

Customs (Prohibited Imports) Amendment Regulations 2003 (No. 5)

2003 No. 89

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 89

Issued by the authority of the Minister for Justice and Customs

Customs Act 1901

Customs (Prohibited Exports) Amendment Regulations 2003 (No. 4)

Customs (Prohibited Imports) Amendment Regulations 2003 (No. 5)

Section 270 of the *Customs Act 1901* (the Act) provides in part that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed for giving effect to the Act.

Sections 50 and 112 of the Act provide in part that the Governor-General may, by regulation, respectively prohibit the importation of goods into, and exportation of goods from, Australia. That power may be exercised by prohibiting the importation or exportation of goods unless specified conditions or restrictions are complied with.

The Customs (Prohibited Exports) Regulations 1958 (the PE Regulations) control the exportation of the goods specified in the various regulations or the Schedules to the PE Regulations. The Customs (Prohibited Imports) Regulations 1956 (the PI Regulations) control the importation of the goods specified in the various regulations or the Schedules to the PI Regulations. Respectively, both PE and PI Regulations can prohibit exportation or importation absolutely or make exportation or importation subject to the permission of a Minister or an authorised person.

Sub-paragraphs 13E(2)(c) and (d) of the PE Regulations provide an exemption from seeking export permission for firearms, ammunition and other related defence goods owned by the defence forces and police forces of countries specifically listed. Regulations 3A and 3B of the PI Regulations provide a similar exemption from the requirement to obtain an import permit for these items by defence or police forces of certain listed countries.

The purpose of the proposed Regulations is to facilitate the exportation and importation of certain goods owned by a defence force or a police force of a country contributing to the new multinational force aiding East Timor established under United Nations Security Council Resolution 1410 (2002), and to facilitate future changes in forces aiding East Timor as they occur.

PE Regulation 13E, and PI Regulations 3A and 3B, currently refer to the multinational force established under United Nations Security Council Resolutions 1264 (1999) and 1272 (1999). This multinational force was named the United Nations Transitional Administration in East Timor (UNTAET). In 2002, this force was superseded by the United Nations Mission of Support in East Timor (UNMISET) under United Nations Security Council Resolution 1410 (2002).

Amendment to regulations 13E (PE Regulations), and 3A and 3B (PI Regulations) are necessary to reflect this change, thereby allowing countries contributing to UNMISET to avoid delays in moving their firearms, ammunition and other defence related goods through Australia to East Timor or the contributing country. Currently, forces of these countries must apply for export and import permits, an arrangement that can result in forces arriving in East Timor without their necessary equipment.

To obtain an exemption from import permit requirements, these goods must be intended to be exported to East Timor and must be intended for use for the purposes of the multinational force. Similarly, upon a defence or police force's return from East Timor, goods that have been used, or were intended to be used for the purposes of the multinational force, must be intended to be exported to the country that is contributing to the force.

To avoid the requirement to further amend the Regulations if the United Nations creates a new multinational force for East Timor, the amendments to the PE and PI Regulations do not make specific reference to the United Nations Security Council Resolution number or date.

Details of the proposed amendments to the PE Regulations are set out in Attachment A. Details of the proposed amendments to the PI Regulations are set out in Attachment B.

The proposed amendments to the Regulations commence on gazettal.

ATTACHMENT A

Customs (Prohibited Exports) Amendment Regulations 2003 (No. 4)

Regulation 1 - Name of Regulations

Regulation 1 provides for the regulations to be named the Customs (Prohibited Exports) Amendment Regulations 2003 (No. 4)

Regulation 2 - Commencement

Regulation 2 provides for the regulations to commence on gazettal.

Regulation 3 - Amendment of Customs (Prohibited Exports) Regulations 1958

Regulation 3 provides for the PE Regulations to be amended as set out in Schedule 1.

Schedule I Amendments

Item 1 - Sub-subparagraphs 13E(2)(c)(i)(O) and (P)

Item 1 substitutes current sub-subparagraphs 13E(2)(c)(i)(O) and (P).

The new sub-subparagraphs specify the countries whose defence forces are the owners of the goods for the purposes of the exemption from the requirement to obtain export approval.

