

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 32, 2015

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901

Customs (International Obligations) Regulation 2015

Section 270 of the *Customs Act 1901* (the Act) provides that the Governor-General may make regulations prescribing all matters which by the Act are required or permitted to be prescribed for giving effect to the Act.

The purpose of the *Customs (International Obligations) Regulation 2015* (the Regulation) is to remake relevant components of the *Customs Regulations 1926* (1926 Regulation). The *Legislative Instruments Act 2003* (LIA) provides that all legislative instruments, other than exempt instruments, progressively ‘sunset’ according to the timetable set out in the LIA. Legislative instruments made before 1930 that were registered on the Federal Register of Legislative Instruments on 1 January 2005, such as the 1926 Regulation, sunsets on 1 April 2015. When a legislative instrument sunsets, it is automatically repealed under section 50 of the LIA.

The Regulation would remake the provisions within the 1926 Regulation that give effect to Australia’s international obligations. Unlike those in the *Customs Regulation 2015*, the provisions relating to international obligations are exempt from any future sunset requirements under section 54 of the LIA and therefore have been placed in a separate instrument.

The Regulation would make significant improvements to the existing provisions by repealing redundant provisions, simplifying language and restructuring provisions that have become difficult to navigate because of multiple amendments over the past 89 years.

Further details of the Regulation are set out in the [Attachment](#).

The Regulation commences on 1 April 2015.

In February 2015, the Australian Customs and Border Protection Service (ACBPS) released an exposure draft of the Regulation and associated explanatory material for industry comment on the ACBPS website and via email to members of the ACBPS National Consultative Committee. The ACBPS received 2 submissions from industry participants however most feedback fell outside the scope of the sunset exercise. Noting the value of this stakeholder feedback, the ACBPS will take account of this feedback as part of its post-implementation strategy.

The Regulation is a legislative instrument for the purposes of the LIA.

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Statement of Compatibility with Human Rights

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

Customs (International Obligations) Regulation 2015

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

Overview of the Regulation

The purpose of the *Customs (International Obligations) Regulation 2015* (the Regulation) is to replace relevant provisions of the *Customs Regulations 1926* (1926 Regulations) which relate to Australia's international obligations. The 1926 Regulations will sunset on 1 April 2015 in accordance with section 50 of the *Legislative Instruments Act 2003*.

Section 270 of the *Customs Act 1901* (the Act) provides that the Governor-General may make regulations prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed to give effect to the Act.

The *Customs (International Obligations) Regulation 2015* (Regulation) is consistent with the Government's deregulation agenda and repeals redundant provisions that were in the 1926 Regulations. It will also restructure provisions and simplify language that has been the subject of multiple amendments since 1926.

The Regulation commences on 1 April 2015.

Human Rights implications

The Regulation does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

The Regulation does not raise any human rights issues.

Minister for Immigration and Border Protection

ATTACHMENT

Details of the Customs (International Obligation) Regulation 2015

Part 1 – Preliminary

Division 1 – Preliminary

Section 1 – Name

This section provides that the title of the Regulation is the *Customs (International Obligations) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on 1 April 2015.

Section 3 – Authority

This section provides that the Regulation is made under the Act.

Section 4 – Definitions

This section contains defined terms used in the Regulation.

Part 2 – Exemptions under the Torres Strait Treaty

Section 5 – Notices requesting exemptions

This section sets out the information that must be included in a notice given by the master of a ship or the pilot of an aircraft when requesting an exemption under the Torres Strait Treaty for the purposes of subsection 30A(4) of the Act.

Part 3 – Exportation of goods

Division 1 – Exportation of goods to Singapore

Section 6 – Declaration by representative of exporter

This section is made for the purposes of section 126AA of the Act and sets out what information a representative of an exporter must declare in writing before the export of goods to Singapore.

The section also provides for additional requirements which may need to be satisfied before making such a declaration.

Section 7 – Record keeping for the producer or manufacturer

This section provides that for the purposes of section 126AB of the Act, the producer or manufacturer (whether or not the producer or manufacturer is the exporter) of the goods mentioned in section 126AB of the Act must keep the records set out in the table.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 8 – Record keeping for other exporters

This section sets out, for the purposes of section 126AB of the Act, the records that must be kept by an exporter, exporting goods to Singapore, who is not the producer or manufacturer of the goods.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 9– Form in which records to be kept

This section sets out for the purposes of section 126AB of the Act, the form in which records are to be kept.

Division 2 – Exportation of goods to Thailand

Section 10 – Record keeping by exporter who is not the producer of goods

This section provides that for the purposes of subsection 126AG(1) of the Act, an exporter of goods mentioned in subsection 126AG(1) of the Act must keep the records set out in the table, unless the exporter is also the producer of the goods.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 11 – Record keeping by producer of goods

This section provides that for the purposes of subsection 126AG(1) of the Act, the producer of goods, whether or not the producer is the exporter of the goods, must keep the records set out in the table.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 12 – Form in which records to be kept

This section sets out for the purposes of section 126AG(1) of the Act, the form in which records are to be kept.

