

Customs Amendment Regulations 2003 (No. 7) 2003 No. 237

EXPLANATORY STATEMENT

STATUTORY RULES 2003 NO. 237

Issued by the Authority of the Minister for Justice and Customs

Customs Act 1901

Customs Amendment Regulations 2003 (No. 7)

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.

Section 168 of the Act provides that the regulations may make provision for and in relation to allowing drawbacks of duty paid on goods imported into Australia. A drawback of duty is a refund of duty paid on the importation of goods where those goods are subsequently exported from Australia without entering the Australian market.

Regulation 131 of the *Customs Regulations 1926* (the principal Regulations) makes provision for allowing drawbacks of duty on imported goods. In particular, regulation 131 allows drawback of duty on imported goods used in the manufacture of goods, or subjected to a process or treatment, if the product of the manufacture or process or treatment, as the case may be, is subsequently exported. Previously, this provision did not allow drawback to be claimed on imported goods used in the packaging of other goods where the packaged goods are subsequently exported.

Regulation 135 sets out a formula used to calculate the amount of drawback to be claimed where the amount of import duty originally paid is not known to the claimant. Previously, this formula only applied to goods with an ad valorem rate of duty (calculated by reference to the value of the goods). It did not apply to goods which had a composite rate of duty, comprising an ad valorem rate of duty and a quantitative rate of duty (calculated by reference to the actual quantity of the goods or a component of the goods).

The purpose of the amending Regulations is to allow drawback to be claimed on imported goods used in the packaging of other goods, where the packaged goods are subsequently exported and to enable the determination of the amount of drawback payable on goods with composite rates of duty, where the owner of the goods does not know the amount of import duty paid.

The amending Regulations defines the 'manufacture' of goods, in the context of the definitions of 'specified goods' and 'imported goods', to include the process of packaging the goods. The amending Regulations also inserts a new statutory formula that applies to goods with a composite rate of duty, to determine the amount of drawback payable on goods where the claimant does not know the amount of import duty paid.

The Act does not specify any conditions that need to be met before the Governor-General may exercise the power to make the proposed regulations.

Details of the amending Regulations are set out in the Attachment.

The amending Regulations commenced on gazettal.

0300262A

ATTACHMENT

CUSTOMS AMENDMENT REGULATIONS 2003 (No. 7)

Regulation 1 - Name of Regulations

Regulation 1 provides for the Regulations to be named the *Customs Amendment Regulations 2003 (No. 7)*.

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence on gazettal.

Regulation 3 - Amendment of Customs Regulations 1926

Regulation 3 provides that Schedule 1 amends the *Customs Regulations 1926*.

SCHEDULE 1 - AMENDMENTS

Item 1 - Subregulation 131(1), after definition of imported goods

Previously subregulation 131(1) provided:

specified goods means:

- (a) manufactured goods in the manufacture of which imported goods have been used; or
- (b) imported goods that have been subjected to a processor to treatment in Australia.

imported goods, in relation to specified goods, means imported goods:

- (a) on which import duty has been paid; and
- (b) that have not been used in the Commonwealth otherwise than:
 - (i) in the manufacture of the specified goods or in being subjected to a process or to treatment for the purpose of producing the specified goods, as the case maybe; or
 - (ii) for the purpose of being inspected or exhibited.

Item 1 inserts a definition of the term 'manufacture', in relation to goods, to include 'the process of packaging the goods'.

Item 2 - Subregulation 135(2)

Item 2 inserts the following statutory formula in subregulation 135(2) for the calculation of the amount of drawback payable where the amount of import duty paid on the goods is not known by the person claiming the drawback:

$$Q + [(P - Q) \times 0.3 \times R]$$

where:

Q is the quantitative duty for the goods.

P is the price paid for the goods by the person who was the owner of the goods at the time the goods were exported.

R is the ad valorem rate of import duty.

The new formula is specified to apply where an amount of quantitative duty is applicable to the relevant goods. Further, 'quantitative duty' is defined to mean the import duty calculated by reference to the actual quantities of the relevant goods, or the actual quantities of a component of the relevant goods, in accordance with the Customs Tariff. This new formula enables drawback to be calculated for goods with a composite rate of duty comprising an ad valorem rate of duty and a quantitative rate of duty.

For example, under the Customs Tariff, vodka has an ad valorem rate of duty of 5%, and a quantitative rate of duty of \$51.58 per litre of alcohol. For a consignment of vodka worth \$10,000.00 and containing 100 litres of alcohol, Q equals \$5,158.00, P equals \$10,000.00 and R equals 5%. The drawback payable according to the new formula is:

$$\text{\$ } \{5,158 + [(10,000 - 5,158) \times 0.3 \times 0.05]\} = \text{\$ } 5,230.63$$

Where an amount of quantitative duty is not applicable to the relevant goods, the current formula ($P \times 0.3 \times R$) continues to apply.