

# **Customs (Prohibited Imports) Amendment Regulations 2003 (No. 10) 2003 No. 321**

## EXPLANATORY STATEMENT

### STATUTORY RULES 2003 NO. 321

Issued by the Authority of the Minister for Justice and Customs

*Customs Act 1901*

*Customs (Prohibited Imports) Amendment Regulations 2003 (No. 10)*

*Customs (Prohibited Exports) Amendment Regulations 2003 (No. 6)*

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

Sections 50 and 112 of the Act provide in part that the Governor-General may, by regulation, prohibit the importation or exportation, respectively, of goods into or from Australia and that the powers may be exercised by prohibiting the importation or exportation of goods absolutely or by prohibiting the importation or exportation of goods unless specified conditions or restrictions are complied with.

The *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations) and the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations) control the importation or exportation, respectively, of the goods specified in the various regulations and the Schedules to the Regulations.

The purpose of the amending Regulations is to prohibit the importation into, and exportation from, Australia of asbestos and certain goods containing asbestos. These prohibitions complement prohibitions on workplace use that are being put in place by the Commonwealth, States and Territories under relevant occupational health and safety and dangerous goods legislation.

Asbestos can be divided into two categories: amphibole asbestos and chrysotile.

The Commonwealth, States and Territories have agreed to prohibit the use of chrysotile or goods containing chrysotile in a workplace unless it is for one of four purposes which are listed in the National List of Exemptions. The Commonwealth, States and Territories have also agreed to phase out the use of these goods by specified dates. Further, the prohibition will not apply to goods that are used for research, display or analysis.

The amendments to the PI Regulations prohibit the importation into Australia of amphibole asbestos unless: it occurs as naturally occurring traces in another raw material; the Minister for Employment and Workplace Relations (the Minister) or a person authorised by that Minister has confirmed that the importation is permitted; or it is, or is in, a hazardous waste as defined in section 4 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (hazardous waste).

The amendments to the PI Regulations also prohibit the importation into Australia of chrysotile, or goods mentioned in Part 1 of Schedule 3B of the amendments to the PI Regulations that contain chrysotile, unless:

- the chrysotile is, or the goods are, hazardous waste;
- a State or Territory authority has confirmed that the proposed use of the chrysotile or goods is in accordance with a law relating to occupational health and safety;
- the Safety, Rehabilitation and Compensation Commission (the SRC Commission) or the Seafarers Safety, Rehabilitation and Compensation Authority (the SSRC Authority) has confirmed that it has granted an exemption for the use of the chrysotile or goods;
- the Minister or a person authorised by that Minister confirms that he or she has granted permission for the chrysotile or goods to be imported where he or she is satisfied that the chrysotile or goods are being imported for research, analysis or display;
- the chrysotile is, or the goods are, being imported from the Australian Antarctic Territory; or
- the goods are raw materials that contain naturally occurring traces of chrysotile.

A confirmation given by a relevant State or Territory authority, the SRC Commission or the SSRC Authority, must state that the chrysotile is, or the goods are, for a use mentioned in Part 2 of Schedule 3B to the PI Regulations and the goods must be imported on or before the date mentioned in those Parts for that use.

The amendments to the PI Regulations also make it clear that importation of relevant goods containing chrysotile that are incorporated into other goods in a stable form, is not prohibited.

The amendments to the PE Regulations prohibit the exportation of both amphibole and chrysotile asbestos, or goods mentioned in Part 1 of Schedule 1 to the PE Regulations that contain asbestos, under criteria broadly similar to those applying to the importation of chrysotile. However, in this case, the State or Territory authority need only confirm that the proposed use is one of the four listed in Part 2 of Schedule 1 to the PE Regulations or for research, display or analysis. Further, there is no express exception for the exportation of asbestos to the Australian Antarctic Territory and the power of the Minister or authorised person to grant a permission to export is not limited.

Details of the amending Regulations are in [Attachments A and B](#).

