

2013

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CUSTOMS AMENDMENT (ANTI-DUMPING COMMISSION TRANSFER) BILL
2013**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry,
the Honourable Ian MacFarlane MP)

CUSTOMS AMENDMENT (ANTI-DUMPING COMMISSION TRANSFER) BILL 2013

OUTLINE

The purpose of the Bill is to amend the *Customs Act 1901* to separate the Anti-Dumping Commission, comprising the Commissioner for the Anti-Dumping Commission (the Commissioner) and Commission staff members, from the Australian Customs and Border Protection Service. This would allow the Commission to be transferred to the Department of Industry (the Department), consistent with Government policy set out in *'The Coalition Policy to Boost the Competitiveness of Australian Manufacturing'*, released in August 2013.

Transferring the Commission from the Australian Customs and Border Protection Service to the Department would allow those considering requests for anti-dumping (including countervailing) action to benefit from the considerable experience and knowledge held across the industry portfolio. Moving responsibility for anti-dumping matters to the Industry portfolio also sends a clear message that the Government is focussed on combatting unfair dumping. An effective trade remedies system is an integral part of Australia's broader plan to ensure a strong industrial sector.

It would also allow the Australian Customs and Border Protection Service to concentrate on other matters of importance to this Government.

The Bill would continue the existence of the Commission within the Department administered by the Minister administering Part XVB of the *Customs Act 1901* on or after the commencement of the Bill.

The Bill provides that the Commission would continue to exercise the relevant anti-dumping powers and functions contained in Parts XVB and XVC of the *Customs Act 1901*. This would include the receipt and screening of applications for anti-dumping measures, and the conduct of investigations and inquiries relating to the imposition, review and continuation of such measures. The Bill would also transfer to the Commissioner any anti-dumping powers and functions currently retained by the Chief Executive Officer (CEO) of the Australian Customs and Border Protection Service under Parts XVB and XVC of the *Customs Act 1901*.

The Bill would replicate to the greatest extent possible the current delegation powers for the Minister and the Commissioner to the extent that they relate to Parts XVB and XVC of the *Customs Act 1901* and to the *Customs Tariff (Anti-Dumping) Act 1975*. The Bill would also ensure the Commission could continue to disclose information to the Australian Customs and Border Protection Service for relevant purposes, such as ensuring compliance with measures imposed under anti-dumping legislation.

The Bill would amend the *Customs Administration Act 1985*, the *Criminal Code Act 1995* and the *Law Enforcement Integrity Commissioner Act 2006* to remove references to the Commissioner.

The Bill includes transitional and savings provisions, such as those which would maintain the continuity of applications, submissions and Ministerial appointments, as well as the operation of non-disclosure and law enforcement provisions relating to information received and conduct engaged in prior to commencement.

FINANCIAL IMPACT STATEMENT

There are no financial impacts associated with this Bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The *Customs Amendment (Anti-Dumping Commission Transfer) Bill 2013* provides that the Anti-Dumping Commission (including the Commissioner), previously established within the Australian Customs and Border Protection Service, would continue in existence within the Department administered by the Minister of State administering Part XVB of the *Customs Act 1901* on and after the commencement of the Bill.

The objective of the Bill is to transition the Anti-Dumping Commission from the Australian Customs and Border Protection Service to the Department of Industry.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms. The Bill would maintain the existing anti-dumping related powers, functions and duties under the *Customs Act 1901*.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

The Minister for Industry, the Honourable Ian Macfarlane MP

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NOTES ON CLAUSES

Clause 1 - Short title

Provides for the Act to be cited as the *Customs Amendment (Anti-Dumping Commission Transfer) Act 2013*.

Clause 2 - Commencement

Subclause 2(1) inserts a three column table setting out commencement information for various provisions in the Act. Each provision of the Act specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for:

- sections 1 to 3 and anything in this Act not elsewhere covered by this table to commence on Royal Assent;
- Schedule 1 to commence on Proclamation or if the provision(s) do not commence within the period of 6 months on the day this Act receives Royal Assent, then they commence on the day after that period.

Subclause 2(2) provides that column 3 of the table is for additional information which may be added to or edited in any published version of the Act but that information is not part of the Act.

Clause 3 - Schedule(s)

Provides that each Act that is specified in a schedule is amended or repealed as set out in the applicable items in the schedule and that any other item in a schedule has effect according to its terms.

