





# **Customs Amendment (Anti-dumping Measures) Act (No. 1) 2015**

**No. 42, 2015**

**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 20 May 2015]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Customs Amendment (Anti-dumping Measures) Act (No. 1) 2015*.

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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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</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.	20 May 2015
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions 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.	

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Note: This table relates only to the provisions of this Act as originally enacted.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

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

#### *Customs Act 1901*

**1 Paragraph 269TC(4)(c)**

Omit “a specified period of not more than 40 days”, substitute “37 days”.

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

Omit “40 days”, substitute “37 days”.

**3 Subparagraph 269TDAA(2)(a)(ii)**

Omit “40 days”, substitute “37 days”.

**4 Paragraph 269ZC(7)(d)**

Omit “a specified period of not more than 40 days”, substitute “37 days”.

**5 Paragraph 269ZCB(1)(a)**

Omit “40 days”, substitute “37 days”.

**6 Subparagraph 269ZD(2)(a)(ii)**

Omit “40 days”, substitute “37 days”.

**7 Paragraph 269ZDBE(6)(e)**

Omit “a specified period of not more than 40 days”, substitute “37 days”.

**8 Subparagraph 269ZDBF(2)(a)(ii)**

Omit “40 days”, substitute “37 days”.

**9 Subparagraph 269ZDBG(2)(aa)(ii)**

Omit “40 days”, substitute “37 days”.

**10 Paragraph 269ZHD(5)(d)**

Omit “a specified period of not more than 40 days”, substitute “37 days”.

**11 Subparagraph 269ZHE(2)(a)(ii)**

Omit “40 days”, substitute “37 days”.

**12 Application provisions**

- (1) The amendments made by items 1, 2 and 3 apply in relation to an application made under subsection 269TB(1) or (2) of the *Customs Act 1901* on or after the commencement of those items.
- (2) The amendments made by items 4, 5 and 6 apply in relation to the following:
  - (a) an application made under subsection 269ZA(1) of the *Customs Act 1901* on or after the commencement of those items;
  - (b) a request made under subsection 269ZC(5) of that Act on or after that commencement.
- (3) The amendments made by items 7, 8 and 9 apply in relation to the following:
  - (a) an application made under subsection 269ZDBC(1) of the *Customs Act 1901* on or after the commencement of those items;
  - (b) a request made under subsection 269ZDBC(2) of that Act on or after that commencement.
- (4) The amendments made by items 10 and 11 apply in relation to an application made under section 269ZHB of the *Customs Act 1901* on or after the commencement of those items.

## **Part 2—Lodgement and publication requirements**

### *Customs Act 1901*

#### **13 Subdivision F of Division 1A of Part XVB (heading)**

Repeal the heading, substitute:

#### **Subdivision F—Form and manner of applications**

#### **14 Section 269SMS (heading)**

Repeal the heading, substitute:

#### **269SMS Form and manner of applications**

#### **15 Section 269SMS**

Before “The”, insert “(1)”.

#### **16 At the end of section 269SMS**

Add:

- (2) The Commissioner may, by writing, approve the manner of lodging an application under a provision of this Part.
- (3) The Commissioner may, by writing, approve the manner of withdrawing, under subsection 269TB(3), an application lodged under subsection 269TB(1) or (2).

#### **17 Subsections 269TAF(4) and (7)**

Omit “in the *Gazette*”, substitute “on the Anti-Dumping Commission’s website”.

#### **18 Paragraph 269TA(3)(a)**

Omit “written”.

#### **19 Paragraphs 269TA(3)(a) and (b)**

Omit “in the *Gazette*”, substitute “on the Anti-Dumping Commission’s website”.

**20 Subsections 269TB(1), (2) and (3)**

Omit “in accordance with subsection (5)”.

**21 At the end of subsection 269TB(4)**

Add:

; and (f) be lodged in the manner approved under section 269SMS.

**22 Subsection 269TB(5)**

Repeal the subsection, substitute:

- (5) The application, or the notice withdrawing an application, is taken to have been received by the Commissioner when the application or notice is first received by a Commission staff member doing duty in relation to dumping applications.