The amending Regulations commence on 31 December 2003, to coincide with the date on which the complementary controls on workplace use are also expected to commence.

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## **ATTACHMENT A**

### **DETAILS OF THE PROPOSED CUSTOMS (PROHIBITED IMPORTS) AMENDMENT REGULATIONS 2003 (NO. 10)**

#### **Regulation 1 - Name of Regulations**

Regulation 1 provides that the amending Regulations are the *Customs (Prohibited Imports) Amendment Regulations 2003 (No. 10)*.

#### **Regulation 2 - Commencement**

Regulation 2 provides that the amending Regulations commence on 31 December 2003.

#### **Regulation 3 - Amendment of *Customs (Prohibited Imports) Regulations 1956***

Regulation 3 provides that Schedule 1 amends the *Customs (Prohibited Imports) Regulations 1956* (the PI Regulations).

### **SCHEDULE 1 - AMENDMENTS**

#### **Item 1 - Subregulation 2(1)**

Item 1 inserts definitions of amphibole asbestos and asbestos into the PI Regulations. Asbestos is defined to mean one of the six listed fibrous forms of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals.

Amphibole asbestos means asbestos in a form other than chrysotile.

#### **Item 2 - After regulation 4BA**

Item 2 inserts new regulation 4C into the PI Regulations to prohibit the importation of asbestos.

##### *Importation of amphibole asbestos*

New subregulation 4C(1) prohibits the importation of amphibole asbestos, or goods containing amphibole asbestos, other than in three circumstances.

The first is where the goods are raw materials that contain naturally occurring traces of amphibole (new paragraph 4C(1)(a) refers).

It is possible that shipments of raw materials may contain traces of amphibole asbestos and this provision will ensure that the importation of those raw materials is not prohibited. However, the traces must be naturally occurring and the exception will not cover circumstances where amphibole asbestos has been deliberately added to raw materials.

The second exception is where the Minister administering the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Minister), or a person authorised by that Minister confirms that they have granted a permission to import the amphibole asbestos or goods. The permission must be produced to a Collector of Customs (new paragraph 4C(1)(b) refers). Currently the relevant Minister is the Minister for Employment and Workplace Relations. New subregulation 4C(2) allows the Minister or authorised person to grant a permission.

The third is where the amphibole asbestos is, or goods containing it are, hazardous waste as defined in section 4 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Hazardous Waste Act). Under the Hazardous Waste Act, hazardous waste can only be imported into, or exported from, Australia if the Minister administering that Act permits it. The amendments do not affect the operation of the Hazardous Waste Act as it relates to hazardous waste that is asbestos. Further, if asbestos is a hazardous waste under that Act, its importation is not prohibited under new regulation 4C even if that importation is contrary to the Hazardous Waste Act. In those circumstances the sanctions and procedures in the Hazardous Waste Act will apply to that importation.

### *Importation of chrysotile*

New subregulation 4C(3) prohibits the importation of chrysotile, or goods mentioned in Part 1 of Schedule 3B that contain chrysotile, unless one of the following exceptions applies. Part 1 of Schedule 3B lists goods that commonly contain asbestos.

The first exception applies to chrysotile that is, or goods that are, hazardous waste (new paragraph 4C(3)(a) refers). As explained above, the amending Regulations do not affect the prohibitions contained in the Hazardous Waste Act in respect of hazardous waste that is asbestos.

Under new paragraphs 4C(3)(b), (c) and (d), chrysotile is, or goods mentioned in Part 1 of Schedule 3B that contain chrysotile are, able to be imported if:

- an authority of a State or Territory confirms that the proposed use of the chrysotile or goods is in accordance with the State or Territory law relating to occupational health and safety; or
- the Safety, Rehabilitation and Compensation Commission has confirmed that it has granted an exemption under the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* for the use of the chrysotile or goods; or
- the Seafarers Safety, Rehabilitation and Compensation Authority has confirmed that it has granted an exemption under the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* for the use of the chrysotile or goods.

