



Australian Government
Australian Customs Service

AUSTRALIAN CUSTOMS DUMPING NOTICE NO. 2004/02

Changes to Australia's Anti Dumping Legislation – Regulations

ACDN 2004/02 refers to changes made to Australia's anti-dumping and countervailing legislation. The legislation package includes new Customs Regulation 183, which sets out the matters to which the Minister must have regard in determining market conditions do not prevail, in accordance with subsection 269TAC(5E) of the *Customs Act 1901*.

Regulation 183 was signed into law by the Governor General on 18 December 2003 and took effect on 19 December 2003.

A copy of the regulation is attached.

Inquiries about this notice may be directed to Trade Measures Branch (Australian Customs Service) on (02) 6275 6547.

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National Manager
TRADE MEASURES BRANCH

23 December 2003

Regulation 183

Matters to which the Minister must have regard (subsection 269TAC(5E) of the Act)

(1) In this regulation:

entity, in relation to goods, means each of:

- (a) the exporter of the exported goods mentioned in subsection 269TAC(5D) of the Act; and
- (b) if the exporter of the goods is not the producer of the goods, but the goods are produced in the country of export – the producer of the goods.

government, of a country, means any level of government of the country.

(2) For subsection 269TAC(5E) of the Act, the following matters are prescribed:

- (a) whether the entity makes decisions about prices, costs, inputs, sales and investments;
 - (i) in response to market signals; and
 - (ii) without significant interference by a government of the country of export;
- (b) whether the entity keeps accounting records in accordance with generally accepted accounting standards in the country of export;
- (c) whether the generally accepted accounting standards in the country of export are in line with international accounting standards developed by the International Accounting Standards Board;

Note: International accounting standards developed by the International Accounting Standards Board can be found on the International Accounting Standards Board website at <http://www.iasc.org.uk/cmt/0001.asp>

- (d) whether the accounting records mentioned in paragraph (b) are independently audited;
- (e) whether the entity's production costs or financial situation are significantly affected by the influence that a government of the country of export had on the domestic price of goods in the country before the country's economy was an economy in transition;
- (f) whether the country of export has laws relating to bankruptcy and property;
- (g) whether the entity is subject to the bankruptcy and property laws mentioned in paragraph (f);
- (h) whether the entity is part of a market or sector in which the presence of an enterprise owned by a government of the country of export prevents market conditions from prevailing in that market or sector;
- (i) whether utilities are supplied to the entity under contracts that reflect commercial terms and prices that are generally available throughout the economy of the country of export;

- (j) if the land on which the entity's facilities are built is owned by a government of the country of export – whether the conditions of rent are comparable to those in a market economy;
 - (k) whether the entity has the right to hire and dismiss employees and to fix the salaries of employees.
- (3) In assessing whether there is significant interference for subparagraph (2)(a)(ii), the Minister must have regard to the following:
- (a) whether a genuinely private company or party holds the majority shareholding in the entity;
 - (b) if officials of a government of the country of export hold positions on the board of the entity – whether these officials are a minority of the members of the board;
 - (c) if officials of a government of the country of export hold significant management positions within the entity – whether these officials are a minority of the persons holding significant management positions;
 - (d) whether the entity's ability to carry on business activities in the country of export is affected by:
 - (i) a restriction on selling in the domestic market; or
 - (ii) the potential for the right to do business being withdrawn other than under the contractual terms; or
 - (iii) if the entity is a joint-venture in which one of the parties is a foreign person, or is carried on in the form of such a joint-venture – the ability of the foreign person to export profits and repatriate capital invested;
 - (e) whether the entity's significant production inputs (including raw materials, labour, energy and technology) are supplied:
 - (i) by enterprises that are owned or controlled by a government of the country of export; and
 - (ii) at prices that do not substantially reflect conditions found in a market economy.