**23 Paragraphs 269TC(2A)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the information must be lodged with the Commissioner, in writing, in the manner in which applications under that section must be lodged; and
- (b) the information is taken to have been received by the Commissioner when the information is first received by a Commission staff member doing duty in relation to dumping applications; and

**24 Subsection 269W(2)**

Repeal the subsection, substitute:

- (2) An application must be lodged with the Commissioner in the manner approved under section 269SMS.
- (2A) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to final duty assessment applications.

**25 At the end of subsection 269ZB(1)**

Add:

; and (e) be lodged in the manner approved under section 269SMS.

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**26 Subsection 269ZB(3)**

Repeal the subsection, substitute:

- (3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for review of anti-dumping measures.

**27 Paragraph 269ZC(4)(a)**

Omit “in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory”, substitute “on the Anti-Dumping Commission’s website”.

**28 Subsection 269ZC(5)**

Omit “in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory”, substitute “on the Anti-Dumping Commission’s website”.

**29 Subsection 269ZC(6)**

Omit “in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory”, substitute “on the Anti-Dumping Commission’s website”.

**30 At the end of subsection 269ZCB(1)**

Add:

- ; and (f) be lodged in the manner approved under section 269SMS.

**31 Subsection 269ZCB(3)**

Repeal the subsection, substitute:

- (3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for review of anti-dumping measures.

**32 Subsection 269ZCC(4)**

Omit “in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory”, substitute “on the Anti-Dumping Commission’s website in accordance with subsection (8)”.

**33 Subsection 269ZCC(7)**

Omit “in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory”, substitute “on the Anti-Dumping Commission’s website”.

**34 Subsection 269ZDB(7)**

Repeal the subsection, substitute:

- (7) A notice under subsection (1) must be published on the Anti-Dumping Commission’s website.

**35 At the end of subsection 269ZDBD(1) (before the note)**

Add:

; and (e) be lodged in the manner approved under section 269SMS.

**36 Subsections 269ZDBD(3) and (4)**

Repeal the subsections, substitute:

*Time of lodgement*

- (3) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for the conduct of anti-circumvention inquiries.

**37 Subsection 269ZDBE(4)**

Omit “in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory”, substitute “on the Anti-Dumping Commission’s website”.

**38 Subsection 269ZDBE(5)**

Omit “in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory”, substitute “on the Anti-Dumping Commission’s website”.

**39 Subsection 269ZDBH(9)**

Repeal the subsection, substitute:

*Manner of publication*

- (9) A notice under subsection (1) must be published on the Anti-Dumping Commission's website.

**40 Subsection 269ZF(1)**

Omit "in accordance with subsection (2)", substitute "in the manner approved under section 269SMS".

**41 Subsection 269ZF(2)**

Repeal the subsection, substitute:

- (2) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for accelerated review.

**42 Subsection 269ZG(3)**

Omit "in writing published in the *Gazette*", substitute "published on the Anti-Dumping Commission's website".

**43 Subsection 269ZHB(1)**

Omit "in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory," substitute "on the Anti-Dumping Commission's website".

**44 At the end of subsection 269ZHC(1)**

Add:

; and (e) be lodged in the manner approved under section 269SMS.

**45 Subsection 269ZHC(2)**

Repeal the subsection, substitute:

- (2) The application is taken to have been lodged when the application is first received by a Commission staff member doing duty in relation to applications for continuation of anti-dumping measures.

**46 Subsection 269ZHD(4)**

Omit "in a newspaper circulating in each State, in the Australian Capital Territory and in the Northern Territory", substitute "on the Anti-Dumping Commission's website".

**47 Paragraph 269ZHG(2)(b)**

Repeal the paragraph, substitute:

(b) on the Anti-Dumping Commission's website.

**48 Subsection 269ZI(1)**

Repeal the subsection, substitute:

(1) If a person or body is required or empowered to give public notice of a decision or determination but the provision requiring or empowering the giving of that notice does not specify where the notice is to be given, it is to be published on the Anti-Dumping Commission's website.

**49 Subsections 269ZI(2) and (9)**

Omit "in a particular publication".

**50 Paragraphs 269ZZD(a) to (c)**

Omit "in a newspaper", substitute "on the Anti-Dumping Commission's website".

**51 Subsection 269ZZI(1)**

Omit "publish a notice in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory,", substitute "publish a notice on the Review Panel's website".

**52 Subsection 269ZZM(1B)**

Omit "public notice of the longer period", substitute "notice of the longer period on the Review Panel's website".