New subregulation 4C(5) provides that the confirmation given under these new paragraphs must either state:

- that the chrysotile is, or goods are, for a use mentioned in Part 2 of Schedule 3B and the importation must be on or before the date mentioned in that Part; or
- that the chrysotile is, or goods are, for research, analysis or display.

In 2001, the National Occupational Health and Safety Commission announced that there would be a prohibition on the workplace use, importation and exportation of chrysotile asbestos from 31 December 2003. It was agreed that a phased-in approach in respect of certain goods that contain chrysotile would be adopted and a National List of Exemptions was formulated by reference to the purpose for which the goods could be used. There are four categories of purposes and each has an end date after which chrysotile asbestos cannot be used for that purpose in a workplace. Further, goods with chrysotile in-situ may be used in a workplace and chrysotile may be used for research, analysis or display.

In order to implement these prohibitions the Commonwealth and each State and Territory will be amending their occupational health and safety regulations. Some States are extending the

prohibition to all use under their dangerous goods legislation. The State and Territory legislation will only allow chrysotile or goods containing chrysotile to be used for the purposes set out in the National List of Exemptions (except in-situ goods or goods for research, analysis or display).

The *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* and the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* will also be amended so that chrysotile and goods containing chrysotile may only be used in Commonwealth workplaces and by seafarers if the Safety, Rehabilitation and Compensation Commission (the SRC Commission) or the Seafarers Safety, Rehabilitation and Compensation Authority (the SSRC Authority) has given an exemption for them to be used.

The National List of Exemptions is replicated in Part 2 of Schedule 3B to the PI Regulations and the relevant State or Territory authority, the SRC Commission or the SSRC Authority must confirm that the chrysotile or goods containing chrysotile are going to be used for one of those purposes and the confirmation must be produced to a Collector in order for the goods to be legally imported. The confirmation may also state that the chrysotile or goods are going to be used for research, analysis or display.

In order to implement the phased-in approach, the importation for one of the four uses listed in Part 2 of Schedule 3B must occur on and before the date when workplace use will be prohibited.

Chrysotile and goods containing chrysotile will also be able to be imported if the Minister or a person authorised by the Minister has granted permission to import (new paragraph 4C(3)(e) refers). The Minister or authorised person will only be able to grant a permission if he or she is satisfied that the goods are going to be used for research, analysis or display (new subregulation 4C(6) refers). This allows, for example, goods containing chrysotile to be imported for display in a museum.

Chrysotile and goods containing chrysotile will also be able to be imported from the Australian Antarctic Territory (Antarctica) (new paragraph 4C(3)(f) refers). Goods containing chrysotile are often brought to Australia from Antarctica for the purpose of disposal. That movement is not controlled by the Hazardous Waste Act as those goods are not considered to be imported into Australia under that Act. However, the *Customs Act 1901* does not extend to the external Territories and hence any goods moved from Antarctica to Australia are imported for the purposes of that Act and the PI Regulations. Hence those goods will be excluded from the import prohibition in the PI Regulations so that they can continue to be brought to Australia for disposal.

The final exception allows raw materials containing naturally occurring traces of chrysotile to be imported (new paragraph 4C(3)(g) refers).

New subregulation 4C(4) makes it clear that the prohibition on the importation of chrysotile or the listed goods containing chrysotile does not apply to goods containing chrysotile that are incorporated into other goods in a way that does not constitute a risk to users until the chrysotile is disturbed. It is not intended to prohibit the importation of goods that incorporate goods containing chrysotile in circumstances where the chrysotile is stable. For example, a ship may be imported that contains tiles that contain asbestos. In that case, the importation of the tiles is not be prohibited as long as it does not constitute a risk to users until the chrysotile is disturbed.

A copy of a confirmation given under paragraph 4C(3)(b), (c), (d) or (e) must be produced to a Collector (new subregulation 4C(7) refers).

