertained, for the purposes of the investigation is less than the normal value of such goods as so ascertained, or last so ascertained:

- (i) a period of 6 months; or

- (ii) if an exporter of goods of the kind referred to in paragraph (3)(a) requests a longer period—a period (not exceeding 9 months) that the Commissioner determines to be appropriate.

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

Insert:

*compliance period* means a period prescribed in, or worked out in accordance with, an instrument under subsection (1A).

*small-medium enterprise* means an enterprise of a kind prescribed in an instrument under subsection (1B).

**4 After subsection 269T(1)**

Insert:

- (1A) The Minister may make a legislative instrument for the purposes of the definition of *compliance period* in subsection (1).
- (1B) The Minister may, by legislative instrument, prescribe kinds of enterprises for the purposes of the definition of *small-medium enterprise* in subsection (1).

**5 After subparagraph 269T(4E)(b)(i)**

Insert:

- (ia) to the export price of the goods; and

**6 Paragraph 269TAA(1)(b)**

Omit “price is”, substitute “price appears to be”.

**7 After subsection 269TG(5)**

Insert:

- (5A) However, subsection (5) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:
  - (a) the normal value of the goods was not ascertained under subsection 269TAC(1) because of the operation of subparagraph 269TAC(2)(a)(ii);
  - (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

**8 After subsection 269TJ(3B)**

Insert:

- (3BA) However, subsection (3B) does not require the Minister to have regard to the matter in that subsection if the Minister is satisfied that either or both of the following apply in relation to the goods in the consignment:

- (a) the country of export has not complied with Article 25 of the Agreement on Subsidies and Countervailing Measures for the compliance period;
- (b) there is an Australian industry in respect of like goods that consists of at least 2 small-medium enterprises, whether or not that industry consists of other enterprises.

**9 Paragraph 269TLA(4)(b)**

After “subsection 269TN(4A)”, insert “or (6)”.

**10 Before subsection 269TN(3)**

Insert:

*Dumping duties*

**11 Paragraph 269TN(3)(b)**

Before “material”, insert “the Minister considers that”.

**12 Paragraph 269TN(3)(b)**

Omit “recurrence of the injury”, substitute “serious undermining of the remedial effect of the dumping duty that will become payable upon publication of the notice”.

**13 Paragraph 269TN(4)(a)**

After “importer who”, insert “the Minister considers”.

**14 After subsection 269TN(4A)**

Insert:

(4B) If:

- (a) the Minister is satisfied that an act or omission of an exporter who has given an undertaking under subsection 269TG(4) is a violation of that undertaking; and

- (b) at the time of, or at any time after, that act or omission, security has been taken under section 42 in respect of any interim duty that might be payable under section 8 of the Dumping Duty Act on goods of the kind to which the undertaking relates or the Customs had the right to require and take such security;

subsection (1) of this section does not prevent the publication of a notice under subsection 269TG(1) in respect of goods that:

- (c) have been exported by the exporter; and
- (d) are of the kind to which the undertaking relates; and
- (e) have been entered for home consumption on a day that:
  - (i) was not earlier than the day on which that act or omission occurred; and
  - (ii) was not more than 90 days before the day on which that security was taken or there was a right to require and take such security.

- (4C) Despite subsections (3) to (4B), the Minister must not publish a notice under subsection 269TG(1) in respect of goods that have been entered for home consumption before the date of initiation of the investigation concerned.

#### **15 Before subsection 269TN(5)**

Insert:

*Countervailing duties*

#### **16 Paragraph 269TN(5)(b)**

Omit “material injury”, substitute “the Minister considers that material injury, which is difficult to repair,”.

#### **17 At the end of paragraph 269TN(5)(b)**

Add “, and the Minister considers that the publication of the notice is necessary to prevent the recurrence of the injury”.

#### **18 Subsection 269TN(6)**

Repeal the subsection, substitute:

- (6) Before the Minister decides to publish a countervailing duty notice under subsection 269TJ(1) in circumstances referred to in

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subsection (5) of this section, in respect of goods that have already been entered for home consumption, the Minister must:

- (a) inform the importer of the goods of the decision he or she proposes to make; and
- (b) allow a reasonable opportunity for the importer of the goods to comment on the proposed decision; and
- (c) give consideration to the comments provided by the importer.