**53 Subsection 269ZZM(4)**

Omit "public notice of his or her decision", substitute "notice of his or her decision on the Review Panel's website".

**54 Subsection 269ZZT(6)**

Omit "publish its decision under this section in a newspaper circulating in each State, the Australian Capital Territory and the Northern Territory", substitute "publish its decision under this section on its website".

## **55 Application provisions**

- (1) The amendment made by item 17 applies in relation to a notice published under subsection 269TAF(4) or (7) of the *Customs Act 1901* on or after the commencement of that item.
- (2) The amendments made by items 18 and 19 apply in relation to a direction given under subsection 269TA(1) of the *Customs Act 1901* on or after the commencement of those items.
- (3) The amendments made by items 20, 21 and 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.
- (4) The amendment made by item 23 applies in relation to information given under subsection 269TC(2A) of the *Customs Act 1901* on or after the commencement of that item.
- (5) The amendment made by item 24 applies in relation to an application lodged under subsection 269V(1) of the *Customs Act 1901* on or after the commencement of that item.
- (6) The amendments made by items 25, 26, 27 and 29 apply in relation to an application lodged under subsection 269ZA(1) of the *Customs Act 1901* on or after the commencement of those items.
- (7) The amendment made by item 28 applies in relation to a request made under subsection 269ZC(5) of the *Customs Act 1901* on or after the commencement of that item.
- (8) The amendments made by items 30, 31 and 32 apply in relation to an application lodged under section 269ZCA of the *Customs Act 1901* on or after the commencement of those items.
- (9) The amendment made by item 33 applies in relation to a request made under section 269ZCC of the *Customs Act 1901* on or after the commencement of that item.
- (10) The amendment made by item 34 applies in relation to a report given to the Minister under section 269ZDA of the *Customs Act 1901* on or after the commencement of that item.

**Schedule 1** Amendments

**Part 2** Lodgement and publication requirements

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- (11) The amendments made by items 35, 36 and 37 apply in relation to an application lodged under subsection 269ZDBC(1) of the *Customs Act 1901* on or after the commencement of those items.
  - (12) The amendment made by item 38 applies in relation to a request made under subsection 269ZDBC(2) of the *Customs Act 1901* on or after the commencement of that item.
  - (13) The amendment made by item 39 applies in relation to a report given to the Minister under section 269ZDBG of the *Customs Act 1901* on or after the commencement of that item.
  - (14) The amendments made by items 40 and 41 apply in relation to an application lodged under subsection 269ZE(1) of the *Customs Act 1901* on or after the commencement of those items.
  - (15) The amendment made by item 42 applies in relation to a report given to the Minister under subsection 269ZG(1) of the *Customs Act 1901* on or after the commencement of that item.
  - (16) The amendment made by item 43 applies in relation to a notice published under subsection 269ZHB(1) of the *Customs Act 1901* on or after the commencement of that item.
  - (17) The amendments made by items 44, 45 and 46 apply in relation to an application lodged under section 269ZHB of the *Customs Act 1901* on or after the commencement of those items.
  - (18) The amendment made by item 47 applies in relation to a report given to the Minister under section 269ZHF of the *Customs Act 1901* on or after the commencement of that item.
  - (19) The amendments made by items 48 and 49 apply in relation to a public notice given on or after the commencement of those items.
  - (20) The amendment made by item 50 applies in relation to a publication that occurs on or after the commencement of that item.
  - (21) The amendment made by item 51 applies in relation to a notice published under subsection 269ZZI(1) of the *Customs Act 1901* on or after the commencement of that item.
  - (22) The amendment made by item 52 applies in relation to longer periods determined by the Minister on or after the commencement of that item.
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- (23) The amendment made by item 53 applies in relation to decisions made by the Minister under subsection 269ZZM(1) of the *Customs Act 1901* on or after the commencement of that item.
- (24) The amendment made by item 54 applies in relation to a notice published under subsection 269ZZT(6) of the *Customs Act 1901* on or after the commencement of that item.

**56 Transitional provision—approved forms**

An instrument approving a form and in force under section 269SMS of the *Customs Act 1901* immediately before the commencement of this item has effect on and after that commencement as if it were an instrument approving that form and in force under subsection 269SMS(1) of that Act.

## **Part 3—Length of investigation period**

### *Customs Act 1901*

#### **57 After subsection 269TC(5)**

Insert:

(5A) The Commissioner cannot vary the length of the investigation period.