Division 3 – Exportation of goods to New Zealand

Section 13 – Record keeping by exporter who is not the producer or principal manufacturer of goods

This section provides that for the purposes of subsection 126AJB(1) of the Act, an exporter of goods must keep the records of goods set out in the table, unless the exporter is also the producer or principal manufacturer of the goods.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 14 – Record keeping by the producer or principal manufacturer of goods

This section provides that for the purposes of subsection 126AJB(1) of the Act, the producer or principal manufacturer of goods whether or not the producer or principal manufacturer is the exporter of the goods, must keep the records set out in the table.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 15 – Form in which records to be kept

This section sets out for the purposes of section 126AJB(1) of the Act, the form in which records are to be kept.

Division 4 – Exportation of goods to Chile

Section 16 – Record keeping by exporter who is not the producer of goods

This section provides that for the purposes of subsection 126AKB(1) of the Act, an exporter of goods must keep the records set out in the table, unless the exporter is also the producer of the goods.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 17 – Record keeping by the producer of goods

This section provides that for the purposes of 126AKB(1) of the Act, the producer of goods, whether or not the producer is the exporter of the goods, must keep the records set out in the table.

The section also provides for the minimum time the records must be kept and where such records may be kept.

Section 18– Form in which records to be kept

This section sets out for the purposes of section 126AKB(1) of the Act, the form in which records are to be kept.

Part 4 – Delivery of goods on giving of general security of undertaking

Section 19 – Reference to duty to include relevant dumping duty

This section provides that in this Part, a reference to duty includes a reference to relevant dumping duty that is payable in relation to imported goods.

Section 20 – Bringing goods into Australia on temporary basis

This section provides what goods may be brought into Australia on a temporary basis without payment of duty for the purposes of subsection 162A(1) of the Act.

Section 21 – Dealing with goods brought into Australia on temporary basis

This section provides that for subsection 162A(4) of the Act, if goods are brought into Australia on a temporary basis without payment of duty, the person to whom the goods are delivered must not, except with the consent of a Collector, do any of the following in relation to the goods:

- lend, sell, pledge, mortgage, hire, give away or exchange the goods;
- part with possession of the goods;
- otherwise dispose of the goods;
- alter the goods in any way.

The section also provides that applications may be made to the Administrative Appeals Tribunal for review of a decision of the Collector to refuse to give consent to do any of the things mentioned in this section.

Section 22 – Circumstances in which duty is not payable

This section provides that for paragraph 162A(5)(b) of the Act, a circumstance in relation to duty not being payable on the goods is that the goods have no value because:

- they have been accidentally damaged or destroyed; or
- if the goods are an animal—it has died, or has been destroyed, because of an accident or illness.

Part 5 – Refunds, rebates and remissions of duty—originating goods

Division 1 – Circumstances for refund, rebate or remission

Section 23 – Circumstances for refunds, rebates and remissions of duty

This section provides the circumstances in which a refund, rebate or remission may be made by a Collector for the purposes of paragraph 163(1)(b) of the Act.

Section 24 – Whether goods are originating goods—refund not payable in certain circumstances

This section provides that a refund is not payable under item 6 of the table in clause 1. of Schedule 6 to the *Customs Regulation 2015* to the extent that an application for a refund relates to one or more of the factors mentioned in this section.

Division 2 – Application for refund, rebate or remission

Section 25 – When an application is required for a refund, rebate or remission of duty

This section provides that for section 163(1AA) of the Act, an application is required for a refund, rebate or remission of duty under this Part.

Section 26 – Application for a refund, rebate or remission of duty

This section provides how an application for a remission, rebate or refund must be made.

Section 27 – Communication of an application for refund, rebate or remission by computer to Customs

This section provides that an application has been communicated to Customs when an electronic message is transmitted by Customs to the person who made the application stating that the application has been accepted and the refund, rebate or remission has been approved or the application has been received but further information is required.

Section 28 – Period for making an application for refund, rebate or remission

This section provides that the application for a remission of duty must be made before the goods to which the remission relates leave the control of Customs.

This section also provides when an application for refund or duty under this Part must be made and the effect on an application if a notice under section 126E of the Act is in force.

Section 29 – Procedures for dealing with application for refund, rebate or remission

This section sets out procedures to be followed by Customs in dealing with applications for a refund, rebate or remission of duty under this Part.

Division 3 – Conditions for refund, rebate or remission

Section 30 – Conditions for a refund, rebate or remission of duty—drawback

For the purposes of subparagraph 163(1)(b) of the Act, this section sets out conditions and restrictions to which a refund, rebate or remission of duty is subject.

Division 4 – Amount of refund, rebate or remission

Section 31 – Calculation of refund, rebate or remission of duty

For the purposes of subsection 163(1A) of the Act, this section provides the amount of a refund, rebate or remission of duty that may be made by a Collector under this Part.

Part 6 – UN-sanctioned goods

Section 32 – UN-sanctioned goods

This section provides that for subsection 233BABAA(1) of the Act, Schedule 1 of this Regulation prescribes goods that are UN-sanctioned goods.

