

Customs Amendment Regulations 2003 (No. 3) 2003 No. 65

EXPLANATORY STATEMENT

STATUTORY RULES 2003 No. 65

Issued by the Authority of the Minister for Justice and Customs

Customs Act 1901

Customs Amendment Regulations 2003 (No. 3)

Section 270 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 or as may be necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to Customs.

The purpose of the amending Regulations is to amend the Customs Regulations 1926 (the principal Regulations) to retrospectively correct the description of certain goods to ensure that certain importers of certain petroleum oils and products, unmanufactured tobacco and tobacco refuse lawfully delivered those goods into home consumption without reporting them to Customs. The amending Regulations also amend the principal Regulations to ensure that importers of epoxidised soybean oil can apply for a duty concession (known as a tariff concession order or TCO) in relation to that oil.

Most goods that are imported into Australia cannot be released from Customs control, that is, delivered into home consumption, without the owner giving detailed information about the goods to Customs, known as 'entering goods for home consumption'. Further, before goods can be delivered, the owner must pay any relevant duty and taxes. Certain like customable goods are not subject to these requirements. Rather, the importer of like customable goods can apply for permission to deliver those goods into home consumption without entering them for home consumption and without paying the relevant duty and taxes on them. If the person is granted that permission, the like customable goods can be delivered into home consumption without the goods being entered. However, the importer is required to make periodic returns in respect of those goods (usually weekly) and any duty and taxes payable on those goods must be paid at the time the return is provided to Customs. That is, the importer receives the benefit of deferring the time at which they have to provide information to Customs and the time that they have to pay duty and taxes.

Section 69 of the Act defines 'like customable goods' as:

- goods specified in column 1 of the Table to section 19 of the *Customs Tariff Act 1995* (the Customs Tariff); and
- any other goods that are prescribed for the purposes of this section.

The rates of duty for those goods that are listed in the table to section 19 of the Customs Tariff are also subject to indexation. On 30 June 2001 certain imported petroleum oils and products were removed from the table, as they were no longer going to be automatically indexed. However, this had the unintended effect that they were no longer 'like customable goods'. Schedule 4 to the amending Regulations amends regulation 32 of the principal Regulations so that those oils and products are taken to be like customable goods from 30 June 2001. On 1 January 2002, the tariff subheadings for those petroleum oils and products were changed.

Schedule 5 to the amending Regulations amends regulation 32 of the principal Regulations, so that those oils and products continue to be taken to be like customable goods after 1 January 2002 (when the subheadings changed).

Paragraph 32(1)(a) of the principal Regulations provides that unmanufactured tobacco and tobacco refuse, classified in subheading 2410.10.00, 2410.20.00 or 2410.30.00 of the Customs Tariff are like customable goods. These subheadings, that is 2410.10.00, 2410.20.00 or 2410.30.00, have been incorrect since 1 January 1995. Schedule 1 to the amending Regulations corrects those subheadings as from 1 January 1995. The subheadings for those goods were also amended on 1 July 1996 and 1 November 1999. Schedules 2 and 3 to the amending Regulations amends those subheadings on 1 July 1996 and 1 November 1999 respectively, to reflect changes that were made on those days.

Part XVA of the Act (sections 269B to 269SL inclusive) provides for the making of tariff concession orders (TCOs). In accordance with these provisions, a person may apply to the Chief Executive Officer ("CEO of Customs") for a TCO in respect of particular goods. Where a TCO is granted, these goods may be imported at a concessional rate of duty by any person.

Paragraph 269SJ(1)(b) of the Act provides that the CEO of Customs must not make a TCO in respect of goods declared by the regulations to be goods to which a TCO should not extend.

Item 3 of Schedule 2 to the principal Regulations provides that a TCO should not extend to certain animal and vegetable fats and oils, except linosyn. Item 1 of Schedule 6 to the amending Regulations amends item 3 so that the CEO is not be prohibited from making a TCO in respect of epoxidised soybean oil if a TCO application in respect of that type of oil meets all the relevant criteria in the Act, primarily, that there are no producers in Australia of substitutable goods. Epoxidised soybean oil is used primarily as a stabiliser in the production of PVC and is no longer manufactured in Australia.

Details of the amending Regulations are set out in the Attachment.

Regulations 1 to 3 and Schedule 1 are taken to have commenced on 1 January 1995. Schedules 2, 3, 4 and 5 are taken to have commenced on 1 July 1996, 1 November 1999, 30 June 2001 and 1 January 2002 respectively. Schedule 6 relating to epoxidised soybean oil commences on gazettal.

The retrospective amendments that are made by Schedules 1 to 5 ensure that those people who delivered goods that should have been like customable goods and deferred the payment of relevant duty and taxes, did so validly. Hence, in accordance with subsection 48(2) of the *Acts Interpretation Act 1901* these Schedules neither affect the rights of a person so as to disadvantage that person nor do they impose a liability on a person in respect of anything done or omitted to be done before the Regulations were gazetted.

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ATTACHMENT

CUSTOMS AMENDMENT REGULATIONS 2003 (NO. 3)

Regulation 1 - Name of regulations

Regulation 1 provides that the amending Regulations are named the "Customs Amendment Regulations 2003 (No. 3)".

Regulation 2 - Commencement

Paragraph 2(a) provides that regulations 1 to 3 and Schedule 1 are taken to have commenced on 1 January 1995.

Paragraphs 2(b) to (e) provide that Schedules 2 to 5 are taken to have commenced on 1 July 1996, 1 November 1999, 30 June 2001 and 1 January 2002 respectively.