#### **58 Application provision**

The amendment made by this Part applies on and after the commencement of this Part in relation to a notice given under subsection 269TC(4) of the *Customs Act 1901* before, on or after that commencement.

## **Part 4—Cumulative assessment of injury or hindrance**

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

#### **59 Subsection 269TDA(13)**

Omit “If”, substitute “Subject to subsection (13A), if”.

#### **60 After subsection 269TDA(13)**

Insert:

(13A) If, in relation to the investigation referred to in subsection (13), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or more countries of export, then the following apply in relation to those countries:

- (a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country, or the hindrance to the establishment of an Australian industry, that has been, or may be, caused by those exports is negligible—subsection (13) does not apply in relation to those countries;
- (b) if the Commissioner is satisfied that such injury or hindrance that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (13) applies to that country.

#### **61 Subsection 269TDA(14)**

Omit “If”, substitute “Subject to subsection (14A), if”.

#### **62 After subsection 269TDA(14)**

Insert:

(14A) If, in relation to the investigation referred to in subsection (14), the Commissioner, in accordance with subsection (14B), considers the cumulative effect of exportations of goods to Australia from 2 or

more countries of export, then the following apply in relation to those countries:

- (a) if the Commissioner is not satisfied that the injury to an Australian industry or an industry in a third country that has been, or may be, caused by those exports is negligible—subsection (14) does not apply in relation to those countries;
- (b) if the Commissioner is satisfied that such injury that has been, or may be, caused by those exports is negligible—the Commissioner must terminate the investigation so far as it relates to those countries.

Note: If the investigation also covers exports of goods from a country that was not part of the cumulation consideration because those exports did not satisfy the criteria in subsection (14B), then the Commissioner will consider whether subsection (14) applies to that country.

*Cumulative assessment of injury or hindrance*

- (14B) For the purpose of subsection (13A) or (14A), the Commissioner must consider the cumulative effect of exportations of goods to Australia from 2 or more countries of export if the Commissioner is satisfied that:
- (a) each of those exportations is the subject of an investigation; and
  - (b) either:
    - (i) all the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on the same day; or
    - (ii) the investigations of those exportations resulted from applications under section 269TB lodged with the Commissioner on different days but the investigation periods for all the investigations of those exportations overlap significantly; and
  - (c) for the purposes of subsection (13A)—the dumping margin worked out under section 269TACB for the exporter for each of the exportations is at least 2% of the export price or weighted average of export prices used to establish that dumping margin; and
  - (d) for the purposes of subsection (13A)—for each application, the volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period (as defined in subsection 269TDA(17))
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from the country of export and dumped is not taken to be negligible for the purposes of subsection 269TDA(3) because of subsection 269TDA(4); and

- (e) for the purposes of subsection (14A):
  - (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
- (f) it is appropriate to consider the cumulative effect of those exportations, having regard to:
  - (i) the conditions of competition between those goods; and
  - (ii) the conditions of competition between those goods and like goods that are domestically produced.

**63 Paragraph 269ZZN(b)**

Omit “(13) or (14)”, substitute “(13), (13A), (14) or (14A)”.

**64 Section 269ZZO (cell at table item 3, column headed “Reviewable decision”)**

Omit “(13) or (14)”, substitute “(13), (13A), (14) or (14A)”.

**65 Section 269ZZO (cell at table item 3, column headed “Applicant”)**

Repeal the cell, substitute:

The person who made the  
application for the dumping duty  
notice or countervailing duty notice

**66 Application provision**

The amendments made by items 59 to 62 apply in relation to applications for a dumping duty notice, or a countervailing duty notice, that are made on or after the commencement of this Part.

## **Part 5—Normal value of goods**

### *Customs Act 1901*

#### **67 After subsection 269TAC(3)**

Insert:

- (3A) The Minister is not required to consider working out the normal value of goods under paragraph (2)(d) before working out the normal value of goods under paragraph (2)(c).

#### **68 Application provision**

The amendment made by this Part applies in relation to investigations that are initiated, to reviews or inquiries that begin or to applications under section 269V of the *Customs Act 1901* that are made, on or after the commencement of this Part.

## **Part 6—Dumping periods**

### *Customs Act 1901*

#### **69 Paragraph 269TACB(2A)(a)**

Omit “2 months”, substitute “1 month”.

