EXPLANATORY STATEMENT

Select Legislative Instrument No. 240, 2015

Issued by the Minister for Immigration and Border Protection

Customs Act 1901

Customs (International Obligations) Amendment (Anti-Dumping) Regulation 2015

The *Customs Act 1901* (the Customs Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

Subsection 270(1) of the Customs Act provides, in part, that the Governor-General may make regulations, not inconsistent with that Act, prescribing all matters which by that Act are required or permitted to be prescribed, or as maybe necessary or convenient to be prescribed for giving effect to that Act.

In additionally, paragraph 163(1)(b) of the Customs Act provides that refunds, rebates and remissions of duty may be made in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, and conditions and restrictions, that relate to goods generally or to the goods included in the class of goods.

The purpose of the *Customs (International Obligations) Amendment (Anti-Dumping) Regulation 2015* (the Amendment Regulation) is to amend the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation) to enable the Department of Immigration and Border Protection to process the refund of interim dumping duty, dumping duty, interim countervailing duty, and countervailing duty (including their equivalent third country duty), in respect of goods that are exempt from such duty under the *Customs Tariff (Anti-Dumping) Act 1975* (the Anti-Dumping Act).

Under Part XVB of the Customs 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. Dumping occurs where the export price of goods is less than the normal value of goods.

Anti-dumping measures can be imposed by way of a special duty of customs, known as dumping duty, third country dumping duty, countervailing duty or third country countervailing duty, by section 8, 9, 10 or 11 of the Anti-Dumping Act, respectively. Those sections also set out the circumstances where the Minister for Industry, Innovation and Science (the Minister) may, by notice in writing (instrument of exemption), exempt goods from the relevant duties. Where the goods are so exempt, it is intended that a refund of the duty may be processed in accordance with paragraph 163(1)(b) of the Customs Act.

The Amendment Regulation, in part, sets out the circumstances for the refunding of interim dumping duty, dumping duty, interim countervailing duty and countervailing duty (including their equivalent third country duty), paid in respect of goods that are exempt from the payment of such duty because of an instrument of exemption made under the Anti-Dumping

Act (where the relevant duty has been paid on the goods). The details of the Amendment Regulation are set out in Attachment A.

Consistent with the amendments made by the *Customs Tariff (Anti-Dumping) Amendment Act 2015* (the Anti-Dumping Amendment Act), the amendments also clarify that an instrument of exemption can exempt goods from duty whether the instrument is made before or after the time the duty was paid. Where the effective date in the instrument of exemption is specified retrospectively to the date the application for the refund is made, the amendment would, if the relevant circumstances are met, enable the refund of relevant duties.

The relevant refund, as envisaged by new subsections 8(8A), 9(9), 10(9A) and 11(10) of the Anti-Dumping Act, would be beneficial to the person who made the application for the relevant refund and does not offend paragraph 12(2)(a) of the *Legislative Instruments Act 2003* (the Legislative Instruments Act).

Consistent with other refund applications, a person seeking the refund of relevant duty will need to make an application for that refund in accordance with Division 2 of Part 5 of the International Obligations Regulation.

A Statement of Compatibility with Human Rights (the Statement) has been completed for the Amendment Regulation in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's overall assessment is that the Amendment Regulation is compatible with human rights. A copy of the Statement is at Attachment B.

The Department of Immigration and Border Protection has consulted with the Department of Industry, Innovation and Science, and the Office of Best Practice Regulation (the OBPR), in respect of the Amendment Regulation. In particular, discussions were held with the Department of Industry, Innovation and Science to ensure the Amendment Regulation and its underpinning policy is consistent with the amendments made to the Anti-Dumping Act by the Anti-Dumping Amendment Act.

In relation to the consultation with the OBPR, the OBPR has assessed the measures contained in the Amendment Regulation as minor, and has advised that a Regulation Impact Statement will not be required. The OBPR reference is 19951.

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulation is to commence on the day after it is registered on the Federal Instrument of Legislative Instruments.

