

EXPLANATORY STATEMENT

Issued by Assistant Minister for Customs, Community Safety and Multicultural Affairs,
Parliamentary Secretary to the Minister for Home Affairs

Customs Tariff Act 1995

*Customs Tariff Amendment (2022 Harmonized System Changes and Other Measures)
Regulations 2021*

The *Customs Tariff Act 1995* (the Customs Tariff Act) gives effect to Australia's import trade classification system. It is used to assign rates of customs duty, both general and preferential, to imported goods and enables the collection of these duties.

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

The trade classification system is based on an internationally agreed hierarchical structure of codes and descriptions known as the Harmonized Commodity Description and Coding System (the Harmonized System).

The World Customs Organization (WCO) maintains the Harmonized System and WCO members (including Australia) review and update it on a five-yearly basis. The sixth review of the Harmonized System was completed in June 2019. The updated codes and descriptions which are the outcome of the sixth review, commonly referred to as the 2022 Harmonized System, will commence on 1 January 2022.

The *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* (the HS2022 Changes Act) amends the Customs Tariff Act to implement the 2022 Harmonized System and amends the tariff headings and subheadings that identify tradeable goods imported generally, and in accordance with one Free Trade Agreement. Relevantly, the tariff classification headings and subheadings for Peruvian originating goods (which are originating goods in accordance with the Peru-Australia Free Trade Agreement (PAFTA)) were amended. The associated preferential rates of customs duty that apply to these goods were maintained.

The purpose of the *Customs Tariff Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* (the Amendment Regulations) is to amend the *Customs Tariff Regulations 2004* (the Customs Tariff Regulations) to update the tariff classification headings and subheadings for Peruvian originating goods. These amendments ensure that Peruvian originating goods prescribed in the Customs Tariff Regulations can continue to be eligible for the preferential rates of customs duty in accordance with the PAFTA.

The Amendment Regulations also repeal a number of spent provisions relating to the Australia-Chile Free Trade Agreement, the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Details of the Amendment Regulations are set out in Attachment A.

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment B.

The *Customs Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* also makes amendments consequential to the amendments made by the HS2022 Changes Act to update tariff classification codes in the *Customs Regulation 2015* from the tariff classification codes of 2017 to the classification codes of 2022.

The Australian Border Force (ABF) represented Australia at the WCO during the sixth review of the Harmonized System and as part of this representation undertook targeted industry consultation. Several industries, including olive oil producers, Light-Emitting Diodes manufacturers and a jewellers association requested changes. The ABF, working through the committees of the WCO, was able to achieve the requested outcomes which will be to the advantage of these industries. These specific outcomes are reflected in the overall outcome of the sixth review. No further consultation was undertaken in the development of the regulation as these amendments are consequential to the implementation of the sixth review.

The Office of Best Practice Regulation (OBPR) has been consulted in relation to the implementation of the 2022 Harmonized System and has advised that the amendments are unlikely to have a more than minor regulatory impact and therefore a Regulation Impact Statement is not required. The OBPR reference number is 43800.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on 1 January 2022.

Details of the Customs Tariff Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021

Section 1 – Name

This section provides that the title of the instrument is the *Customs Tariff Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Amendment Regulations commence.

Table item 1 provides for the whole instrument to commence on 1 January 2022.

Section 3 – Authority

This section sets out the authority under which the Amendment Regulations are to be made, which is the *Customs Tariff Act 1995* (the Customs Tariff Act).

Section 4 – Schedules

This section sets out the formal enabling provision for the Schedule to the Amendment Regulations, and provides that, each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.

The *Customs Tariff Regulations 2004* (the Customs Tariff Regulations) is amended by the Amendment Regulations.

Schedule 1—Amendments

Customs Tariff Regulations 2004

Item [1] – Regulation 3

Schedule 7 to the Customs Tariff Act specifies the rate of customs duty that applies to certain *Chilean originating goods* in accordance with the Australia-Chile Free Trade Agreement. *Chilean originating goods* means goods that, under Division 1F of Part VIII of the *Customs Act 1901* (the Customs Act), are Chilean originating goods.

Regulation 3 of the Customs Tariff Regulations defines *Schedule 7 item* to mean an item in the table in Schedule 7 to the Customs Tariff Act. The table items in Schedule 7 to the Customs Tariff Act are to identify the prescribed subset of goods of a particular tariff subheading to which the preferential rate of customs duty in column 3 of Schedule 7 to the Customs Tariff Act applies. For each *Schedule 7 item* mentioned in column 2 of an item in

Schedule 1B to the Customs Tariff Regulations, the goods mentioned in column 3 of that item are prescribed by regulation 4B of the Customs Tariff Regulations, including by reference to their tariff classification.