#### **70 Application provision**

The amendment made by this Part applies in relation to applications for a dumping duty notice that are made on or after the commencement of this Part.

## Part 8—Accelerated review

### *Customs Act 1901*

#### **74 Subsection 269T(1) (definition of *new exporter*)**

Repeal the definition, substitute:

*new exporter*, in relation to goods the subject of an application for a dumping duty notice or a countervailing duty notice or like goods, means an exporter who did not export such goods to Australia at any time during the investigation period in relation to the application.

#### **75 Subsection 269ZE(1)**

Omit “subparagraph 269ZG(3)(b)(ii)”, substitute “paragraph 269ZG(3)(b)”.

#### **76 Paragraph 269ZG(1)(b)**

Repeal the paragraph, substitute:

- (b) that the dumping duty notice or countervailing duty notice the subject of the application be altered so as to apply to the applicant as if different variable factors had been fixed;

#### **77 Paragraph 269ZG(3)(b)**

Repeal the paragraph, substitute:

- (b) declare that, with effect from the date the application is lodged, this Act and the Dumping Duty Act have effect as if the original dumping duty notice or countervailing duty notice had applied to the applicant but the Minister had fixed specified different variable factors relevant to the determination of duty;

#### **78 Paragraph 269ZH(a)**

Omit “from the applicant in respect of consignments of goods”, substitute “in respect of consignments of goods, to which the application relates,”.

## **79 Application provision**

The amendments made by this Part apply in relation to applications lodged under subsection 269ZE(1) of the *Customs Act 1901* on or after the commencement of this Part.

## Part 9—Period during which notices remain in force

### *Customs Act 1901*

#### 80 Subsection 269TM(1)

Omit “Where”, substitute “Subject to subsection (1A), if”.

#### 81 After subsection 269TM(1)

Insert:

(1A) If:

- (a) a notice (the *original notice*) is published under a relevant notification provision in respect of goods of a particular kind; and
- (b) in relation to the investigation that resulted in the publication of the original notice, the Minister accepted an undertaking under subsection 269TEB(5) or (6) that was proposed by a government of a country of export, or by an exporter, of goods of that kind; and
- (c) before the end of the period of 5 years beginning on the day (the *start day*) that the Minister accepted that undertaking:
  - (i) that government or exporter breaches that undertaking; and
  - (ii) the Minister, under subsection 269TEB(7), takes steps to facilitate the resumption of the investigation in so far as it relates to goods of that kind exported from that country or exported by that exporter; and
  - (iii) another notice is published under a relevant notification provision in respect of goods of that kind exported from that country or exported by that exporter;

then the other notice expires 5 years after the start day unless it is revoked before the end of that period.

#### 82 Application provision

Paragraph 269TM(1A)(b) of the *Customs Act 1901*, as inserted by this Act, applies in relation to an undertaking that is accepted on or after the commencement of this item.

## **Part 10—Dumping findings**

### *Customs Act 1901*

#### **83 After subsection 269T(2AD)**

Insert:

(2AE) However, subsection (2AD) does not permit any determination under this Part that dumping has occurred by reference to goods exported to Australia before the start of the investigation period.

Note: Section 269TACB requires a determination of whether dumping has occurred by reference to goods exported to Australia during the investigation period.

#### **84 Application provision**

The amendment made by this Part applies in relation to investigations that are initiated, or to reviews or inquiries that begin, on or after the commencement of this Part.

## Part 12—Fee for review by Review Panel

### *Customs Act 1901*

#### **87 At the end of subsection 269ZZE(1)**

Add:

; and (f) be accompanied by the fee prescribed in an instrument under subsection (3).

#### **88 At the end of section 269ZZE**

Add:

*Fee*

- (3) The Minister may, by legislative instrument, prescribe a fee for the purposes of paragraph (1)(f).
- (4) The instrument may prescribe different fees for different kinds of applications or different kinds of applicants.
- (5) The instrument may make provision for, and in relation to, the refund or waiver of any fee.

#### **89 At the end of subsection 269ZZQ(1) (before the note)**

Add:

; and (f) be accompanied by the fee prescribed in an instrument under subsection (2).