OPC61736 - A

ATTACHMENT A

Details of the *Customs (International Obligations) Amendment (Anti-Dumping) Regulation 2015*

Section 1 – Name

This section provides that the title of the Regulation is the *Customs (International Obligations) Amendment (Anti-Dumping) Regulation 2015* (the Amendment Regulation).

Section 2 – Commencement

This section sets out, in a table, the date on which the Amendment Regulation will commence, and provides that, each provision of that Regulation as specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of that table, and that any other statement in column 2 has effect according to its terms.

The Amendment Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This section provides that the Amendment Regulation is made under the *Customs Act 1901* (the Customs Act).

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

The purpose of this section is to provide for how amendments in this Amendment Regulation are to operate.

Schedule 1 – Amendments

Customs (International Obligations) Regulation 2015

Item 1 – After paragraph 23(b)

This item will insert new paragraphs (c) and (d) into section 23 of the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation).

Under Part XVB of the Customs 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. Dumping occurs where the export price of goods is less than the normal value of goods.

Anti-dumping measures can be imposed by way of a special duty of customs, known as dumping duty, third country dumping duty, countervailing duty or third country countervailing duty, by section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975* (the Anti-Dumping Act), respectively. Those sections also set out the circumstances where the Minister for Industry, Innovation and Science (the Minister) may, by notice in writing (instrument of exemption), exempt goods from the relevant duties. Where the goods are so exempt, it is intended that a refund of the duty may be processed in accordance with paragraph 163(1)(b) of the Customs Act.

Paragraph 163(1)(b) of the Customs Act provides that refunds, rebates and remissions of duty may be made in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, and conditions and restrictions, that relate to goods generally or to the goods included in the class of goods.

The purpose of this item is to set out, in new paragraphs 23(c) and (d) of the International Obligations Regulation, additional relevant circumstances in which an interim dumping duty, a dumping duty, an interim countervailing duty, and a countervailing duty (including the third country equivalent of these duties) imposed on goods may be refunded.

The circumstances require the relevant duty was paid on the goods and that, at the time that the duty was paid, the relevant goods were exempt from that duty because of an instrument of exemption made under the Anti-Dumping Act. The instrument of exemption may be made before or after the time that duty was paid (see also the notes for item 3).

In effect, this item will enable a person to rely on the new circumstances to make an application for the refund of an interim dumping duty, a dumping duty, an interim countervailing duty, and a countervailing duty (including the third country equivalent of these duties), in accordance with Division 2 of Part 5 of the International Obligations Regulation.

For example, under paragraph 163(1)(b) of the Customs Act and new paragraph 23(c) of the International Obligations Regulation, a Collector may refund interim dumping duty or dumping duty on goods, if:

- on 1 January 2016, duty is paid;
- on the same day (or earlier), an application is made for exemption from interim dumping duty and dumping duty on the goods;
- on 1 April 2016, in response to the application, the Minister makes an instrument of exemption under subsection 8(7) of the Anti-Dumping Act exempting the goods from interim dumping duty and dumping duty;
- the instrument specifies 1 January 2016 as the day the instrument takes effect for the purpose of subsection 8(8A) of that Act; and
- on 8 April 2016, an application for a refund of the duty paid on 1 January 2016 is made in accordance with Division 2 of Part 5 of the International Obligations Regulation.

<u>Items 2 and 3</u>

Item 2 substitutes the reference to “Note”, in section 23 of the International Obligations Regulation, with “Note 1”. The amendment made by this item is consequential to the amendment made by item 3, which inserts a new “Note 2” into the same section.

Item 3 inserts a new "Note 2" into section 23 of the International Obligations Regulation. The new note provides that an instrument of exemption mentioned in subparagraph 23(c)(ii) or 23(d)(ii) may take effect on a day specified in the instrument that is earlier or later than the day the instrument is made. However, if an application for exemption was made, the day specified in the instrument must not be earlier than the day the application was made.