The Customs Tariff Regulations prescribed goods for table item 674 of Schedule 7 of the Customs Tariff Act. The *Customs Tariff Amendment (Incorporation of Proposals and Other Measures) Act 2021* (the Amendment Act) repealed table item 674 of Schedule 7 to the Customs Tariff Act because the customs duty applicable to goods previously covered by that item had phased down to ‘free’, as provided for by subparagraph 16(1)(m)(ii) of the Customs Tariff Act.

As a result, the definition of *Schedule 7 item* under regulation 3 of, regulation 4B of, and Schedule 1B to, the Customs Tariff Regulations is also redundant. Regulation 4B and Schedule 1B are repealed by items [3] and [5] of the Amendment Regulations, respectively.

This item amends regulation 3 of the Customs Tariff Regulation to omit the definition of *Schedule 7 item* as a consequence of the repeal of table item 674 of Schedule 7 of the Customs Tariff Act.

Item [2] – Regulation 3

Schedule 8 to the Customs Tariff Act specifies the rate of customs duty that applies to certain *ASEAN-Australia-New Zealand (AANZ) originating goods* in accordance with the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area. *AANZ originating goods* means goods that, under Division 1G of Part VIII of the Customs Act, are AANZ originating goods.

Regulation 3 of the Customs Tariff Regulations defines *Schedule 8 item* to mean an item in the table in Schedule 8 to the Customs Tariff Act. The table items in Schedule 8 to the Customs Tariff Act are to identify the prescribed subset of goods of a particular tariff subheading to which the preferential rate of customs duty in column 3 of Schedule 8 to the Customs Tariff Act applies. For each *Schedule 8 item* mentioned in column 2 of an item in Schedule 2 to the Customs Tariff Regulations, the goods mentioned in column 3 of that item are prescribed by regulation 5 of the Customs Tariff Regulations, including by reference to their tariff classification.

The Customs Tariff Regulations prescribed goods for table items 113, 114, 123, 123A, 143, 144, 145, 146, 179, 180, 212, 213, 238, 335, 338, 338A, 339, 362A, 362B, 362J, 362K, 368 and 369 of Schedule 8 of the Customs Tariff Act. The Amendment Act repealed those table items of Schedule 8 of the Customs Tariff Act because the customs duty applicable to goods previously covered by those items phased down to ‘free’, as provided for by subparagraph 16(1)(n)(ii) of the Customs Tariff Act.

As a result, the definition of Schedule 8 item under regulation 3 of, regulation 5 of, and Schedule 2 to, the Customs Tariff Regulations is also redundant. Regulation 5 and Schedule 2 are repealed by items [3] and [5] of the Amendment Regulations, respectively.

This item amends regulation 3 of the Customs Tariff Regulations to omit the definition of *Schedule 8 item* as a consequence of the repeal of aforementioned table items of Schedule 8 to the Customs Tariff Act.

Item [3] – Regulations 4B and 5

This item repeals regulations 4B and 5 of the Customs Tariff Regulations.

This amendment is made as a consequence of the amendments made by the Amendment Act, as per the notes for items [1] and [2] of the Amendment Regulations.

Item [4] – Schedule 1A (after table item 2)

This item inserts new table items 2A to 2Q into Schedule 1A (Peruvian originating goods) to the Customs Tariff Regulations.

Regulation 3 of the Customs Tariff Regulations defines *Schedule 6A item* to mean an item in the table in Schedule 6A to the Customs Tariff Act. The table items in Schedule 6A to the Customs Tariff Act are to identify the prescribed subset of goods of a particular tariff subheading to which the preferential rate of customs duty in column 3 of Schedule 6A to the Customs Tariff Act applies. For each *Schedule 6A item* mentioned in column 2 of an item in Schedule 1A to the Customs Tariff Regulations, the goods mentioned in column 3 of that item are prescribed by regulation 4A of the Customs Tariff Regulations, including by reference to their tariff classification.

The *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* (the HS2022 Changes Act) amended the Customs Tariff Act to implement the outcome of the sixth review of the Harmonized Commodity Description and Coding System (the Harmonized System). In particular, the Customs Tariff Act was amended to update tariff classifications, including those classifications as listed in Schedule 6A to the Customs Tariff Act, for (a) gloves, of a kind used for medical, dental or veterinary purposes; (b) non-digital television cameras and non-digital video camera recorders; and (c) unmanned aircraft, with a non-digital camera.