## **19 After subsection 269ZDBB(5)**

Insert:

*Avoidance of intended effect of duty*

(5A) ***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 is an exporter in respect of which the notice applies;
- (c) either or both of sections 8 and 10 of the Dumping Duty Act apply to the export of the circumvention goods to Australia;
- (d) the importer of the circumvention goods, whether directly or through an associate or associates, sells those goods in Australia without increasing the price commensurate with the total amount of duty payable on the circumvention goods under the Dumping Duty Act;
- (e) the circumstances covered by paragraphs (a) to (d) occur over a reasonable period.

## **20 After subsection 269ZDBC(1)**

Insert:

(1A) If:

- (a) a person lodges an application under subsection (1) with the Commissioner; and
- (b) the person describes, in the application, circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A); and
- (c) the Commissioner publishes a notice (the ***inquiry notice***) under subsection 269ZDBE(4) because of the application;

the person must not lodge another application under subsection (1) of this section describing circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), within 12 months after the day the inquiry notice was published.

**21 After subsection 269ZDBD(2)**

Insert:

- (2A) An application that describes circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), must not describe any other kind of circumvention activity in relation to that notice.

**22 Paragraph 269ZDBE(6)(d)**

Repeal the paragraph, substitute:

- (d) indicate that a report will be made to the Minister:
- (i) unless subparagraph (ii) applies—within 155 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; or
  - (ii) if the inquiry relates to whether circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred—within 100 days after the day the inquiry notice is published or such longer period as the Minister allows under section 269ZHI; and

**23 Paragraph 269ZDBE(6)(f)**

Before “state”, insert “if subparagraph (d)(i) applies—”.

**24 Paragraph 269ZDBE(6)(g)**

Before “invite”, insert “if subparagraph (d)(i) applies—”.

**25 After section 269ZDBE**

Insert:

**269ZDBEA Termination of anti-circumvention inquiry**

*General inquiry*

- (1) If:

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- (a) the Commissioner publishes a notice under subsection 269ZDBE(4); and
  - (b) subparagraph 269ZDBE(6)(d)(i) applies; and
  - (c) before the Commissioner would otherwise be required to place on the public record a statement referred to in subsection 269ZDBF(1), the Commissioner becomes satisfied that no circumvention activity in relation to the original notice has occurred;

the Commissioner may terminate the anti-circumvention inquiry concerned.

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

*Accelerated inquiry*

- (2) If:
  - (a) the Commissioner publishes a notice under subsection 269ZDBE(4); and
  - (b) subparagraph 269ZDBE(6)(d)(ii) applies; and
  - (c) the Commissioner is satisfied that no circumvention activity, in relation to the original notice, within the meaning of subsection 269ZDBB(5A), has occurred;

the Commissioner may terminate the anti-circumvention inquiry concerned.

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

*Notice of termination decision*

- (3) The Commissioner must:
  - (a) give public notice of a decision under subsection (1) or (2); and
  - (b) notify the applicant for the conduct of the anti-circumvention inquiry of the decision; and
  - (c) inform the applicant of the applicant's right, within 30 days after the applicant is so notified, to apply for a review of the decision by the Review Panel under Division 9.

## **26 Subsection 269ZDBF(1)**

After "an original notice", insert "and subparagraph 269ZDBE(6)(d)(i) applies".

## 27 Subsection 269ZDBG(1)

Repeal the subsection, substitute:

### *Commissioner recommendations*

- (1) The Commissioner must, after conducting an anti-circumvention inquiry in relation to an original notice and within:
- (a) if subparagraph 269ZDBE(6)(d)(i) applies—155 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI; or
  - (b) if subparagraph 269ZDBE(6)(d)(ii) applies—100 days after the day the notice under subsection 269ZDBE(4) or (5) about the inquiry is published or such longer period as the Minister allows under section 269ZHI;
- give the Minister a report recommending:
- (c) the original notice remain unaltered; or
  - (d) the following:
    - (i) the original notice be altered because the Commissioner 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.

## 28 Paragraph 269ZDBG(2)(a)

Before “must have”, insert “if paragraph (1)(a) applies—”.