New sub-subparagraph 13E(2)(c)(i)(O) exempts a defence force of a country from obtaining an export permit for goods brought into Australia for export to East Timor for the purposes of contributing to an operational multinational force established by a United Nations Security Council Resolution to aid East Timor.

New sub-subparagraph 13E(2)(c)(i)(P) exempts a defence force of a country from obtaining an export permit to export goods used, or intended for use in East Timor to aid an operational multinational force established by a United Nations Security Council Resolution, back to that contributing country.

The new regulations use the phrase 'intended for use' to allow for the export, back through Australia to the contributing country, of goods not used whilst in East Timor.

Item 2 - Subparagraph 13E(2)(d)(i)

Item 2 substitutes current subparagraph 13E(2)(d)(i) of the PE Regulations.

The new subparagraph 13E(2)(d)(i) exempts the police forces of countries contributing to operational multinational forces established by a United Nations Security Council Resolution to aid East Timor, from having to obtain export permits for goods brought into Australia.

New sub-subparagraph 13E(2)(d)(i)(A) exempts a police force of a contributing country from requiring an export permit when exporting goods to East Timor to support an operational multinational force established by United Nations Security Council Resolution.

New sub-subparagraph 13E(2)(d)(i)(B) exempts a police force of a contributing country from obtaining export permits, when exporting goods used, or intended for use, to aid an operational multinational force in East Timor, from East Timor back to the contributing country.

The new regulations use the phrase 'intended for use' to allow for the export, back through Australia to the contributing country, of goods not used whilst in East Timor.

ATTACHMENT B

Customs (Prohibited Imports) Amendment Regulations 2003 (No. 5)

Regulation 1 - Name of Regulations

Regulation 1 provides for the regulations to be named the Customs (Prohibited Imports) Amendment Regulations 2003 (No. 5)

Regulation 2 - Commencement

Regulation 2 provides for the regulations to commence on gazettal.

Regulation 3 - Amendment of Customs (Prohibited Imports) Regulations 1956

Regulation 3 provides for the PI Regulations to be amended as set out in Schedule 1.

Proposed Schedule 1 Amendments

Item 1 - Subparagraphs 3A(a)(xv) and (xvi)

Item 1 substitutes current subparagraphs 3A(a)(xv) and (xvi).

The new subparagraphs specify the countries whose defence forces are the owners of the goods for the purposes of the exemption from the requirement to obtain import permits.

New subparagraph 3A(a)(xv) exempts a country from obtaining an import permit to import goods into Australia from East Timor, if those goods were in East Timor for the purposes of an operational multinational force established by United Nations Security Council Resolution, and are intended to be transferred back to the contributing country.

New subparagraph 3A(a)(xvi) exempts a country from obtaining an import permit to import goods into Australia, where it is intended that those goods will then be exported to contribute to an operational multinational force established by United Nations Security Council Resolution to aid East Timor.

The new regulations use the phrases 'intended for use' and 'intended to be exported' with respect to goods being transferred to and from East Timor to allow for the import back to, and export from Australia to the contributing country of goods not used whilst in East Timor.

Item 2 - Paragraph 3B(a)

Item 2 substitutes current paragraph 3B(a) of the Regulations.

The new paragraph 3B(a) exempts the police forces of countries contributing to an operational multinational force aiding East Timor, established by a United Nations Security Council Resolution, from having to obtain import permits for goods imported into Australia while being moved to or from East Timor.

New subparagraph 3B(a)(i) exempts a police force of a contributing country from requiring an import permit while in the process of transferring goods used, or intended for use in East Timor, to support an operational multinational force, from East Timor back to the contributing country.

New subparagraph 3B(a)(ii) exempts police forces of contributing countries from obtaining import permits when moving goods to East Timor to support an operational multinational force established by United Nations Security Council Resolution to aid East Timor.

The new regulations use the phrases 'intended for use' and 'intended to be exported' with respect to goods being transferred to and from East Timor to allow for the import back to, and export from Australia to the contributing country of goods not used whilst in East Timor.