The amendments in item [4] of the Amendment Regulations are required to reflect the changes to the tariff subheadings made by the HS2022 Changes Act. New table items 2A to 2Q prescribes goods for items 187A, 388 to 338C and 389A to 389K of Schedule 6A to the Customs Tariff Act with respect to the goods mentioned. The changes maintain the type of goods that are to be prescribed.

For example, for item 187A of Schedule 6A to the Customs Tariff Act for goods classified to subheading 4015.12.00, the following goods are prescribed:

Gloves, of a kind used for medical, dental or veterinary purposes

This means that only these goods will be subject to the phasing rates of duty set out in item 187A of Schedule 6A to the Customs Tariff Act. All other goods classified to subheading 4015.12.00 will be subject to a ‘Free’ rate of customs duty.

Item [5] – Schedules 1B and 2

This item repeals Schedules 1B and Schedule 2 to the Customs Tariff Regulations. Schedule 1B deals with goods covered by the Australia-Chile Free Trade Agreement, other than non-wovens, classified to subheading 9619.00.90. Schedule 2 deals with those goods

covered by the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area, classified to tariff subheadings classified listed in that Schedule.

This amendment is made as a consequence of the amendments made by the Amendment Act, as per the notes for items [1] and [2] of the Amendment Regulations. This change does not alter or change the applicable preferential rate of customs duty applicable to goods classified to tariff subheadings listed in Schedules 1B and 2 to the Customs Tariff Regulations; being the rate of 'Free' by operation of subparagraphs 16(1)(m)(ii) and 16(1)(n)(ii) of the Customs Tariff Act.

Item [6] – Schedule 3 (table item 2)

Table item 2 in Schedule 3 to the Customs Tariff Regulations prescribes the subset of goods that are insecticides, herbicides, anti-sprouting products and plant-growth regulators classified to subheading 3808.59.90 for table item 135 in Schedule 8B of the Customs Tariff Act. Schedule 3 of the Customs Tariff Regulations and Schedule 8B of the Customs Tariff Act deals with certain goods covered by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

This item repeals table item 2 in Schedule 3 to the Customs Tariff Regulations.

This amendment is made as a consequence of the amendment made by item 425 of the *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021*, which repeals table item 135 in Schedule 8B of the Customs Tariff Act dealing with insecticides, herbicides, anti-sprouting products and plant-growth regulators. This change does not alter or change the applicable preferential rate of customs duty applicable to the subset of goods, per table item 2 of Schedule 3 to the Customs Tariff Regulations, classified to subheading 3808.59.90. The rate of 'Free' is maintained by operation of subparagraph 16(1)(nb)(ii) of the Customs Tariff Act.

Statement of Compatibility with Human Rights

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

Customs Tariff Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of Disallowable Legislative Instrument

The Harmonized Commodity Description and Coding System, commonly referred to as the Harmonized System, is a system of goods classification based on internationally agreed descriptors for goods and related four and six digit codes. These four and six digit tariff classifications uniquely identify all traded goods and commodities and are uniform across all countries that have adopted the Harmonized System.

The World Customs Organization (WCO) maintains the Harmonized System and WCO members (including Australia) review and update it on a five yearly basis. The sixth review of the Harmonized System was completed in June 2019. The updated codes and descriptions which are the outcome of the sixth review, commonly referred to as the 2022 Harmonized System, will commence on 1 January 2022.

The *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* (the HS2022 Changes Act) amends the *Customs Tariff Act 1995* to implement the 2022 Harmonized System and amends the tariff headings and subheadings that identify tradeable goods imported generally, and in accordance with one Free Trade Agreement. Relevantly, the tariff classification headings and subheadings for Peruvian originating goods (which are originating goods in accordance with the Peru-Australia Free Trade Agreement (PAFTA)) were amended. The associated preferential rates of customs duty that apply to these goods were maintained.

The purpose of the Disallowable Legislative Instrument titled *Customs Tariff Amendment (2022 Harmonized System Changes and Other Measures) Regulations 2021* is to amend the *Customs Tariff Regulations 2004* (the Customs Tariff Regulations) to update the tariff classification headings and subheadings for Peruvian originating goods. These amendments ensure that Peruvian originating goods prescribed in the Customs Tariff Regulations can continue to be eligible for the preferential rates of customs duty in accordance with the PAFTA.

The Disallowable Legislative Instrument also repeals a number of spent provisions relating to the Australia-Chile Free Trade Agreement, the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

The Disallowable Legislative Instrument commences on 1 January 2022, being the same time that the HS2022 Changes Act commences.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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Parliamentary Secretary to the Minister for Home Affairs