Customs Amendment (Anti-Dumping Commission Transfer) Act 2013

No. 139, 2013

An Act to amend the law relating to customs, 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 Commission Transfer) Act 2013

No. 139, 2013

An Act to amend the law relating to customs, and for related purposes

[*Assented to 13 December 2013*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment (Anti-Dumping Commission Transfer) Act 2013*.

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.	13 December 2013
2. Schedule 1	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.	

Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments

Part 1—Main amendments

Customs Act 1901

1 Subsection 4(1) (definition of *Commissioner*)

Omit “established”, substitute “continued in existence”.

2 Subsection 4(1)

Insert:

> ***Commission staff member*** means a member of the staff assisting the Commissioner as mentioned in subsection 269SMQ(1).

3 Subsections 9(3A) and (4)

Repeal the subsections, substitute:

(4) Subsection (1) does not apply to the Minister’s power under subsection 77EA(1), 77ED(1), 77EE(1) or 77EF(2).

4 Subsection 45(2)

Omit “by the Minister”, substitute “under Part XVB of this Act”.

5 Paragraph 45(4)(a)

Omit “by the Minister”, substitute “under Part XVB of this Act”.

6 Section 269SMA

Omit “within the Australian Customs and Border Protection Service”, substitute “within the Department”.

7 Section 269SMA

Omit “staff of the Australian Customs and Border Protection Service”, substitute “APS employees in the Department”.

8 Section 269SMB

Repeal the section, substitute:

269SMB Establishment

(1) The Anti-Dumping Commission that was established by this section (as in force before the transfer day) continues in existence, by force of this section, within the Department.

(2) In this section:

transfer day means the day Schedule 1 to the *Customs Amendment (Anti-Dumping Commission Transfer) Act 2013* commenced.

9 Section 269SMP

Repeal the section.

10 Subsection 269SMQ(1)

Repeal the subsection, substitute:

(1) The staff assisting the Commissioner are to be APS employees in the Department and made available for the purpose by the Secretary of the Department.

11 Subsection 269SMQ(2) (note)

Repeal the note.

12 At the end of Division 1A of Part XVB

Add:

Subdivision E—Delegation

269SMR Delegation

(1) The Commissioner may, by writing, delegate any of the Commissioner's functions or powers under this Part to a Commission staff member.

(2) In performing functions or exercising powers under a delegation, the delegate must comply with any written directions of the Commissioner.

Subdivision F—Approval of forms

269SMS Approval of forms

The Commissioner may, by writing, approve a form for the purposes of a provision of this Part.

Subdivision G—Disclosure of information

269SMT Disclosure of information

(1) The Commissioner, or a Commission staff member, may disclose information (including personal information) obtained under this Part or the Dumping Duty Act, or an instrument under this Part or the Dumping Duty Act, to the CEO, or an officer of Customs, for the purposes of a Customs Act.

Interaction with the Privacy Act 1988

(2) For the purposes of the *Privacy Act 1988*, the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

Definition

(3) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

13 Subparagraphs 269TAE(2C)(b)(i) and (ii)

Omit “Customs”, substitute “Commissioner”.

14 After section 269TAG

Insert:

269TAH Minister may delegate functions and powers to Commissioner or Commission staff members

(1) The Minister may, by signed instrument, delegate to the following any of the functions and powers of the Minister under this Part or the Dumping Duty Act:

(a) the Commissioner;
(b) a Commission staff member.

(2) However, subsection (1) does not apply to a function or power under:
(a) subsection 269TG(1) or (2), 269TH(1) or (2), 269TJ(1) or (2) or 269TK(1) or (2) of this Act; or
(b) subsection 8(5), 9(5), 10(3B) or 11(4) of the Dumping Duty Act.

15 Subsections 269TB(1) and (2)

Omit “Customs”, substitute “Commissioner”.

16 Subsection 269TB(3)

Omit “Customs”, substitute “the Commissioner”.

17 Paragraph 269TB(4)(b)

Omit “an approved form”, substitute “a form approved by the Commissioner for the purposes of this section”.

18 Subsection 269TB(5)

Omit “with the Customs”, substitute “with the Commissioner”.

19 Paragraph 269TB(5)(a)

Omit “an officer”, substitute “a Commission staff member”.

20 Paragraphs 269TB(5)(b) and (c)

Omit “approved form”, substitute “form referred to in paragraph (4)(b)”.

21 Subsection 269TB(5)

Omit “by Customs”, substitute “by the Commissioner”.