List of abbreviations

‘the Act’	<i>Customs Amendment (Anti-Dumping Commission Transfer) Act 2013</i> (when enacted)
‘the Commission’	Anti-Dumping Commission
‘the Commissioner’	The Commissioner of the Anti-Dumping Commission
‘Customs’	Australian Customs and Border Protection Service
‘the Customs Act’	<i>Customs Act 1901</i>
‘the Department’	Department of Industry
‘Dumping Duty Act’	<i>Customs Tariff (Anti-Dumping) Act 1975</i>

Schedule 1—Amendments

Part 1—Main amendments

Customs Act 1901

Transfer of machinery of Anti-Dumping Commission to the Department of Industry

Summary

The amendments made by Part 1 provide for the transfer of anti-dumping administration from the Australian Customs and Border Protection Service to the Department of Industry (being the Department administered by the Minister responsible for Part XVB of the Customs Act on and from the day the Act commences). Parts XVB and XVC contain the substantive provisions in respect of anti-dumping matters and the International Trade Remedies Forum (the Forum) under the Customs Act. Under these amendments, new provisions have been inserted to allow the Minister to delegate his powers and functions under the Dumping Duty Act and Parts XVB and XVC of the Customs Act. The new provisions effectively replicate the delegation powers currently contained in section 9 of the Customs Act with respect to the Dumping Duty Act and Parts XVB and XVC of the Customs Act. Amendments have also been made to provide that the Anti-Dumping Commission, its staff and staff assisting the Commissioner are to be located within the Department of Industry.

Other amendments have also been made to provide greater clarity in relation to the disclosure of information between the Commission and Customs.

Explanation of the changes

Establishment

Item 8 repeals and substitutes section 269SMB of the Customs Act. New subsection 269SMB(1) provides that the establishment of the Anti-Dumping Commission shall continue within the Department of Industry on and from the day on which the Act commences. New subsection (2) inserts the term, ***transfer day***, which is defined as the day on which Schedule 1 to the Act commences. Items 1 and 6 reflect these amendments.

Staff assisting the Commissioner

Item 2 inserts the new term, ***Commission staff member***, into subsection 4(1) of the Customs Act. ***Commission staff member*** is defined as a member of the staff assisting the Commissioner as mentioned in subsection 269SMQ(1). Item 10 repeals and substitutes subsection 269SMQ(1) of the Customs Act to provide that the staff assisting the Commissioner shall be APS employees within the Department rather than those referred to in section 15 of the *Customs Administration Act 1985*. Item 11 repeals the note referring to *Customs Administration Act 1985* associated with repealed subsection 269SMQ(1). The amendments effected through items 2, 10 and 11 are also reflected in item 7.

Delegation powers

Item 12 inserts a new Subdivision E at the end of Division 1A of Part XVB. New subsection 269SMR(1) provides delegation powers to allow the Commissioner to delegate any of his or her functions or powers under Part XVB to a Commission staff member. New subsection 269SMR(2) requires a delegate to comply with any written directions of the Commissioner in the performance of a function or power under such a delegation. Section 269SMR effectively replicates section 269SMP, repealed at item 9 – which referenced an officer of Customs, the new provision references a Commission staff member.

Item 14 inserts new section 269TAH after section 269TAG of the Customs Act. New subsection 269TAH(1) allows the Minister to delegate his or her powers or functions under Part XVB or the Dumping Duty Act to the Commissioner or a Commission staff member. This new provision mirrors the existing delegation powers under subsections 9(1) and (3A) of the Customs Act to provide powers and functions in respect of anti-dumping matters provided by Part XVB and the Dumping Duty Act.

In keeping with existing subsection 9(4) of the Customs Act, new subsection 269TAH(2) does not allow the Minister to delegate certain powers or functions under the Part XVB of the Customs Act and the Dumping Duty Act. Under the Part XVB, these powers or functions relate to declaration powers in relation to dumping duties (under subsection 269TG(1) or (2)), third country dumping duties (under subsection 269TH(1) or (2)), countervailing duties (under subsection 269TJ(1) or (2)) or third country countervailing duties (under subsection 269TK(1) or (2)). Under the Dumping Duty Act, the disallowed powers relate to determination powers in relation to calculation of interim dumping duty (under subsection 8(5)), calculation of interim third country dumping duty (under subsection 9(5)) and also to direction powers in relation to countervailing duties (under subsection 10(3B) and third country countervailing duties (under subsection 11(4)).

To reflect the creation of new Ministerial delegation provisions specific to anti-dumping matters, item 3 of the Bill repeals and substitutes subsections 9(3A) and 9(4) of the Customs Act to remove references to the Commissioner and to provisions of Part XVB and of the Dumping Duty Act.

Approval of forms

Item 12 also inserts new section 269SMS (under new Subdivision F), which allows the Commissioner rather than the CEO of Customs to approve a form for the purposes of Part XVB.

Disclosure of information

Item 12 also inserts new section 269SMT (under new Subdivision G), which provides for the disclosure of information. Subsection (1) permits information obtained under Part XVB, or the Dumping Duty Act or an instrument under either Part XVB, or the Dumping Duty Act to be disclosed to the CEO of Customs or an officer of Customs for the purposes of administering a Customs Act. Subsection (2) authorises the disclosure of personal information for the purpose of the *Privacy Act 1988*. New subsection (3) provides that, for the purposes of section 269SMT, the term, **personal information**, shall have the same meaning as the *Privacy Act 1988*.

