



25 January 2018

(18-0618)

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**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS UNDER  
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

AUSTRALIA

*Supplement*

The following communication, dated 22 January 2018, is being circulated at the request of the Delegation of Australia.

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Pursuant to Article 18.5 of the WTO Anti-Dumping Agreement and Article 32.6 of the WTO Agreement on Subsidies and Countervailing Measures, please find attached the *Customs Amendment (Anti-Dumping Measures) Act 2017*. The Act received Royal Assent on 30 October 2017 and commenced on 31 October 2017.

The *Customs Amendment (Anti-Dumping Measures) Act 2017* amends the *Customs Act 1901* (the Customs Act) to provide greater certainty in the determination of export prices for exporters to Australia, subject to anti-dumping and countervailing duties, in reviews of anti-dumping measures under Division 5 of the Customs Act. The amendments provide a range of methods to determine appropriate export prices where there are no exports, or a low volume of exports, during the period examined for a review of measures.

The methods are not hierarchical. The Minister may have regard to any method that he or she considers is most appropriate to apply to the circumstances of the case.

**Customs Amendment (Anti-Dumping Measures) Act 2017****No. 119, 2017****An Act to amend the *Customs Act 1901*, and for related purposes**

The Parliament of Australia enacts:

**1 Short title**

This Act is the *Customs Amendment (Anti-Dumping Measures) Act 2017*.

**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 October 2017
2. Schedule 1	The day after this Act receives the Royal Assent.	31 October 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

**3 Schedules**

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

**Schedule 1—Amendments*****Customs Act 1901*****1 Subsection 269TAB(1A)**

Repeal the subsection.

**2 After subsection 269TAB(2)**

Insert:

- (2A) If an export price of goods exported to Australia is being ascertained for the purposes of conducting a review of anti-dumping measures under Division 5, the price may, despite subsection (1), be determined by the Minister in accordance with subsection (2B) if:
- (a) the price is being ascertained in relation to an exporter of those goods (whether the review is of the measures as they affect a particular exporter of those goods, or as they affect exporters of those goods generally); and
  - (b) the Minister determines that there is insufficient or unreliable information to ascertain the price due to an absence or low volume of exports of those goods to Australia by that exporter having regard to the following:

- (i) previous volumes of exports of those goods to Australia by that exporter;
- (ii) patterns of trade for like goods;
- (iii) factors affecting patterns of trade for like goods that are not within the control of the exporter.

Note: If there is an absence of exports of those goods to Australia by that exporter, the Minister may deem such exports to have taken place for the purposes of ascertaining an export price: see subsection (2C).

(2B) For the purposes of subsection (2A), the export price of those goods is the price determined by the Minister to be the export price, having regard to any of the following:

- (a) the export price for the goods exported to Australia by the exporter established in accordance with subsection (1) of this section for a decision of a kind mentioned in subsection (2D);
- (b) the price paid or payable for like goods sold by the exporter in arms length transactions for exportation from the country of export to a third country determined by the Minister to be an appropriate third country;
- (c) the export price for like goods exported to Australia from the country of export by another exporter or exporters established in accordance with subsection (1) of this section for a decision mentioned in subsection (2D).

(2C) For the purposes of conducting the review of anti-dumping measures under Division 5, if there is an absence of exports of those goods to Australia by the exporter, the Minister may deem such exports to have occurred for the purposes of applying subsections (2A) and (2B) of this section.

(2D) For the purposes of paragraphs (2B)(a) and (c), the decisions are the following:

- (a) deciding to publish a notice under any of the following provisions:
  - (i) subsection 269TG(1) or (2) (dumping duties);
  - (ii) subsection 269TJ(1) or (2) (countervailing duties);
  - (iii) subsection 269ZDB(1) (reviews of anti-dumping measures);
  - (iv) subsection 269ZDBH(1) (anti-circumvention inquiries);
  - (v) subsection 269ZG(3) (accelerated review);
  - (vi) subsection 269ZHG(1) (continuation of anti-dumping measures);
- (b) any other decision under this Act of a kind prescribed by the regulations.

(2E) For the purposes of paragraph (2B)(c), the decision must be a decision made during the period:

- (a) beginning 2 years before the day the Commissioner published notice of the review under subsection 269ZC(4), (5) or (6); and
- (b) ending on the day notice of the review is published under subsection 269ZDB(1).

- (2F) Without limiting the generality of the matters that may be taken into account by the Minister in determining whether a third country is an appropriate third country for the purposes of paragraph (2B)(b), the Minister may have regard to the following matters:
- (a) whether the volume of trade from the country of export to the third country is similar to the volume of trade from the country of export to Australia;
  - (b) whether the nature of the trade in goods concerned between the country of export and the third country is similar to the nature of trade between the country of export and Australia.
- (2G) If the export price of goods exported to Australia has been ascertained under subsection (2B), the export price may be subject to such adjustments that the Minister determines are necessary to reflect what the export price would have been had there not been an absence or low volume of exports, including:
- (a) adjustments due to exports (on which the export price is based) relating to earlier times; or
  - (b) adjustments due to exports (on which the export price is based) relating to not identical goods.

**3 At the end of section 269TAB**

Add:

- (6) For the purposes of paragraphs (1)(a) and (2B)(b), the reference in those paragraphs to the price paid or payable for goods is a reference to that price after deducting any amount that is determined by the Minister to be a reimbursement of the kind referred to in subsection 269TAA(1A) in respect of that transaction.

**4 Application of amendments**

The amendments made by this Schedule apply in relation to the following:

- (a) a review under Division 5 of Part XVB of the *Customs Act 1901* for which an application is lodged, or request is made, on or after the commencement of this Schedule;
  - (b) such a review that was being undertaken immediately before the commencement of this Schedule but for which a declaration in accordance with subsection 269ZDB(1) of that Act had not been made at that time;
  - (c) an application for such a review that was lodged, or a request for such a review that was made, before the commencement of this item but for which a notice of a review under subsection 269ZC(4), (5) or (6) of that Act had not been made at that commencement.
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