22 Subsection 269TB(5)

Omit “by an officer”, substitute “by a Commission staff member”.

23 Subsections 269TC(1) and (2)

Omit “Customs receives”, substitute “receiving”.

24 Subsection 269TC(2A)

Omit “give Customs”, substitute “give the Commissioner”.

25 Paragraphs 269TC(2A)(a) and (b)

Omit “Customs”, substitute “the Commissioner”.

26 Subparagraph 269TD(2)(a)(ii)

Omit “Customs”, substitute “the Commissioner”.

27 Subsection 269TD(3)

Omit “Customs”, substitute “the Commissioner”.

28 Paragraph 269TD(4)(b)

Omit “officer of Customs taking the securities”, substitute “Commissioner”.

29 Subparagraph 269TDAA(2)(a)(ii)

Omit “Customs”, substitute “the Commissioner”.

30 Subsection 269TDAA(3)

Omit “Customs”, substitute “the Commissioner”.

31 Subparagraph 269TEA(3)(a)(iv)

Omit “Customs”, substitute “the Commissioner”.

32 Subsection 269TEA(4)

Omit “Customs”, substitute “the Commissioner”.

33 Subsection 269U(1)

Omit “authorize an officer”, substitute “authorise a Commission staff member”.

34 Subsection 269U(2)

Omit “An officer authorized”, substitute “A Commission staff member authorised”.

35 Subsections 269U(3) to (9)

Omit “officer”, substitute “Commission staff member”.

36 Paragraph 269W(2)(a)

Omit “at Customs House in Canberra”, substitute “by the Commissioner by notice published on the Anti-Dumping Commission’s website”.

37 Subsection 269W(2)

Omit “an officer of Customs”, substitute “a Commission staff member”.

38 Subsection 269YA(1)

Omit “Customs”, substitute “Commissioner”.

39 Paragraph 269ZB(1)(b)

Omit “an approved form”, substitute “a form approved by the Commissioner for the purposes of this section”.

40 Subsection 269ZB(2)

Omit “approved” (wherever occurring).

41 Subsection 269ZB(3)

Omit “with Customs”, substitute “with the Commissioner”.

42 Paragraph 269ZB(3)(a)

Omit “at Customs House in Canberra”, substitute “by the Commissioner by notice published on the Anti-Dumping Commission’s website”.

43 Paragraphs 269ZB(3)(b) and (c)

Omit “approved form”, substitute “form referred to in paragraph (1)(b)”.

44 Subsection 269ZB(3)

Omit “an officer of Customs”, substitute “a Commission staff member”.

45 Subsection 269ZC(1)

Omit “with Customs”, substitute “with the Commissioner”.

46 Subsection 269ZC(1)

Omit “Customs receives”, substitute “receiving”.

47 Section 269ZCA

Omit “Customs”, substitute “the Commissioner”.

48 Paragraph 269ZCB(1)(c)

Omit “an approved form”, substitute “a form approved by the Commissioner for the purposes of this section”.

49 Subsection 269ZCB(2)

Omit “approved”.

50 Subsection 269ZCB(3)

Omit “with Customs”, substitute “with the Commissioner”.

51 Paragraph 269ZCB(3)(a)

Omit “at Customs House in Canberra”, substitute “by the Commissioner by notice published on the Anti-Dumping Commission’s website”.

52 Paragraphs 269ZCB(3)(b) and (c)

Omit “approved form”, substitute “form referred to in paragraph (1)(c)”.

53 Subsection 269ZCB(3)

Omit “an officer of Customs”, substitute “a Commission staff member”.

54 Subsection 269ZCC(1)

Omit “with Customs”, substitute “with the Commissioner”.

55 Subsection 269ZCC(1)

Omit “Customs receives”, substitute “receiving”.

56 Subparagraphs 269ZD(2)(a)(ii) and (iii)

Omit “Customs”, substitute “the Commissioner”.

57 Subsection 269ZD(3)

Omit “Customs”, substitute “the Commissioner”.

58 Subparagraph 269ZDA(3)(a)(iv)

Omit “Customs”, substitute “the Commissioner”.

59 Subsection 269ZDA(4)

Omit “Customs”, substitute “the Commissioner”.

60 Paragraph 269ZDBD(1)(b)

Omit “an approved form”, substitute “a form approved by the Commissioner for the purposes of this section”.

61 Subsection 269ZDBD(3)

Omit “with Customs”, substitute “with the Commissioner”.