## 29 After paragraph 269ZDBG(2)(a)

Insert:

- (aa) if paragraph (1)(b) applies—must have regard to:
  - (i) the application or request for the inquiry; and
  - (ii) any submission concerning the inquiry that is received by Customs within 40 days after the publication of the notice under subsection 269ZDBE(4) or (5); and

## 30 Paragraph 269ZDBG(2)(b)

Before “may”, insert “in any case—”.

**31 After subsection 269ZDBG(3)**

Insert:

- (3A) The Commissioner 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)(aa)(ii) if to do so would, in the Commissioner's opinion, prevent the timely preparation of the report to the Minister.

**32 Paragraph 269ZHI(1)(eb)**

Omit "subsection 269ZDBG(1)", substitute "paragraph 269ZDBG(1)(a)".

**33 After paragraph 269ZHI(1)(eb)**

Insert:

- (ec) an extension of the 100-day period referred to in paragraph 269ZDBG(1)(b);

**34 Subsection 269ZZK(6) (paragraph (ca) of the definition of relevant information)**

After "paragraph 269ZDBG(2)(a)", insert "or (aa)".

**35 At the end of section 269ZZN**

Add:

- ; (e) a decision by the Commissioner to terminate an anti-circumvention inquiry under subsection 269ZDBEA(1) or (2) (also a *termination decision*).

**36 Section 269ZZO (at the end of the table)**

Add:

6	A termination decision under subsection 269ZDBEA(1) or (2)	The applicant under subsection 269ZDBC(1) for the conduct of the anti-circumvention inquiry
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**37 Subsections 269ZZT(2) and (3)**

Repeal the subsections, substitute:

- (2) If the Review Panel revokes a reviewable decision (other than a decision under subsection 269ZDBEA(2)):

- (a) unless paragraph (b) applies:
    - (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential facts under section 269TDAA in relation to the application for a dumping duty notice or countervailing duty notice that is related to the review; and
    - (ii) after that publication, the investigation of the application resumes under this Part; or
  - (b) if the reviewable decision was a decision under subsection 269ZDBEA(1):
    - (i) as soon as practicable after the revocation, the Commissioner must publish a statement of essential facts under section 269ZDBF in relation to the anti-circumvention inquiry concerned; and
    - (ii) after that publication, the conduct of the anti-circumvention inquiry concerned resumes under this Part.
- (3) If the Review Panel revokes a reviewable decision under subsection 269ZDBEA(2), the conduct of the anti-circumvention inquiry concerned resumes under this Part.

### **38 Application provisions**

- (1) The amendments made by items 1 and 2 apply in relation to a security taken on or after the commencement of those items.
- (2) The amendments made by items 7 and 8 apply in relation to a notice given under subsection 269TG(3D) or 269TJ(2A) of the *Customs Act 1901* on or after the commencement of those items, where:
  - (a) the application for the publication of a dumping duty notice or a countervailing duty notice was made on or after that commencement; or
  - (b) the investigation under subsection 269TAG(1) of that Act began on or after that commencement.
- (3) The amendments made by items 9 to 18 apply in relation to a notice of a kind referred to in subsection 269TN(1) of the *Customs Act 1901* that is published on or after the commencement of those items.
- (4) Division 5A of Part XVB of the *Customs Act 1901*, so far as it relates to the amendment made by item 19, applies in relation to:

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- (a) conduct constituting circumvention activity occurring wholly after the commencement of that item; and
  - (b) conduct constituting circumvention activity occurring wholly before the commencement of that item; and
  - (c) conduct constituting circumvention activity occurring partly before and partly after the commencement of that item.
- (5) The amendments made by items 20 and 21 apply in relation to an application under subsection 269ZDBC(1) of the *Customs Act 1901* that is made on or after the commencement of those items.
- (6) The amendments made by items 22 to 24 and 26 to 33 apply in relation to a notice published under subsection 269ZDBE(4) or (5) of the *Customs Act 1901* on or after the commencement of those items.
- (7) The amendment made by item 25 applies in relation to a notice published under subsection 269ZDBE(4) of the *Customs Act 1901* on or after the commencement of that item (whether the application under subsection 269ZDBC(1) of that Act was made before, on or after that commencement).
- (8) The amendment made by item 37 applies in relation to a revocation made on or after the commencement of that item.
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*[Minister's second reading speech made in—  
House of Representatives on 29 May 2013  
Senate on 19 June 2013]*

(126/13)

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