

EXPLANATORY STATEMENT

Select Legislative Instrument 2017 No.

Issued by the Assistant Minister for Immigration and Border Protection
Parliamentary Secretary to the Minister for Immigration and Border Protection

Customs Tariff Act 1995

Customs Tariff Amendment Regulations 2017

Authority

The *Customs Tariff Act 1995* (the Customs Tariff Act) gives effect to Australia's import trade classification system. It assigns rates of customs duty, both general and preferential, to imported goods and enables the collection of these duties. It also allows for the regulation of certain goods and the collection of trade statistics.

Subsection 20A of the Customs Tariff Act provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by this Act, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Background

Australia's system of Tariff Preferences grants non-reciprocal preferential tariff treatment to selected countries through the Customs Tariff Act. These preference schemes give eligible countries access to lower, or "Free", rates of customs duty for certain imported goods. Countries and places that are eligible for these rates of duty were set out in Schedule 1 of the Customs Tariff Act.

The *Customs Tariff Amendment Act 2017* (the Amendment Act), repeals Schedule 1 of the Customs Tariff Act and instead enables the countries and places for which a preferential rate of customs may apply, as contained in Schedule 1 of the Customs Tariff Act, to be prescribed in the *Customs Tariff Regulations 2004* (the Customs Tariff Regulations). In doing so, this enables those countries and places to be updated more easily.

The *Customs Tariff Amendment Regulations 2017* (the Amendment Regulations) amend the Customs Tariff Regulations to prescribe the lists of countries and places that are eligible for preferential arrangements for customs duty. The Amendment Regulations also update the preferential arrangements for certain countries to provide for Forum Island Countries to be subject to Developing Country (DC) rates of duty. This enables Forum Island countries which previously received preferential rates of duty as part of the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) (Textile, Clothing and Footwear provisions) Scheme, which expired on 31 December 2014, to receive DC rates of duty.

The Amendment Regulations also remove redundant definitions and regulations from the Customs Tariff Regulations that relate to the preferential rates of duty that were imposed on certain goods imported from the United States of America.

Purpose

The purpose of the Amendment Regulations is to ensure that the preferential rates of duty that are available to certain countries and places are maintained, and to make other related amendments, i.e. to remove redundant provisions.

The details of the Amendment Regulations are set out in Attachment A. A Statement of Compatibility with Human Rights has been prepared and is at Attachment B.

Consultation

In developing the Amendment Regulations, consultation was undertaken by the Department of Foreign Affairs and Trade and the Department of Industry, Innovation and Science with a range of industry stakeholders in Australia and Fiji in relation to the expiration of SPARTECA and the possibility of extending preferential tariff treatment through other legislative and regulatory means.

In December 2014, the Minister for Foreign Affairs, and the then Ministers for Trade and Investment; Immigration and Border Protection; Industry; and the then Treasurer, agreed not to renew SPARTECA, but to continue to provide Forum Island Countries with a duty rate of “Free” by allowing them to access Australia's DC preference scheme from 1 January 2015.

The remaining amendments in the Amendment Regulations are minor in nature and do not substantially alter existing arrangements. As such, the Department of Immigration and Border Protection did not consider further consultation to be appropriate.

Commencement

The Amendment Regulations will commence immediately after the commencement of Schedule 1 to the Amendment Act.

Schedule 1 to the Amendment Act commences on 1 July 2017 by operation of the *Customs Tariff Amendment Commencement Proclamation 2017*. As such, the Amendment Regulations will commence on 1 July 2017 immediately after the commencement of the Amendment Act.

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Details of the *Customs Tariff Amendment Regulations 2017*

Section 1 – Name

This section provides that the title of the Regulations is the *Customs Tariff Amendment Regulations 2017* (the Amendment Regulations).

Section 2 – Commencement

This section sets out in a table the dates on which provisions in the Amendment Regulations will commence. In particular, this section provides that each of provisions in the Amendment Regulation as specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that other statement in column 2 has effect according to its terms.

The Amendment Regulations will commence immediately after the commencement of Schedule 1 to the *Customs Tariff Amendment Act 2017* (the Amendment Act).

Schedule 1 to the Amendment Act commences on 1 July 2017 by operation of the *Customs Tariff Amendment Commencement Proclamation 2017*. As such, the Amendment Regulations will commence on 1 July 2017 immediately after the commencement of the Amendment Act.

Section 3 – Authority

This section provides that the Amendment Regulations are made under *Customs Tariff Act 1995* (the Customs Tariff Act).

Section 4 – Schedule(s)

This section provides for each instrument that is specified in a Schedule to this instrument is to be amended or repealed as set out in the applicable items in the Schedule concerned, and for any other item in a Schedule to this instrument to have effect according to its own terms. The instrument that is being amended in the *Customs Tariff Regulations 2004* (the Customs Tariff Regulations).

Schedule 1 – Amendments

Customs Tariff Regulations 2004

Items 1, 2 and 4

The amendments contained in these items are consequential to the amendments made by the the Amendment Act.

Item 4 of the Amendment Regulations repeals Schedules 1 and 1A (the previous Schedules) of the Customs Tariff Regulations, and substitutes them with a new Schedule 1.

The previous Schedules contained certain categories of prescribed goods originating from the United States of America that, in accordance with items 921 to 922, 923, 924, 925, 926, 927, 954 and 955 of Schedule 5 to the Customs Tariff Act, can be imported and be subject to preferential rates of duty.