#### **90 At the end of section 269ZZQ**

Add:

*Fee*

- (2) The Minister may, by legislative instrument, prescribe a fee for the purposes of paragraph (1)(f).
- (3) The instrument may prescribe different fees for different kinds of applications or different kinds of applicants.

- (4) The instrument may make provision for, and in relation to, the refund or waiver of any fee.

**91 Application provision**

The amendments made by this Part apply in relation to reviewable decisions made on or after the commencement of this Part.

## Part 13—Conduct of review by Review Panel

### *Customs Act 1901*

#### **92 Section 269ZY**

Omit “Commissioner”, substitute “Senior Member of the Review Panel”.

#### **93 Paragraph 269ZZE(2)(b)**

Repeal the paragraph, substitute:

- (b) contain a statement setting out the grounds on which the applicant believes the reviewable decision is not the correct or preferable decision; and
- (c) contain a statement setting out the decision (the *proposed decision*) that the applicant considers the Minister should have made; and
- (d) contain a statement setting out how the grounds mentioned in paragraph (b) support the making of the proposed decision; and
- (e) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—contain a statement setting out how the proposed decision is materially different from the reviewable decision.

#### **94 Section 269ZZG (heading)**

Repeal the heading, substitute:

**269ZZG Rejection of application—failure to establish decision not the correct or preferable decision etc.**

#### **95 Subsections 269ZZG(1) and (2)**

Repeal the subsections, substitute:

- (1) If one or more of the following apply:
  - (a) the Review Panel is not satisfied that an application sets out reasonable grounds for the reviewable decision not being the correct or preferable decision;

- (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZE(2)(b) support the making of the proposed decision (see paragraph 269ZZE(2)(c));
  - (c) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZE(2)(c)) is materially different from the reviewable decision;
- the Review Panel may, by notice given to the applicant, request the applicant to give the Review Panel, within the period specified in the notice, further information in relation to those matters.
- (2) The Review Panel may reject an application if at any time after the end of the 30-day period referred to in section 269ZZD:
    - (a) the Review Panel is not satisfied that the applicant has given the Review Panel information setting out reasonable grounds for the reviewable decision not being the correct or preferable decision; or
    - (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZE(2)(b) support the making of the proposed decision (see paragraph 269ZZE(2)(c)); or
    - (c) for a decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZE(2)(c)) is materially different from the reviewable decision.

#### **96 Subsection 269ZZG(4)**

Omit “30-day period referred to in section 269ZZD”, substitute “period specified in a notice under subsection (1)”.

#### **97 At the end of section 269ZZG**

Add:

- (5) If:
  - (a) the Review Panel does not, under this Subdivision, reject an application; and
  - (b) in relation to information given by the applicant setting out the grounds for the reviewable decision not being the correct or preferable decision:
    - (i) the Review Panel is satisfied that one or more of those grounds (the *reviewable grounds*) are reasonable

grounds for the reviewable decision not being the correct or preferable decision; and

- (ii) the Review Panel is satisfied that one or more of those grounds (the *non-reviewable grounds*) are not reasonable grounds for the reviewable decision not being the correct or preferable decision;

then:

- (c) the Review Panel must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds; and
- (d) the Review Panel must reject the non-reviewable grounds.

## 98 After section 269ZZH

Insert:

### 269ZZHA Review Panel may hold conferences

- (1) The Review Panel may, at any time after receiving an application for a review, hold a conference of such persons or bodies as it considers appropriate for the purpose of obtaining further information in relation to the application or review.
- (2) In making a recommendation under subsection 269ZZK(1), the Review Panel may also have regard to:
  - (a) that further information to the extent that it relates to the relevant information (within the meaning of subsection 269ZZK(6)); and
  - (b) any conclusions reached at the conference based on that relevant information.
- (3) If the Review Panel decides to hold a conference at any time after receiving an application for a review and before beginning to conduct the review:
  - (a) the Review Panel must invite the applicant to attend the conference; and
  - (b) if the applicant fails to attend the conference and the Review Panel is not satisfied that the applicant has a reasonable excuse for the failure—the Review Panel may reject the application.

**99 Paragraph 269ZZI(2)(b)**

Omit “ground for seeking the review”, substitute “grounds in relation to which the review is to be conducted”.

**100 After paragraph 269ZZJ(a)**

Insert:

(aa) the Commissioner;

**101 Subsection 269ZZK(1)**

Omit “or 269ZZH”, substitute “, 269ZZH or 269ZZHA”.

