

EXPLANATORY STATEMENT

Select Legislative Instrument No. 15, 2015

Subject: *Customs Act 1901* and *Customs Amendment (Anti-Dumping Improvements) Regulation 2015*

Authority

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.

Subsection 269ZDBB of the Act provides in part that circumvention activities are to be prescribed by regulation.

Background

The *Customs Act 1901* (the Customs Act) provides that circumstances may be prescribed in regulation that will be ‘circumvention activity’ in relation to a notice for the purposes of subsection 269ZDBB(6).

Purpose and operation

The purpose of the *Customs Amendment (Anti-Dumping Improvements) Regulation 2015* (the Regulation) is to specify a new type of circumvention activity in Australia’s anti-dumping system to address the practice of slightly modifying goods in order to avoid payment of anti-dumping and countervailing duties already imposed.

‘Circumvention activity’ means certain practices of exporters and importers of dumped goods which aim to avoid the payment (or effect) of anti-dumping duties that have been imposed in Australia. The Regulation prescribes a new circumvention activity in which goods that would have been the subject of a dumping or countervailing notice (and liable to pay duties) are slightly modified, prior to the export of the goods to Australia, to avoid the anti-dumping duty. This activity may result in reducing the effectiveness of anti-dumping measures as a trade remedy for Australian industry. The new circumvention activity may be used in an anti-circumvention inquiry resulting in the notice which imposes duties being affirmed or altered in order to give effect to the dumping duty measures imposed under that notice. Details of the Regulation are set out in the [Attachment](#).

An application or request by the Minister for an anti-circumvention inquiry in relation to goods that would be covered by this Regulation will be dealt with in accordance with the requirements set out in Division 5A of the Customs Act.

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

Consultation

The Government has undertaken consultation with a limited number of key anti-dumping industry stakeholders in considering the amendment to introduce the new circumvention activity. The industry stakeholders that have been consulted are supportive of the new ‘slight modification’ circumvention activity.

Authority: Section 270 of the *Customs Act 1901*.

Detailed explanation of the Regulation's provisions

Section 1 – Name of Regulation

This section provides the title of the Regulation, *Customs Amendment (Anti-Dumping Improvements) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences 30 days after registration.

Section 3 – Authority

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

Section 4 – Schedule(s)

This section provides that each instrument specified in a Schedule to the Regulation is amended or repealed as provided for in the applicable Schedule and that any other item in a Schedule will have effect according to its terms.

Schedule 1

Item 1 – After regulation 183

This item inserts Regulation 183A after Regulation 183 in the *Customs Regulations 1926*.

Regulation 183A

Sub-clause (1) prescribes the circumstances set out at sub-clause (2) as a 'circumvention activity' for the purposes of section 269ZDBB(6) of the *Customs Act 1901*.

Sub-clause (2) provides that where the circumstances specified at paragraphs (a) through to and including (e) are present, then 'circumvention activity' in relation to the notice for the purposes of section 269ZDBB(6) of the *Customs Act 1901* has occurred. The intention is that where goods, the subject of a notice, have been slightly modified, in order to avoid the payment of duties specified in the notice by an exporter of the goods then 'circumvention activity' will have occurred.

Sub-clause (3) provides that in deciding if goods have been slightly modified for the purposes of sub-clause (2), the Commissioner may have regard to any factors considered relevant. These factors may include the non-exhaustive and non-mandatory list of factors set out at paragraphs (a) through to (m). No single factor will necessarily provide definitive guidance as to whether the circumvention activity has occurred or not.