Paragraph 2(f) provides that Schedule 6 commences on gazettal.

Regulation 3 - Amendment of *Customs Regulations 1926*

Regulation 3 provides that Schedules 1 to 6 amend the *Customs Regulations 1926* (the principal Regulations).

SCHEDULE 1 - AMENDMENT TAKEN TO HAVE COMMENCED ON 1 JANUARY 1995

Item 1 - Paragraph 32(1)(a)

Section 69 of the Act defines 'like customable goods' as:

- goods specified in column 1 of the Table to section 19 of the *Customs Tariff Act 1995*; and
- any other goods that are prescribed for the purposes of this section.

Regulation 32 prescribes goods from the purposes of the second part of that definition. That regulation was inserted into the principal Regulations in 1992 and at the time paragraph 32(1)(a) provided that the following goods were like customable goods:

unmanufactured tobacco or tobacco refuse, having Customs Tariff Reference Number 2401.10.12,
2401.10.13, 2401.10.90, 2401.20.12, 2401.20.13, 2401.20.90 or 2401.30.00

On 1 January 1995 the *Customs Tariff Amendment Act (No. 2) 1995* amended the *Customs Tariff Act 1987* by repealing heading 2401 and replacing it with the following:

2401 UNMANUFACTURED TOBACCO; TOBACCO REFUSE:

2401.10.00 - Tobacco, not stemmed/stripped

2401.20.00 - Tobacco, partly or wholly stemmed/stripped

2401.30.00 - Tobacco refuse

Unmanufactured tobacco and tobacco refuse falling to those Customs Tariff Reference Numbers should have been made like customable goods at that time.

Item 1 retrospectively amends paragraph 32(1)(a) of the principal Regulations so that correct Customs Tariff Reference Numbers are referred to. This item is taken to have commenced on 1 January 1995 when the changes to the *Customs Tariff Act 1987* were made.

SCHEDULE 2 - AMENDMENT TAKEN TO HAVE COMMENCED ON 1 JULY 1996

Item 1 - Paragraph 32(1)(a)

On 1 July 1996 the *Customs Tariff Act 1987* was replaced by the *Customs Tariff Act 1995* and the term 'Customs Tariff Reference Numbers' was replaced by 'subheading'.

Item 1 retrospectively amends paragraph 32(1)(a) of the principal Regulations to replace the reference to 'Customs Tariff Reference Numbers' with 'subheading'. This item is taken to have commenced on 1 July 1996 when the *Customs Tariff Act 1995* commenced.

SCHEDULE 3 - AMENDMENT TAKEN TO HAVE COMMENCED ON 1 NOVEMBER 1999

Item 1 - Paragraph 32(1)(e)

On 1 November 1999, the *Customs Tariff Amendment Act (No. 1) 2000*, inserted subheadings 2401.20.00 and 2401.30.00 into the Table in section 19 of the *Customs Tariff Act 1995* and hence, since that date, those goods were like customizable goods. Hence, from that date it was only necessary to include in regulation 32 of the principal Regulations a reference to the goods classified to subheading 2401.10.00. Those goods are tobacco, not stemmed or stripped.

Item 1 retrospectively substitutes paragraph 32(1)(a) of the principal Regulations so that it refers to those goods classified to subheading 2401.10.00. This item is taken to have commenced on 1 November 1999, being the time at which the *Customs Tariff Amendment Act (No. 1) 2000* commenced.

SCHEDULE 4 - AMENDMENTS TAKEN TO HAVE COMMENCED ON 30 JUNE 2001

Item 1 - Paragraph 32(1)(b)

Item 1 makes a technical amendment to paragraph 32(1)(b) of the principal Regulations as a result of item 2 adding paragraph (c) into the principal Regulations.

Item 2 - After paragraph 32(1)(b)

Prior to 30 June 2001, the Table in section 19 of the Customs Tariff included those subheadings applicable to excise equivalent imported petroleum fuels. The *Customs Tariff Amendment Act (No. 3) 2001* removed the automatic indexation of duty rates for those fuels by amending the Table in section 19 to delete those subheadings applicable to petroleum fuels. As a consequence, the definition of like customizable goods in section 69 of the Customs Act no longer includes the subheadings applicable to petroleum fuels.

This means that importers of petroleum fuels are not able to apply for a permission to deliver into home consumption without entry and are not able to rely on any existing permissions to continue to deliver fuel prior to entry.

Item 2 retrospectively inserts paragraph 32(1)(c) into the principal Regulations to ensure that the relevant petroleum oils and petroleum products listed in that paragraph are taken to be like customizable goods on and from 30 June 2001.

SCHEDULE 5 - AMENDMENT TAKEN TO HAVE COMMENCED ON 1 JANUARY 2002

Item 1 - Paragraph 32(1)(c)

On 1 January 2002, the subheadings of tariff headings 2710 and 3817 were significantly amended by the *Customs Tariff Amendment Act (No. 5) 2001* as part of a World Customs Organisation tariff change.

Item 1 retrospectively substitutes paragraph 32(1)(c) to ensure that the correct tariff subheadings are referred to from 1 January 2002.

SCHEDULE 6 - AMENDMENT COMMENCING ON GAZETTAL

Item 1 - Schedule 2, item 3, column 3

Schedule 2 of the principal Regulations sets out those goods for which a Tariff Concession Order cannot be made. Item 3 of Schedule 2 provides that a TCO should not extend to certain animal and vegetable fats and oils, except linoxyn. Item 1 amends item 3 so that the CEO is not prohibited from making a TCO in respect of epoxidised soybean oil if a TCO application in respect of that type of oil meets all of the relevant criteria.