

Customs Tariff Regulations 2004 2004 No. 289

EXPLANATORY STATEMENT

STATUTORY RULES 2004 NO. 289

Issued by the Authority of the Minister for Justice and Customs

Customs Tariff Act 1995

Customs Tariff Regulations 2004

The *US Free Trade Agreement Implementation Act 2004* (the FTA Act) consists of ten schedules that amend the relevant Australian legislation to fulfil Australia's obligations under the Australia-United States Free Trade Agreement (the Agreement). Part 1 of Schedule 1 to the FTA Act amends the *Customs Act 1901* (the Customs Act) to fulfil obligations under the Agreement, in respect of Rules of Origin.

The associated *US Free Trade Agreement Implementation (Customs Tariff) Act 2004* (the FTA Tariff Act) contains amendments to the *Customs Tariff Act 1995* (the Act) to implement Australia's obligations under the Agreement by enacting lower rates of customs duty for imported goods that are US originating goods. US originating goods are goods from the United States of America that satisfy the new rules of origin which are contained in new Division 1C of Part VIII of the Customs Act, inserted by the FTA Act.

The FTA Tariff Act also inserted a new regulation-making power into the Act. New section 20A of the 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 purpose of the Regulations is to support the implementation of the revised customs tariff arrangements for US originating goods.

The FTA Act and the FTA Tariff Act both received the Royal Assent on 16 August 2004. Relevant provisions of those Acts which amend the Act and the Customs Act are expressed to commence on the later of 1 January 2005 or the day on which the Agreement comes into force for Australia. Details of these commencement provisions are set out in [Attachment A](#).

For most US originating goods, the rate of customs duty is "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 are specified in new Schedule 5 to the Act with the goods identified by reference to their 8 figure tariff classification under existing Schedule 3 to the Act.

In the Agreement itself, some US originating goods that are to be subject to the preferential duty rates are specified by reference to their tariff classification under the Harmonized US Tariff Schedule of the United States (the US Tariff). In some circumstances, the goods classified under tariff classifications in the US Tariff do not exactly match the goods classified under similar tariff classifications in the Act, which may be wider than the US Tariff counterpart. Therefore, if the tariff classifications under the Act are used, without limitation, to specify the goods to which the preferential rates of customs duty apply, the concession would be wider than the Agreement allows.

To fully implement the Agreement, in a small number of circumstances where the US tariff classification is narrower, not all of the goods that are classified under particular tariff classifications mentioned in an item in Schedule 5 to the Act are to be subject to the preferential rates of duty. Accordingly, these duty rates are expressed to apply to prescribed goods only.

The Regulations implement some of the preferential rates of customs duty under the Agreement by prescribing, for each of the relevant items in the table in Schedule 5 to the Act, the goods that are to be subject to these preferential rates of customs duty. The goods subject to these preferential rates are identified by reference to their classification under the US Tariff.

Details of the Regulations are set out in Attachment B.

The Regulations commence on the commencement of item 34 of Schedule 1 to the FTA Tariff Act, which is the later of 1 January 2005 or the day on which the Agreement comes into force for Australia.

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ATTACHMENT A

DETAILS OF THE COMMENCEMENT PROVISIONS

New Division 1C of Part VIII of the *Customs Act 1901*

The *US Free Trade Agreement Implementation (Customs Tariff) Act 2004* (the FTA Tariff Act) contains amendments to the *Customs Tariff Act 1995* (the Act) to implement the Australia-United States Free Trade Agreement (the Agreement) by enacting lower rates of customs duty for imported goods that are US originating goods. US originating goods are goods from the United States of America that satisfy new rules of origin which are contained in new Division 1C of Part VIII of the Customs Act, inserted by Part 1 of Schedule 1 to the *US Free Trade Agreement Implementation Act 2004* (the FTA Act).

New Division 1C commences pursuant to item 2 of the table in subsection 2(1) of the FTA Act on the later of 1 January 2005 or the day on which the Agreement comes into force for Australia.

New section 20A of the Act

New section 20A of the 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. This section is inserted by item 14 of Schedule 1 to the FTA Tariff Act.

New section 20A commences pursuant to item 2 of the table in subsection 2(1) of the FTA Tariff Act on the later of 1 January 2005 or the day on which the Agreement comes into force for Australia.

New Schedule 5 to the Act

For most US originating goods, the rate of customs duty is "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 are in new Schedule 5 to the Act and the goods are identified by reference to their 8 figure tariff classification under Schedule 3 to the Act. New Schedule 5 is inserted by item 34 of Schedule 1 to the FTA Tariff Act.

New Schedule 5 commences pursuant to item 4 of the table in subsection 2(1) of the FTA Tariff Act on the later of 1 January 2005 or the day on which the Agreement comes into force for Australia.

ATTACHMENT B

DETAILS OF THE *CUSTOMS TARIFF REGULATIONS 2004*

Regulation 1 - Name of Regulations

Regulation 1 provides that the Regulations are the *Customs Tariff Regulations 2004*.

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence on the commencement of item 34 of Schedule 1 to the *US Free Trade Agreement Implementation (Customs Tariff Act 2004)* (the FTA Tariff Act). Item 34 of Schedule 1 to the FTA Tariff Act inserted Schedule 5 into the *Customs Tariff Act 1995* (the Act) and commences on the later of 1 January 2005 or the day on which the Australia-United States Free Trade Agreement (the Agreement) comes into force for Australia.

Regulation 3 - Definitions

Regulation 3 inserts the following definitions for the purposes of the Regulations:

- (a) **Act** which means the *Customs Tariff Act 1995*;
- (b) **Harmonized US Tariff Schedule** which has the meaning given by section 153YA of the *Customs Act 1901*;
- (c) **Schedule 5 item** which means an item in Schedule 5 to the Act; and
- (d) **US classification** which means a classification under the Harmonized US Tariff Schedule.

Regulation 4 - Schedule 5 of the Act - prescribed goods

Regulation 4 provides that for each item of Schedule 5 to the Act mentioned in column 2 of an item in Schedule 1 to the Regulations, the goods classified to the US classification, or 1 of the US classifications, mentioned in column 3 are prescribed. The effect of this is that goods classified to the US classification, or 1 of the US classifications, mentioned in column 3 of Schedule 1 to the Regulations attract preferential rates of customs duty.

Schedule 1- Prescribed goods

Schedule 1 sets out each item in the table in Schedule 5 to the Act that applies to prescribed goods only and the relevant classification under the US Tariff for each of the items. For example, for item 921 of Schedule 5 to the Act, the classification of 6401.92.90 under the US Tariff is prescribed.