The purpose of item 3 is to clarify that an instrument of exemption can exempt goods from duty whether the instrument is made before or after the time the duty was paid. This clarification is consistent with new subsections 8(8A), 9(9), 10(9A) and 11(10) of the Anti-Dumping Act.

Item 4 – At the end of Part 9

This item inserts, after section 50 of the International Obligations Regulation, a new section 51.

The new section concerns the amendments made by the Amendment Regulation, and provides that the amendment made by item 1 of Schedule 1 to the Amendment Regulation applies in relation to an application for the refund of duty under Part 5 of this instrument in relation to a circumstance mentioned in paragraph 23(c) or (d) of this instrument (as the case requires), if the circumstance consists of:

- payment of duty on goods before, on or after the day that Regulation commenced; and
- the exemption of the goods from that duty because of an instrument of exemption made on or after 2 November 2015 under subsection 8(7), 9(7), 10(8) or 11(8) of the Anti-Dumping Act (whether the instrument was made before or after the time that duty was paid).

The purpose of this item is to clarify the application for the relevant refund to which the amendments made by item 1 are to apply to.

<u>Attachment B</u>

Statement of Compatibility with Human Rights

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

Customs (International Obligations) Amendment (Anti-Dumping) Regulation 2015

The Legislative Instrument, titled the *Customs (International Obligations) Amendment (Anti-Dumping) Regulation 2015* (the Amendment Regulation), 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

The Amendment Regulation will amend the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation) to enable the Department of Immigration and Border Protection to process the refund applications for interim dumping duty, dumping duty, interim countervailing duty, and countervailing duty (including their equivalent third country duty), in respect of goods that are exempt from such duty under the *Customs Tariff (Anti-Dumping) Act 1975* (the Anti-Dumping Act).

Under Part XVB of the *Customs Act 1901* (Customs 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. Dumping occurs where the export price of goods is less than the normal value of goods.

Anti-dumping measures can be imposed by way of a special duty of customs, known as dumping duty, third country dumping duty, countervailing duty or third country countervailing duty, by section 8, 9, 10 or 11 of the Anti-Dumping Act, respectively. Those sections also set out the circumstances where the Minister for Industry, Innovation and Science (the Minister) may, by notice in writing (instrument of exemption), exempt goods from the relevant duties. Where the goods are so exempt, it is intended that a refund of the duty may be processed in accordance with paragraph 163(1)(b) of the Customs Act.

The Amendment Regulation, in part, will set out the circumstances for the refunding of interim dumping duty, dumping duty, interim countervailing duty and countervailing duty (including their equivalent third country duty), paid in respect of goods that are exempt from the payment of such duty because of an instrument of exemption made under the Anti-Dumping Act (where the relevant duty has been paid on the goods).

The circumstances require the relevant duty was paid and, that at the time that the duty was paid, the relevant goods were exempt from that duty because of an instrument of exemption made under the Anti-Dumping Act. The instrument of exemption may be made before or after the time that duty was paid.

Consistent with the amendments made by the *Customs Tariff (Anti-Dumping) Amendment Act 2015* (the Anti-Dumping Amendment Act), the amendments also clarify that an instrument of exemption can exempt goods from duty whether the instrument is made before or after the time the duty was paid. Where the effective date in the instrument of exemption is specified retrospectively to the date the application for the refund is made, the amendment would, if the relevant circumstances are met, enable the refund of relevant duties.

The relevant refund, as envisaged by new subsections 8(8A), 9(9), 10(9A) and 11(10) of the Anti-Dumping Act, would be beneficial to the person who made the application for the relevant refund and does not offend paragraph 12(2)(a) of the *Legislative Instruments Act 2003*.

Consistent with other refund applications, a person seeking the refund of relevant duty will need to make an application for that refund in accordance with Division 2 of Part 5 of the International Obligations Regulation.

The Amendment Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Human rights implications

The Amendment Regulation does not engage any of the applicable rights or freedoms.

Conclusion

The Amendment Regulation is compatible with human rights as it does not raise any human rights issues.

The Hon. Peter Dutton MP, Minister for Immigration and Border Protection