

AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2012/20

Proposed amendment to the production assist costs provisions of the Customs Act 1901

Customs and Border Protection proposes to amend the definition of production assist costs in section 154(1) of the *Customs Act 1901* (the Customs Act) to ensure that the legislation is consistent with the World Trade Organization (WTO) Valuation Agreement.

Division 2 of Part VIII of the Customs Act sets out provisions for the valuation of imported goods. This gives effect to Australia’s obligations under the WTO Valuation Agreement.

The valuation provisions require that production assist costs, where relevant, be included in determining the customs value of imported goods.

Customs and Border Protection has found that the production assist cost provisions in the current legislation may not completely align with the WTO Valuation Agreement.

The amendment will affect the ‘purchaser’s material costs’, ‘purchaser’s subsidiary costs’, ‘purchaser’s tooling costs’ and ‘purchaser’s work costs’ definitions in section 154(1) of the Customs Act.

The policy intent of the proposed changes to these definitions is to correctly reflect Article 8(1)(b)(i)-(iv) of the WTO Valuation Agreement. Article 8(1)(b)(i)-(iv) requires the customs value of imported goods to include the value, apportioned as appropriate, of the materials, design work, parts or tools where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production of the imported goods.

The definitions in section 154(1) of the Customs Act require the actual cost of acquisition of the material to be included in the customs value of the imported goods. In circumstances where the materials, parts or tools were provided free of charge by the buyer to the seller in the import sales transaction and such material was acquired free of charge or at reduced cost by the buyer from an unrelated person, the cost of acquisition is treated as zero under the legislation.

This is contrary to the intention of Article 8(1)(b)(i)-(iv) which is to attribute a reasonable value to the material supplied directly or indirectly by the buyer for use in the production of imported goods and to include that value in the customs value despite the fact that the buyer acquired the material from a third party at zero cost or reduced cost.

As part of the legislation development process, Customs and Border Protection invites submissions from industry on the proposed legislative amendment outlined above, in particular comments regarding:

* impacts on industry; and
* specific business compliance costs for the proposal.

Feedback received will be taken into consideration in the development of the final proposal for legislative amendment.

Industry submissions should be addressed to:

Director Valuation and Origin Trade and Compliance Division

Australian Customs and Border Protection Service 5 Constitution Avenue

CANBERRA ACT 2600

The closing date for submissions is Monday 30 April 2012.

(Signed)

Geoff Johannes National Manager

Trade, Policy and Implementation Branch CANBERRA ACT

10 April 2012