The preferential rates of duty are the rates used in accordance with subparagraph 16(1)(k)(i) of the Customs Tariff Act to calculate the import duty for relevant prescribed goods.

Since 2014 and 2015, the preferential rates of duty for the relevant goods have been phased out to “Free” in accordance with items 921 to 922, 923, 924, 925, 926, 927, 954 and 955 of Schedule 5 to the Customs Tariff Act. By operation of subparagraph 16(1)(k)(ii), and subsection 16(2), of the Customs Tariff Regulations, the same result is also achieved if the relevant goods are not prescribed in those Regulations.

As such, the previous Schedules of the Customs Tariff Regulations are repealed as they are no longer necessary.

The new Schedule 1:

- specifies lists of countries and places similar to the lists that were contained in Schedule 1 of the Customs Tariff Act and retains the non-reciprocal preferential rates of duty for those countries and places; and
- provides for Forum Island countries to also be subject to Developing Countries (DC) rates of duty.

The extension of DC rates of duty to Forum Countries is to implement the agreement of the Minister for Foreign Affairs, and the then Ministers for Trade and Investment; Immigration and Border Protection; Industry; and the then Treasurer, to not renew the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) (Textile, Clothing and Footwear provisions) which expired on 31 December 2014, but instead to provide Forum Island countries with a duty rate of “Free” by allowing them to access Australia's Developing Country (DC) preference scheme from 1 January 2015.

Items 1 and 2 of the Amendment Regulations amend the Customs Tariff Regulations to support the repeal of the previous Schedules.

Item 1 removes redundant definitions from the Customs Tariff Regulations that relate to the previous Schedules.

Item 2 amends the Customs Tariff Regulations to repeal regulations 4 and 4A (the previous regulations) of the Customs Tariff Regulations, and substitute them with a new regulation 4.

The previous regulations prescribed for the goods originating from the United States of America as contained in the previous Schedules to the Customs Tariff Regulations to be prescribed goods such that those goods are subject to the preferential rates of duty in accordance with subparagraph 16(1)(k)(i) of, and either or item 921 to 922, 923, 924, 925, 926, 927, 954 and 955 of Schedule 5 to, the Customs Tariff Act.

The new regulation 4 states that the new Schedule 1 has effect for the purposes of the Customs Tariff Act and that the new Schedule sets out the countries and places to which

non-reciprocal preferential rates of duty apply under the Australian system of tariff preferences.

Item 3 – After regulation 5

This item amends the Customs Tariff Regulations to insert a new regulation 6.

The effect of new regulation 6 is that regulations 4 and 4A, as repealed by items 1 and 2 above, and as in force immediately before the commencement of Schedule 1 to the Amendment Regulations, continue to apply on and after that commencement in relation to goods imported into Australia before that commencement.

The purpose of this item is to ensure that the amendments made by items 1 and 2 above do not limit a person's ability to apply for a refund, rebate or remission of duty before the expiry of the 4 years limit set out by sub-subparagraph 106(2)(b)(iii)(A) of the *Customs Regulation 2015* (the Customs Regulation).

The earliest point in time to which the goods prescribed in regulations 4 and 4A were phased to "Free" in accordance with Schedule 5 of the Customs Tariff Act is 2014.

Sub-subparagraph 106(2)(b)(iii)(A) of the Customs Regulation enables a person to tell the Collector (as defined in the *Customs Act 1901*) the ground on which the person believes he or she is entitled to a refund or rebate within 4 years after the duty was paid.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Customs Tariff Amendment Regulations 2017

This legislative instrument, titled the *Customs Tariff Amendment Regulations 2017* (the Amendment Regulations), is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

Australia's system of Tariff Preferences grants preferential tariff treatment to selected countries through the *Customs Tariff Act 1995* (the Customs Tariff Act). These preference schemes give eligible countries access to lower, or "Free", rates of customs duty for certain imported goods. Countries and places that are eligible for these rates of duty are set out in Schedule 1 of the Customs Tariff Act.

The *Customs Tariff Amendment Act 2017*, will repeal Schedule 1 of the Customs Tariff Act and instead enables the countries and places for which a non-reciprocal preferential rate of customs may apply, as contained in Schedule 1 of the Customs Tariff Act, to be prescribed in the *Customs Tariff Regulations 2004* (the Customs Tariff Regulations). In doing so, this will enable those countries and places to be updated more easily.

The Amendment Regulations amend the Customs Tariff Regulations to prescribe the list of countries and places that are eligible for preferential arrangements customs duty. The Amendment Regulations also updates the preferential arrangements for certain countries to provide for Forum Island countries to also be subject to Developing Countries (DC) rates of duty. This enables Forum Island countries which previously received preferential rates of duty as part of the South Pacific Regional Trade and Economic Cooperation Agreement (Textile, Clothing and Footwear provisions) Scheme, which expired on 31 December 2014, to receive DC rates of duty.

The Amendment Regulations also removes redundant definitions and regulations from the Customs Tariff Regulations that relate to the preferential rates of duty that were imposed on certain goods imported from the United States of America.

The purpose of the Amendment Regulations is to ensure that the preferential rates of duty that are available to certain countries and places are maintained, and to make other related amendments, i.e. to remove redundant provisions.

Human rights implication

The Amendment Regulations do not engage any of the applicable rights or freedoms.

Conclusion

This Amendment Regulations are compatible with human rights as it does not raise any human rights issues.

**The Hon Alex Hawke MP, Assistant Minister for Immigration and Border Protection
Parliamentary Secretary to the Minister for Immigration and Border Protection**