62 Paragraph 269ZDBD(3)(a)

Omit “at Customs House in Canberra”, substitute “by the Commissioner by notice published on the Anti-Dumping Commission’s website”.

63 Paragraphs 269ZDBD(3)(b) and (c)

Omit “approved form”, substitute “form referred to in paragraph (1)(b)”.

64 Subsection 269ZDBD(4)

Omit “an officer of Customs”, substitute “a Commission staff member”.

65 Subsection 269ZDBE(1)

Omit “with Customs”, substitute “with the Commissioner”.

66 Subsection 269ZDBE(1)

Omit “Customs receives”, substitute “receiving”.

67 Subparagraph 269ZDBF(2)(a)(ii)

Omit “Customs”, substitute “the Commissioner”.

68 Subsection 269ZDBF(3)

Omit “Customs”, substitute “the Commissioner”.

69 Subparagraph 269ZDBG(2)(a)(iv)

Omit “Customs”, substitute “the Commissioner”.

70 Subparagraph 269ZDBG(2)(aa)(ii)

Omit “Customs”, substitute “the Commissioner”.

71 Subsections 269ZDBG(3) and (3A)

Omit “Customs”, substitute “the Commissioner”.

72 Subsection 269ZF(2)

Omit “with Customs”, substitute “with the Commissioner”.

73 Paragraph 269ZF(2)(a)

Omit “accelerated review applications”, substitute “such applications by the Commissioner by notice published on the Anti-Dumping Commission’s website”.

74 Subsection 269ZF(2)

Omit “an officer of Customs”, substitute “a Commission staff member”.

75 Paragraph 269ZH(b)

Omit “Commissioner”, substitute “Customs”.

76 Paragraph 269ZHC(1)(b)

Omit “an approved form”, substitute “a form approved by the Commissioner for the purposes of this section”.

77 Subsection 269ZHC(2)

Omit “with Customs”, substitute “with the Commissioner”.

78 Paragraph 269ZHC(2)(a)

Omit “at Customs House in Canberra”, substitute “by the Commissioner by notice published on the Anti-Dumping Commission’s website”.

79 Paragraphs 269ZHC(2)(b) and (c)

Omit “approved form”, substitute “form referred to in paragraph (1)(b)”.

80 Subsection 269ZHC(2)

Omit “an officer of Customs”, substitute “a Commission staff member”.

81 Subsection 269ZHD(1)

Omit “with Customs”, substitute “with the Commissioner”.

82 Subparagraph 269ZHE(2)(a)(ii)

Omit “Customs”, substitute “the Commissioner”.

83 Subsection 269ZHE(3)

Omit “Customs”, substitute “the Commissioner”.

84 Subparagraph 269ZHF(3)(a)(iv)

Omit “Customs”, substitute “the Commissioner”.

85 Subsection 269ZP(3)

After “officer of Customs”, insert “, the Commissioner or a Commission staff member”.

86 Paragraphs 269ZU(2)(b) and (3)(d)

Omit “an officer of Customs”, substitute “a Commission staff member”.

87 Paragraph 269ZZYD(1)(a)

Omit “CEO”, substitute “Commissioner”.

88 Subsections 269ZZYE(1), (2) and (3)

Omit “CEO”, substitute “Commissioner”.

89 Subsection 269ZZYF(1)

Omit “CEO”, substitute “Commissioner”.

90 Subsection 269ZZYG(2) (heading)

Repeal the heading, substitute:

Commissioner to convene meetings

91 Subsections 269ZZYG(2) and (3)

Omit “CEO” (wherever occurring), substitute “Commissioner”.

92 At the end of section 269ZZYG

Add:

(6) The Minister may, by signed instrument, delegate to the following the power of the Minister under subsection (4):

(a) the Commissioner;

(b) a Commission staff member.

93 At the end of Part XVC

Add:

269ZZYH Disclosure of information

(1) The Commissioner, or a Commission staff member, may disclose information (including personal information) obtained under this Part to the CEO, or an officer of Customs, for the purposes of a Customs Act.

Interaction with the Privacy Act 1988

(2) For the purposes of the *Privacy Act 1988*, the disclosure of personal information under subsection (1) is taken to be a disclosure that is authorised by this Act.

Definition

(3) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

Customs Administration Act 1985

94 Section 3 (definition of *Commissioner*)

Repeal the definition.

95 Subsection 4(3)

Omit “, the Commissioner”.

96 Subsection 14(4A)

Repeal the subsection.

97 Paragraph 16(1AA)(aa)

Repeal the paragraph.