### **Item 3 - After Schedule 3A**

Item 3 inserts new Schedule 3B into the PI Regulations. Part 1 of Schedule 3B contains those goods whose importation into Australia is prohibited if they contain chrysotile.

Part 2 of Schedule 3B sets out the purposes for which certain goods containing chrysotile may be imported and the date up until which those goods can be imported. Part 2 mirrors the National List of Exemptions.

## **ATTACHMENT B**

### **DETAILS OF THE PROPOSED CUSTOMS (PROHIBITED EXPORTS) AMENDMENT REGULATIONS 2003 (NO. 6)**

#### **Regulation 1 - Name of Regulations**

Regulation 1 provides that the amending Regulations are the *Customs (Prohibited Exports) Amendment Regulations 2003 (No. 6)*.

#### **Regulation 2 - Commencement**

Regulation 2 provides that the amending Regulations commence on 31 December 2003.

#### **Regulation 3 - Amendment of *Customs (Prohibited Exports) Regulations 1958***

Regulation 3 provides that Schedule 1 amends the *Customs (Prohibited Exports) Regulations 1958* (the PE Regulations).

### **SCHEDULE 1 - AMENDMENTS**

#### **Item 1 - Subregulation 2(1), after definition of arms or related matériel**

Item 1 inserts a definition of asbestos into the PE Regulations. Asbestos is defined to mean one of the six listed fibrous forms of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals.

#### **Item 2 - After regulation 3**

New subregulation 4(1) prohibits the exportation of asbestos, or goods mentioned in Part 1 of Schedule 1 that contain asbestos, unless one of the following exceptions applies. Part 1 of Schedule 1 lists goods that commonly contain asbestos.

The first exception applies to asbestos that is, or goods mentioned in Part 1 of Schedule 1 that contain asbestos that are, hazardous waste (new paragraph 4(1)(a) refers). The amending Regulations do not affect the prohibitions contained in the Hazardous Waste Act in respect of hazardous waste that is asbestos.

Under new paragraphs 4(1)(b), (c) and (d), asbestos, or goods mentioned in Part 1 of Schedule 1 that contain asbestos, will be able to be imported if:

- an authority of a State or Territory provides a confirmation in accordance with subregulation 4(3); or
- the Safety, Rehabilitation and Compensation Commission confirms that it has granted an exemption under the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*; or
- the Seafarers Safety, Rehabilitation and Compensation Authority confirms that it has granted an exemption under the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003*.

New subregulation 4(3) provides that:

- a confirmation given under these new paragraphs must state that the chrysotile is, or goods are, for a use mentioned in Part 2 of Schedule 3B and the importation must be on or before the date mentioned in that Part; or
- a confirmation given under these new paragraphs must state that the chrysotile is, or goods are, for research, analysis or display.

Asbestos and goods containing asbestos will also be able to be exported if the Minister administering the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Minister) or a person authorised by the Minister has confirmed that they have granted a permission to export the asbestos or goods (new paragraph 4(1)(e) refers). This is currently the Minister for Employment and Workplace Relations. The Minister or authorised person will be able to grant the permission under new subregulation 4(4).

New subregulation 4(5) requires a copy of these confirmations to be produced to a Collector.

The final exception (new paragraph 4(1)(f) refers) allows raw materials containing naturally occurring traces of asbestos to be exported .

As with the prohibition on the importation of chrysotile, it is not intended to prohibit the exportation of goods that incorporate goods containing asbestos in circumstances where the chrysotile is stable (new subregulation 4(2) refers)

### **Item 3 - Before Schedule 3**

Item 3 inserts new Schedule 1 into the PE Regulations. Part 1 of Schedule 1 contains those goods whose exportation from Australia is prohibited if they contain asbestos.

Part 2 of Schedule 1 sets out the purposes for which certain goods containing asbestos may be exported and the date up until which those goods can be exported. Part 2 mirrors the National List of Exemptions.