Similarly, new section 269ZZYH (inserted by item 93) is an identical provision to section 269SMT (as inserted by item 12) which authorises disclosure of information obtained under Part XVC.

These provisions make it clear that the Commission can still exchange information with Customs, given that Customs will retain certain functions and powers associated with anti-dumping administration, such as collecting and refunding dumping and countervailing duties and requiring, taking and discharging securities, as well as ensuring compliance with measures imposed under anti-dumping legislation. The CEO of Customs may authorise Commission staff members to perform powers and functions retained by Customs should such action be considered necessary or otherwise desirable for the efficient and effective operation of Australia's anti-dumping system.

Existing Customs' legislation ensures information held by Customs relevant to anti-dumping administration can continue to be disclosed to the Commission once the Commission transfers to the Department of Industry.

Replacement of references to Customs and approved forms

Items 13, 15-72, 74-77, 79-86 replace various references to Customs and approved forms to reflect the transfer of the Commission to the Department of Industry effected through items 8 and 10 and the insertion of new approved form provisions in item 12.

Allocation of place of lodgement for certain applications

Items 73 and 78 provide for revised arrangements in relation to the lodgement of accelerated review applications (under paragraphs 269ZF(2)(a) of the Customs Act) and applications for continuation of anti-dumping measures (under paragraph 269ZHC(2)(a)). Under these amendments, the Commissioner shall allocate the place of lodgement for such applications by notice to be published on the Anti-Dumping Commission's website. Presently, paragraph 269ZF(2)(a) is silent in regard to the manner by which the location for lodgement would be notified, and paragraph 269ZH(2)(a) specifies that applications must be lodged at a Customs House.

International Trade Remedies Forum

Items 87-91 replace references to the CEO of Customs in Part XVC with references to the Commissioner to reflect the transfer of the Commission to the Department of Industry. These amendments provide that the Commissioner would be a permanent member of the Forum, would have the power to convene and preside over meetings of the Forum, and may nominate a person to attend and preside over meetings of the Forum in his or her place.

Item 92 inserts new subsection 269ZZYG(6). Section 269ZZYG provides a number of required matters in relation to Forum meetings. Subsection (4) allows the Minister to determine any procedures to be followed at Forum meetings, including the number of members who shall constitute a quorum. New subsection (6) allows the Minister to delegate his or her power to determine matters in relation to Forum meeting procedures under subsection (4). Under this amendment, the Minister may delegate this power to the

Commissioner or a Commission staff member. This delegation power is similar to the existing Ministerial delegation powers contained in subsection 9(1) of the Customs Act.

Securities

For practical reasons, Customs is to retain the power to require, take and discharge securities associated with anti-dumping matters once the Commission transfers to the Department of Industry. Accordingly, item 75 contains amendments to paragraph 269ZH(b) of the Customs Act. Section 269ZH sets out requirements to be observed if an application for accelerated review of a dumping duty or a countervailing duty notice has been lodged in regard to the collection of interim duty and, the requiring and taking of securities. Under this amendment, if such an application is lodged, Customs (instead of the Commissioner) may require and take securities under section 42 in respect of interim duty that may be payable on the importation of goods to which the relevant application relates.

Items 4 and 5 of the Bill make it clear that the references to a notice published by the Minister contained in subsection 45(2) and paragraph 45(4)(a) of the Customs Act (which deal with circumstances under which securities associated with anti-dumping measures shall or shall not be cancelled) are references to a notice published under Part XVB of the Customs Act.

Part 2—Other amendments

Criminal Code Act 1995

Item 98 repeals paragraph (da) of the definition of *Commonwealth law enforcement officer* under section 146.1. Paragraph (da) includes the Commissioner of the Anti-Dumping Commission (established under section 269SMB of the Customs Act) as a Commonwealth law enforcement officer.

Law Enforcement Integrity Commissioner Act 2006

Item 99 repeals paragraph 10(2A)(aa) of the *Law Enforcement Integrity Commissioner Act 2006*. Subsection (2A) sets out the persons who are staff member of Customs for the purposes of this Act. Under this amendment, the Commissioner would no longer be a staff member of Customs for the purposes of this Act.

The amendments made by items 98 and 99 reflect the transfer of the Commission to the Department of Industry. The Commissioner would no longer be within a law enforcement agency once the Commission transfers to the Department of Industry.

Part 3—Application, saving and transitional provisions

Item 100 - Application provisions

Subitem (1) provides that the amendments made by items 15 to 22 shall 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 on or after the commencement of those items. Section 269TB deals with applications for certain action under the Dumping Duty Act.

