

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 278**

Issued by the Authority of the Minister for Home Affairs

*Customs Tariff Act 1995*

*Customs Tariff Amendment Regulations 2009 (No. 1)*

Section 20A of the *Customs Tariff Act 1995* (the Tariff Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009* (the FTA Act) amends the *Customs Act 1901* (the Customs Act) to fulfil Australia's obligations under Chapter 3 of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Agreement), which deals with rules of origin. The rules of origin determine whether goods imported into Australia are originating goods under the Agreement and are thereby eligible for preferential rates of customs duty.

The associated *Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009* (the FTA Tariff Act) contains amendments to the Tariff Act to implement Australia's obligations under the Agreement by enacting lower or 'Free' rates of customs duty for imported goods that are AANZ originating goods. AANZ originating goods are goods from a Party to the Agreement that satisfy the new rules of origin which are contained in new Division 1G of Part VIII of the Customs Act, inserted by the FTA Act.

The Agreement is expected to enter into force for Australia on 1 January 2010.

The purpose of the amending Regulations is to amend the *Customs Tariff Regulations 2004* to prescribe goods to support the implementation of the revised customs tariff arrangements for AANZ originating goods.

For most AANZ originating goods, the rate of customs duty will be 'Free' from the commencement of the FTA Tariff Act. However, for certain classes of goods, the rate of customs duty will not immediately be 'Free', but will be phased down to 'Free' from their current rate over a period of time. The phasing rates for these goods will be specified in new Schedule 8 to the Tariff Act with the goods identified by reference to their eight figure tariff classification under Schedule 3 to the Tariff Act.

In the Agreement itself, certain goods that are to be subject to the preferential duty rates are specified by reference to their tariff classification under the 2002 version of the Harmonized Commodity Description and Coding System (the Harmonized System). The Harmonized System is the worldwide classification system that has been adopted by all countries that are members of the World Customs Organization. In Australia, the Harmonized System has been adopted in the Tariff Act.

However, in 2007, a new version of the Harmonized System was adopted. The tariff classification of a number of goods in the 2007 version is different from their classification under the 2002 version, for example in several instances one or more tariff classifications in

the 2002 version have been combined into a single tariff classification in the 2007 version. The amendments in the 2007 version of the Harmonized System (the 2007 amendments) were incorporated into Schedule 3 to the Tariff Act, and are also reflected in the tariff classifications listed in the items in Schedule 8 to the Tariff Act.

One outcome of the 2007 amendments is that several tariff classifications specified in new Schedule 8 to the Tariff Act now cover a wider range of goods than was originally intended to be covered by the phasing rates of duty negotiated under the Agreement. Another outcome of the 2007 amendments is that two different tariff classifications for which two different phasing rates were negotiated under the Agreement have been combined under one tariff classification.

Therefore, if the tariff classifications listed in Schedule 8 to the Tariff Act are used, without limitation, to specify the goods to which the phasing rates of customs duty apply, the concessions would be different to the concessions that the Agreement specifies. One result would be that goods which should be subject to a 'Free' rate of customs duty would instead be subject to a phasing rate of duty.

As a consequence of the outcomes of the 2007 amendments, the relevant items in Schedule 8 to the Tariff Act are expressed to apply to 'prescribed goods only'. This means that only goods that are prescribed for each of these items would be subject to the phasing rates of customs duty specified in each item in Schedule 8.

The amending Regulations prescribe, for each of the relevant items in Schedule 8 to the Tariff Act, the goods that are to be subject to phasing rates of customs duty.

Details of the amending Regulations are set out in the [Attachment](#).

No consultation was undertaken specifically in relation to the amendments as they implement Australia's international obligations under the Agreement.

The amending Regulations commence on the commencement of Schedule 1 to the FTA Tariff Act, which will be the later of the day the FTA Act receives the Royal Assent or the day the Agreement enters into force for Australia.

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## **ATTACHMENT**

### **DETAILS OF THE CUSTOMS TARIFF AMENDMENT REGULATIONS 2009 (NO. 1)**

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

Regulation 1 provides that the amending Regulations are the *Customs Tariff Amendment Regulations 2009 (No. 1)*.

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

Regulation 2 provides that the amending Regulations commence on the commencement of Schedule 1 to the *Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009* (the FTA Tariff Act). Schedule 1 to the FTA Tariff Act will commence at the same as Schedule 1 to the *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009* (the FTA Act) and will commence on the later of the day the FTA Act receives the Royal Assent or the day on which the Agreement enters into force for Australia.

#### **Regulation 3 - Amendment of the Customs Tariff Regulations 2004**

Regulation 3 provides that the Schedule 1 amends the *Customs Tariff Regulations 2004* (the Principal Regulations).

### **SCHEDULE 1 - AMENDMENT**

#### **Item [1] - Regulation 3, after definition of Schedule 5 item**

Item [1] inserts a definition of *Schedule 8 item* into regulation 3 of the Principal Regulations. *Schedule 8 item* means an item in Schedule 8 to the *Customs Tariff Act 1995* (the Tariff Act).

#### **Item [2] - After regulation 4**

Item [2] inserts new regulation 5 into the Principal Regulations. New regulation 5 provides that for each Schedule 8 item mentioned in column 2 of an item in Schedule 2 to the Principal Regulations, the goods mentioned in column 3 of that item are prescribed. The effect of this is that goods mentioned in column 3 of Schedule 2 to the Regulations will be subject to the phasing rates of customs duty.

#### **Item [3] - After Schedule 1**

Item [3] inserts new Schedule 2 into the Principal Regulations.

### **Schedule 2 Prescribed goods for certain Schedule 8 items**

Schedule 2 sets out each item in the table in Schedule 8 to the Act that applies to prescribed goods only and the relevant goods that are to be prescribed for each of the items. For example, for item 123 of Schedule 8 to the Tariff Act, insecticides, herbicides, anti-sprouting products and plant-growth regulators classified in 3808.50.90 of Schedule 3 to the Tariff Act

are prescribed. This means that only these goods will be subject to the phasing rates of duty set out in item 123 of Schedule 8 to the Tariff Act. All other goods classified in 3808.50.90 of Schedule 3 will be subject to a 'Free' rate of customs duty from entry into force of the Agreement.