Part 2—Other amendments

Criminal Code Act 1995

98 Section 146.1 of the *Criminal Code* (paragraph (da) of the definition of *Commonwealth law enforcement officer*)

Repeal the paragraph.

Law Enforcement Integrity Commissioner Act 2006

99 Paragraph 10(2A)(aa)

Repeal the paragraph.

Part 3—Application, saving and transitional provisions

100 Application provisions

(1) The amendments made by items 15 to 22 apply in relation to an application lodged under subsection 269TB(1) or (2), or a notice lodged under subsection 269TB(3), of the *Customs Act 1901* on or after the commencement of those items.

(2) The amendments made by items 24 and 25 apply in relation to information lodged under subsection 269TC(2A) of the *Customs Act 1901* on or after the commencement of those items.

(3) The amendment made by item 28 applies in relation to a preliminary affirmative determination made under subsection 269TD(1) of the *Customs Act 1901* on or after the commencement of that item.

(4) The amendments made by items 36 and 37 apply in relation to an application lodged under subsection 269V(1) of the *Customs Act 1901* on or after the commencement of those items.

(5) The amendments made by items 39 to 44 apply in relation to an application lodged under subsection 269ZA(1) of the *Customs Act 1901* on or after the commencement of those items.

(6) The amendments made by items 47 to 53 apply in relation to an application lodged under section 269ZCA of the *Customs Act 1901* on or after the commencement of those items.

(7) The amendments made by items 60 to 64 apply in relation to an application lodged under subsection 269ZDBC(1) of the *Customs Act 1901* on or after the commencement of those items.

(8) The amendments made by items 72 to 74 apply in relation to an application lodged under subsection 269ZE(1) of the *Customs Act 1901* on or after the commencement of those items.

(9) The amendments made by items 76 to 80 apply in relation to an application lodged under section 269ZHB of the *Customs Act 1901* on or after the commencement of those items.

(10) Sections 269SMT and 269ZZYH of the *Customs Act 1901*, as amended by this Act, apply in relation to information obtained before, on or after the commencement of this item.

101 Continuity of Commissioner not affected

The amendments made by this Schedule do not affect the continuity of:

(a) the appointment of the Commissioner of the Anti-Dumping Commission; or

(b) the terms and conditions on which that Commissioner holds office.

102 Continuity of members of the Review Panel not affected

The amendments made by this Schedule do not affect the continuity of:

(a) the appointment of a member of the Review Panel mentioned in section 269ZL of the *Customs Act 1901*; or

(b) the terms and conditions on which that member holds office.

103 Continuity of members of the International Trade Remedies Forum not affected

The amendments made by this Schedule do not affect the continuity of the appointment of a member of the International Trade Remedies Forum mentioned in section 269ZZYB of the *Customs Act 1901*.

104 Continuity of applications and submissions

Applications

(1) If:

(a) an application under Part XVB of the *Customs Act 1901* was lodged with Customs before the commencement of this item; and

(b) the application had not been decided before that commencement;

then, on and after that commencement, that Part has effect as if the application had been lodged with the Commissioner.

Submissions

(2) If:

(a) an investigation, review or inquiry under Part XVB of the *Customs Act 1901* is pending at the commencement of this item; and

(b) before that commencement, submissions were received by Customs in relation to the investigation, review or inquiry;

then, on and after that commencement, that Part has effect as if the submissions had been received by the Commissioner.

105 Continuation of secrecy provision

(1) A delegation in force under subsection 14(4A) of the *Customs Administration Act 1985* immediately before the commencement of this item continues to apply on and after that commencement.

(2) Section 16 of the *Customs Administration Act 1985*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to the Commissioner and to information that came to the knowledge of, or into the possession of, the Commissioner before that commencement while he or she performed duties.

106 Continuation of offences under the *Criminal Code*

Sections 146.1, 146.2, 147.1 and 147.2 of the *Criminal Code*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to conduct engaged in before that commencement in relation to the person covered by paragraph (da) of the definition of ***Commonwealth law enforcement officer*** in section 146.1 of the *Criminal Code*.

107 Continuation of processes under the *Law Enforcement Integrity Commissioner Act 2006*

The *Law Enforcement Integrity Commissioner Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to conduct engaged in before that commencement by the person covered by paragraph 10(2A)(aa) of that Act.

108 Transitional rules

The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments and repeals made by Part 1 or 2 of this Schedule.

[*Minister's second reading speech made in—*
House of Representatives on 14 November 2013
Senate on 5 December 2013]

(190/13)