

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 265

Issued by the Authority of the Minister for Justice and Customs

Customs Act 1901

Customs Amendment Regulations 2005 (No. 8)

Subsection 270(1) 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 or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to the Customs.

The purpose of the amending Regulations is to:

- amend the prescribed information that the Minister for Justice and Customs (the Minister) must take into account when determining the costs of production or manufacture of certain goods; and
- add to the list of countries that are not treated as having economies in transition and amend the names of some of the countries already listed.

Prescribed information

Under Part XVB of the Act, anti-dumping measures may be taken in respect of goods whose exportation to Australia involves a dumping of those goods that injures, or threatens to injure, Australian industry. Goods are taken to have been dumped if the export price of those goods is less than the normal value of those goods.

Section 269TAAD of the Act, in part, provides that the cost of goods is worked out by adding:

- the amount determined by the Minister to be the cost of production or manufacture of those goods in the country of export; and
- the amount determined by the Minister to be the administrative, selling and general costs associated with the sale of those goods.

Subsection 269TAAD(5) provides that those amounts must be worked out in such manner, and taking account of such factors, as the regulations provide in respect of those purposes.

Regulation 180 of the *Customs Regulations 1926* (the Principal Regulations) sets out the manner in which the Minister must work out the amount to be the cost of production or manufacture of like goods in a country of export and factors that the Minister must take into account for that purpose. In particular, paragraph 180(2)(b) previously provided that if an exporter or producer of like goods keeps records relating to the like goods and the records:

- (i) are in accordance with generally accepted accounting principles in the country of export; and

(ii) reasonably reflect the costs associated with the production or manufacture of the like goods;

the Minister must work out the cost of production or manufacture of like goods by using the information set out in the records.

However, mandating that the Minister use only the costs associated with the production or manufacture of the like goods narrowed the scope of goods that may be examined in assessing the cost of production or manufacture.

The amending Regulations substitute paragraph 180(2)(b)(ii) to prescribe that the Minister only has to use the records relating to the like goods if they reasonably reflect competitive market costs associated with the production or manufacture of like goods. This ensures that the relevant records are only taken into account if they reasonably reflect competitive market costs and not just actual costs.

Economies in transition

Section 269TAC of the Act sets out how the normal value of goods exported to Australia is to be calculated. Where the country of export has an economy in transition, that is, a formerly centrally-planned economy moving towards a market economy, subsection 269TAC(5D) sets out a different basis for determining the normal value of goods.

Subsection 269TAC(5J) provides that the regulations may disapply subsection (5D) to a country and Schedule 1B to the Principal Regulations lists those countries that are recognised as full market economies.

The amending Regulations add to Schedule 1B those countries have become World Trade Organisation (WTO) members since 1999 when the Schedule was introduced and those countries that became EU members in May 2004. The amending Regulations also change the names of six countries and two regions to reflect the names by which they are known in the WTO.

No consultation was undertaken in relation to the amending Regulations as they are of a minor or machinery nature and do not substantially alter existing arrangements.

The amending Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

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