Part 7 – Drawbacks of import duty

Division 1 – Drawback of dumping duty

Section 33 – Reference to import duty including relevant dumping duty

This section provides that in this Part, a reference to import duty includes a reference to relevant dumping duty that has been paid in relation to imported goods.

Division 2 – Goods for which drawback may be paid

Section 34 – Drawback on import duty on goods—general

This section provides that for section 168 of the Act, drawback of import duty may be paid, in accordance with this Part, on the exportation of imported goods for which import duty has been paid.

The section also provides that drawback of import duty is not payable on second-hand goods and provides for what second-hand goods are.

Section 35 – Drawback on import duty on goods—manufactured goods and processed or treated goods

This section provides when drawback of import duty may be paid for goods which were used in the manufacture, process or treatment of other goods in Australia.

Division 3 – Circumstances when drawback is not payable

Section 36 – Circumstances when drawback of import duty is not payable

This section specifies circumstances in which drawback of import duty is not payable for the purposes of section 34 and 35 of the Regulation.

Division 4 – Conditions relating to drawback

Section 37 – Conditions relating to drawback of import duty

This section sets out the conditions which must be satisfied in order for a drawback of import duty to be paid on the exportation of goods.

Section 38 – Additional conditions for tobacco and tobacco products

This section sets out additional conditions which must be satisfied in order for a drawback of import duty to be paid on tobacco and tobacco products.

Section 39 – Drawback of import duty for goods imported more than once

This section provides that for goods imported more than once, the import duty for which drawback is payable is the import duty paid for the importation of the goods last preceding the exportation of the goods in relation to which drawback is payable.

Division 5 – Amount of claim for drawback

Section 40 – Amount of claim for drawback of import duty

This section sets out for paragraph (b) of items 3 and 4 of the table in section 37 of the Regulation how to work out the amount of a claim for drawback of import duty.

Section 41 – Amount of drawback for goods mixed with similar goods— manufactured goods or processed or treated goods

This section sets out the amount of drawback that may be paid on exportation if the relevant imported goods in section 35 of the Regulation were mixed with similar goods produced in Australia before the mixture, or part of the mixture, of goods was:

- used in the manufacture of other goods; or
- subjected to a process or treatment for the purpose of producing other goods.

Section 42 – Deduction of rebates from drawback payable

This section provides that the amount of any drawback of import duty that may be paid on the exportation of goods is reduced by an amount equal to the amount of any rebate of import duty under this Part that has been made.

Part 8 – Anti-dumping duties

Division 1 – Ordinary course of trade

Section 43 – Determination of cost of production or manufacture

For subsection 269TAAD(5) of the Act, this section sets out:

- the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount to be the cost of production or manufacture of like goods in a country of export; and
- factors that the Minister must take account of for that purpose.

Section 44 – Determination of administrative, selling and general costs

For subsection 269TAAD(5) of the Act, this section sets out:

- the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and
- factors that the Minister must take account of for that purpose.

Division 2 – Normal value of goods

Section 45 – Determination of profit

For subsection 269TAC(5B) of the Act, this section sets out:

- the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount to be the profit on the sale of goods; and
- factors that the Minister must take account of for that purpose.

Section 46 – Determining whether conditions exist – matters to which the Minister must have regard

This section sets out, for subsection 269TAC(5E) of the Act, the matters to which the Minister must have regard to be satisfied that the conditions in paragraph 269TAC(5D)(a) or (b) exist.

Section 47 – Determination of value – countries to which subsection 269T(5D) of the Act does not apply

This section provides that for subsection 269TAC(5J) of the Act, Schedule 2 of the Regulation prescribes countries to which subsection 269TAC(5D) of the Act does not apply.

Division 3 – Circumvention activities

Section 48– Circumvention activities

This section prescribes the circumstance for the purposes of subsection 269ZDBB(6) of the Act.

This section also provides for the factors which the Commissioner may have regard to for the purpose of determining whether a circumvention good is slightly modified.

Part 9 – Transitional matters

Section 49 – Approved forms and approved statements

This section creates a transitional provision for approved forms and statements. The effect of this provision is that if a form or statement approved under section 4A of the Act before the repeal of the 1926 Regulation is approved for the purposes of a provision of that Regulation and this Regulation contains a corresponding provision, the form or statement has effect for the corresponding provision. For example a form approved for the purposes of Regulation 128 of the 1926 Regulation (application for a refund, rebate or remission of duty) is an approved form for the purposes of new section 26 of this Regulation.

Schedule 1 – UN-sanctioned goods

Part 1 – Prohibited Imports Regulations

Clause 1 – Prohibited Imports Regulations

This clause provides that for section 32 of the Regulation the goods specified in an item in the table are UN-sanctioned goods.

Part 2 – Prohibited Exports Regulations

Clause 2 – Prohibited Exports Regulations

This clause provides that for section 32 of the Regulation, the goods specified in an item in the table are goods UN-sanctioned goods.

Schedule 2 – Countries to which subsection 269TAC(5D) of the Act does not apply

Clause 1 – Countries

This clause provides that for section 47 of the Regulation, subsection 269TAC(5D) of the Act does not apply to the countries mentioned in the table.