Subitem (2) provides that the amendments made by items 24 and 25 shall apply in relation to information lodged under subsection 269TC(2A) of the Customs Act on or after the commencement of those items. Section 269TC outlines the manner in which applications received under section 269TB are to be considered.

Subitem (3) provides that the amendment made by item 28 shall apply in relation to a preliminary affirmative determination made under subsection 269TD(1) of the Customs Act on or after the commencement of that item.

Subitem (4) provides that the amendments made by items 36 and 37 shall apply in relation to an application lodged under subsection 269V(1) of the Customs Act on or after the commencement of those items. Subsection 269V sets out the circumstances in which an importer may apply for a duty assessment.

Subitem (5) provides that the amendments made by items 39 to 44 shall apply in relation to an application lodged under subsection 269ZA(1) of the Customs Act on or after the commencement of those items. Section 269ZA deals with applications and requests for review of anti-dumping measures under Division 5 of the Customs Act.

Subitem (6) provides that the amendments made by items 47 to 53 shall apply in relation to an application lodged under section 269ZCA of the *Customs Act 1901* on or after the commencement of those items. Section ZCA deals with applications to extend a review under Division 5 of the Customs Act to consider revocation of anti-dumping measures.

Subitem (7) provides that the amendments made by items 60 to 64 shall apply in relation to an application lodged under subsection 269ZDBD(1) of the Customs Act on or after the commencement of those items. Section 269ZDBD sets out the content and lodgement requirements for applications for conduct of an anti-circumvention inquiry.

Subitem (8) provides that the amendments made by items 72 to 74 shall apply in relation to an application lodged under subsection 269ZE(1) of the Customs Act on or after the commencement of those items. Section 269ZE sets out the circumstances in which an accelerated review may be sought.

Subitem (9) provides that the amendments made by items 76 to 80 shall apply in relation to an application lodged under section 269ZHB of the Customs Act on or after the commencement of those items. Section ZHB deals with applications for continuation of anti-dumping measures.

Subitem (10) provides that sections 269SMT and 269ZZYH of the Customs Act, as amended by this Act, shall apply in relation to information obtained before, on or after the commencement of this item. New sections 269SMT and 269ZZYH deal with the disclosure of information.

Continuity of appointment of Commissioner and Review Panel not affected

Items 101 and 102 clarify that, notwithstanding the amendments made by Schedule 1, the appointment of the Commissioner of the Anti-Dumping Commission and of members of the Review

Panel established under section 269ZL of the Customs Act, including their respective terms and conditions on which they hold office, are unaffected by those amendments.

Continuity of appointment of International Trade Remedies Forum

Item 103 ensures the continuity of the appointment of the members of the International Trade Remedies Forum would not be affected by the amendments made by Schedule 1.

Continuity of applications and submissions

Item 104 provides that all applications lodged with Customs and submissions received by Customs before the commencement of this Act, shall have effect as if the relevant application or submission had been received lodged with or received by the Commissioner. This ensures that such applications and submissions would remain valid so they can be taken into account for decision-making and other purposes (for example, for establishing appropriate procedures and timelines associated with further action).

Continuation of disclosure delegations

Subitem 105(1) ensures that any delegation in force under subsection 14(4A) of the *Customs Administration Act 1985* before commencement shall continue to apply on and after commencement. Subsection 14 of the *Customs Administration Act 1985* concerns delegations by the CEO of Customs of all or any of the CEO of Customs' functions and powers under a law of Customs. Subsection 14(4A) allows the CEO of Customs to delegate to the Commissioner any of the powers of the CEO of Customs under section 16 of the *Customs Administration Act 1985*, to the extent those powers apply in connection with Part XVB of the Customs Act. Section 16 of the *Customs Administration Act 1985* prohibits the unauthorised recording or disclosure of certain information except in certain circumstances. Section 16 allows the CEO of Customs to authorise the disclosure of information in the circumstances contained in that section.

Subitem 105(2) provides that section 16 of the *Customs Administration Act 1985*, as in force immediately before the commencement, shall continue to apply on and after commencement in relation to the Commissioner and to all information that came to the knowledge of, or into the possession of, the Commissioner before commencement while he or she performed duties.

Continuation of offences under the Criminal Code

Item 106 provides that sections 146.1, 147.1 and 147.2 of the *Criminal Code*, as in force immediately before commencement, shall 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*.

Continuation of processes under the Law Enforcement Integrity Commissioner Act 2006

Item 107 provides that the *Law Enforcement Integrity Commissioner Act 2006*, as in force immediately before the commencement, shall continue 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.

Transitional rules

Item 108 provides authority for the Minister to make rules to provide for any 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 1. Any such rule is a legislative instrument for the purposes of the *Legislative Instrument Act 2003*.