**102 After subsection 269ZZK(1)**

Insert:

(1A) For a reviewable decision referred to in paragraph 269ZZA(1)(a), (c), (ca) or (d), the Review Panel may make a recommendation referred to in paragraph (1)(b) of this section only if the new decision is materially different from the reviewable decision.

**103 Subsection 269ZZK(4)**

After “subsections (4A) and (5)”, insert “and subsection 269ZZHA(2)”.

**104 Subsection 269ZZQ(1A)**

Repeal the subsection, substitute:

- (1A) Without limiting paragraph (1)(c), an application must:
- (a) contain a statement setting out the grounds on which the applicant believes the reviewable decision is not the correct or preferable decision; and
  - (b) contain a statement setting out the decision (the *proposed decision*) that the applicant considers the Commissioner should have made; and
  - (c) contain a statement setting out how the grounds mentioned in paragraph (a) support the making of the proposed decision; and
  - (d) for a decision referred to in paragraph 269ZZN(c)—contain a statement setting out how the proposed decision is materially different from the reviewable decision.

**105 Section 269ZZQA (heading)**

Repeal the heading, substitute:

**269ZZQA Rejection of application—failure to establish decision not the correct or preferable decision etc.**

**106 Subsections 269ZZQA(1) and (2)**

Repeal the subsections, substitute:

(1) If one or more of the following apply:

- (a) the Review Panel is not satisfied that an application sets out reasonable grounds for the reviewable decision not being the correct or preferable decision;
- (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZQ(1A)(a) support the making of the proposed decision (see paragraph 269ZZQ(1A)(b));
- (c) for a decision referred to in paragraph 269ZZN(c)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZQ(1A)(b)) is materially different from the reviewable decision;

the Review Panel may, by notice given to the applicant, request the applicant to give the Review Panel, within the period specified in the notice, further information in relation to those matters.

(2) The Review Panel may reject an application if at any time after the end of the 30-day period referred to in section 269ZZP:

- (a) the Review Panel is not satisfied that the applicant has given the Review Panel information setting out reasonable grounds for the reviewable decision not being the correct or preferable decision; or
- (b) the Review Panel is not satisfied that the grounds mentioned in paragraph 269ZZQ(1A)(a) support the making of the proposed decision (see paragraph 269ZZQ(1A)(b)); or
- (c) for a decision referred to in paragraph 269ZZN(c)—the Review Panel is not satisfied that the proposed decision (see paragraph 269ZZQ(1A)(b)) is materially different from the reviewable decision.

**107 Subsection 269ZZQA(4)**

Omit “30-day period referred to in section 269ZZP”, substitute “period specified in a notice under subsection (1)”.

**108 At the end of section 269ZZQA**

Add:

(5) If:

- (a) the Review Panel does not, under this Subdivision, reject an application; and
- (b) in relation to information given by the applicant setting out the grounds for the reviewable decision not being the correct or preferable decision:
  - (i) the Review Panel is satisfied that one or more of those grounds (the **reviewable grounds**) are reasonable grounds for the reviewable decision not being the correct or preferable decision; and
  - (ii) the Review Panel is satisfied that one or more of those grounds (the **non-reviewable grounds**) are not reasonable grounds for the reviewable decision not being the correct or preferable decision;

then:

- (c) the Review Panel must accept the reviewable grounds and must conduct the review in relation to those grounds and no other grounds; and
- (d) the Review Panel must reject the non-reviewable grounds.

**109 After section 269ZZR**

Insert:

**269ZZRA Review Panel may hold conferences**

- (1) The Review Panel may, at any time after receiving an application for a review, hold a conference of such persons or bodies as it considers appropriate for the purpose of obtaining further information in relation to the application or review.
- (2) In making a decision on the review, the Review Panel may also have regard to:

- (a) that further information to the extent that it relates to the information that was before the Commissioner when the Commissioner made the reviewable decision; and
  - (b) any conclusions reached at the conference based on the information that was before the Commissioner when the Commissioner made the reviewable decision.
- (3) If the Review Panel decides to hold a conference at any time after receiving an application for a review and before beginning to conduct the review:
- (a) the Review Panel must invite the applicant to attend the conference; and
  - (b) if the applicant fails to attend the conference and the Review Panel is not satisfied that the applicant has a reasonable excuse for the failure—the Review Panel may reject the application.

**269ZZRB Review Panel may seek further information from the Commissioner**

- (1) In reviewing a reviewable decision under this Subdivision, the Review Panel may seek further information from the Commissioner in relation to information that was before the Commissioner when the Commissioner made the reviewable decision.
- (2) In making a decision on the review, the Review Panel may also have regard to that further information.

**269ZZRC Notification of review**

*Negative prima facie decisions, negative preliminary decisions and rejection decisions*

- (1) Before the Review Panel begins to conduct a review of a negative prima facie decision, a negative preliminary decision or a rejection decision, the Review Panel must give a notice to the applicant and the Commissioner indicating that the Review Panel proposes to conduct that review.
  - (2) A notice under subsection (1) must:
    - (a) describe the goods to which the application relates; and
-

- (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted.

*Termination decision*

- (3) Before the Review Panel begins to conduct a review of a termination decision, the Review Panel must publish a notice on the Review Panel's website indicating that the Review Panel proposes to conduct that review.
- (4) A notice under subsection (3) must:
  - (a) describe the goods to which the application relates; and
  - (b) set out the decision that is sought to be reviewed and the grounds in relation to which the review is to be conducted.

**110 Subsection 269ZZS(1)**

After "section 269ZZQA", insert "or 269ZZRA".

**111 Subsection 269ZZS(3)**

Omit "In", substitute "Subject to subsections 269ZZRA(2) and 269ZZRB(2), in".

**112 Subsection 269ZZS(4)**

Omit "receipt of the application for the review", substitute "giving of the notice under subsection 269ZZRC(1) to the applicant".

**113 Subsection 269ZZT(1)**

Omit "or 269ZZR", substitute ", 269ZZR or 269ZZRA".

**114 Subsection 269ZZT(4)**

Omit "In", substitute "Subject to subsections 269ZZRA(2) and 269ZZRB(2), in".

**115 Subsection 269ZZT(5)**

Omit "receipt of the application for the review", substitute "publication of the notice under subsection 269ZZRC(3)".

**116 Subsection 269ZZU(1)**

After "section 269ZZQA", insert "or 269ZZRA".

**117 After subsection 269ZZU(1)**

Insert:

- (1A) The Review Panel may revoke a reviewable decision and substitute a new decision under subsection 269X(6) only if the new decision is materially different from the reviewable decision.

**118 Subsection 269ZZU(3)**

Omit “In”, substitute “Subject to subsections 269ZZRA(2) and 269ZZRB(2), in”.

**119 Subsection 269ZZU(4)**

Omit “receipt of the application for the review”, substitute “giving of the notice under subsection 269ZZRC(1) to the applicant”.

**120 Subsection 269ZZUA(1)**

After “section 269ZZQA”, insert “or 269ZZRA”.

**121 Subsection 269ZZUA(5)**

Omit “In”, substitute “Subject to subsections 269ZZRA(2) and 269ZZRB(2), in”.

**122 Subsection 269ZZUA(6)**

Omit “receipt of the application for the review”, substitute “giving of the notice under subsection 269ZZRC(1) to the applicant”.

**123 At the end of paragraph 269ZZX(1)(a)**

Add:

- (iv) a summary of further information obtained at a conference mentioned in section 269ZZHA or 269ZZRA; and

**124 Application provision**

The amendments made by this Part apply in relation to reviewable decisions made on or after the commencement of this Part.

## **Part 14—Withdrawal of review applications**

### *Customs Act 1901*

#### **125 After section 269ZZE**

Insert:

#### **269ZZF Withdrawal of application**

- (1) An applicant may withdraw an application for a review.
- (2) The withdrawal must:
  - (a) be in writing; and
  - (b) be made in the manner approved under section 269ZY for making applications for a review.

#### **126 After section 269ZZQ**

Insert:

#### **269ZZQAA Withdrawal of application**

- (1) An applicant may withdraw an application for a review.
- (2) The withdrawal must:
  - (a) be in writing; and
  - (b) be made in the manner approved under section 269ZY for making applications for a review.

#### **127 Application provision**

The amendments made by this Part apply in relation to applications made on or after the commencement of this Part.

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*[Minister's second reading speech made in—  
House of Representatives on 26 February 2015  
Senate on 18 March 2015]*

(15/15)

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