

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

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

Customs Act 1901

Customs Amendment (Excluded Goods) Regulation 2016

The *Customs Act 1901* (the Act) relates to customs functions and provides, among other things, for the importation and exportation of goods to and from Australia.

Subsection 270(1) of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters, which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to this Act.

The Tariff Concession System (TCS) is designed to help Australia's industry become more internationally competitive and allows duty-free entry of certain goods where there is no local industry that produces these goods.

Part XVA of the Act provides for the making of Tariff Concession Orders (TCOs) in certain circumstances; goods that are covered by a TCO may then be imported into Australia free from customs duty. However, subsection 269SJ(1) of the Act provides, in part, that the Comptroller-General of Customs must not make a TCO for goods declared by the regulations to be goods to which a TCO should not extend.

Section 145 of the *Customs Regulation 2015* (the Customs Regulation) provides, in part, that for the purposes of subsection 269SJ(1) of the Act, a TCO cannot be made for goods prescribed by clause 1 or 2 of Schedule 9 of the Customs Regulation. Column 1 of clause 2 of Schedule 9 lists goods by tariff heading or tariff subheading to which a TCO should not extend. Column 2 lists Goods for which an exemption to the column 1 exclusion exists. The reason for the exemption is that, in general, there is no known local manufacturer of those goods.

The *Customs Amendment (Excluded Goods) Regulation 2016* (the Amendment Regulation) amends the Customs Regulation to remove goods of tariff subheading 3904.10.00 (polyvinyl chloride, not mixed with any other substances) from Schedule 9. This will allow an application for a TCO to be made for these goods. This change is made in response to the recent closure of Australia's only polyvinyl chloride resin manufacturer.

In addition to the removal of goods of tariff subheading 3904.10.00 from Schedule 9 of the Customs Regulation, the proposed Amendment Regulation also removes a definition which has become redundant as a consequence of the removal.

The current inclusion in Column 1 of table item 10 in clause 2 of Schedule 9 prevents a TCO from being issued for goods classified to tariff subheading 3904.10.00. Column 2 of table item 10 lists goods within the same tariff subheading that are exempt from the column 1 exclusion, and includes reference to ISO 1628-2:1998 (Plastics), which is defined in Schedule 9 and section 4 of the Customs Regulations.

The Amendment Regulation removes Item 10 from clause 2(1) of Schedule 9. This means that an application for a TCO can be made for polyvinyl chloride resin. The TCS allows any person to apply at any time for a TCO to import goods at a concessional rate of Free. Each application is considered by the delegate of the Comptroller-General of Customs on the basis of the criteria set out in Part XVA of the Act. The Amendment Regulation also removes the definitions for ISO 1628-2:1998 (Plastics), as these are now redundant.

Details of the Amendment Regulation are set out in [Attachment A](#).

The Human Rights Statement of Compatibility is at [Attachment B](#).

Consultation was undertaken with local importers and industries that use polyvinyl chloride resin and goods produced from the resin in their manufacturing processes.

The Amendment Regulation is to commence on the day after registration on the Federal Register of Legislation.

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Details of the *Customs Amendment (Excluded Goods) Regulation 2016*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Customs Amendment (Excluded Goods) Regulation 2016* (the Amendment Regulation).

Section 2 – Commencement

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

The Amendment Regulation commences on the day after this instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amendment Regulation is made under the *Customs Act 1901* (the Act).

The purpose of this section is to set out the Act under which the Amendment Regulation is to be made.

Section 4 – Schedule(s)

This section provides for each instrument that is specified in a Schedule to this instrument 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 purpose of this section is to provide for how amendments in this Amendment Regulation are to operate.

Schedule 1 – Amendments

Customs Regulation 2015

The items in Schedule 1 set out in detail the amendments to the *Customs Regulation 2015* (the Customs Regulation).

Item 1 – Section 4 (definition of ISO 1628-2:1998 (Plastics))

This item repeals the definition of ISO 1628-2:1998 (Plastics) in Section 4 of the Customs Regulation as this is no longer required following the commencement of the Amendment Regulation and removal of table item 10 from clause 2(2) of Schedule 9.

Item 2 – Subclause 2(1) of Schedule 9 (table item 10)

Subclause 2(1) of Schedule 9 (table item 10) lists goods by tariff heading or tariff subheading to which a Tariff Concession Order (TCO) should not extend. It also lists items that are exempt from the exclusion, including a reference to ISO 1628-2:1998 (Plastics).

This item repeals Subclause 2(1) of Schedule 9 (table item 10), removing goods with the tariff subheading 3904.10.100 from the table. The list of goods which are exempt from the exclusion applying to goods in tariff subheading 3904.10.100 is also removed.

This will enable a TCO application to be made regarding Polyvinyl Chloride resin, not mixed with any other substance.

Item 3 – Subclause 2(2) of Schedule 9 (definition of *ISO 1628-2:1998 (Plastics)*)

This item repeals the definition is ISO 1628-2:1998 (Plastics) provided in Subclause 2(2) of Schedule 9. This definition is no longer required following the removal of table item 10 in Schedule 9.

Statement of Compatibility with Human Rights

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

Customs Amendment (Excluded Goods Schedule) Regulation 2016

This Legislative Instrument, titled the *Customs Amendment (Excluded Goods) Regulation 2016* (the Amendment Regulation), 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

The purpose of this Amendment Regulation is to amend the *Customs Regulation 2015* to allow an application for a tariff concession order (TCO) to be made for polyvinyl chloride resin. Part XVA of the *Customs Act 1901* (the Act) provides for the making of TCOs in certain circumstances. Each application is considered by the delegate of the Comptroller-General of Customs on the basis of the criteria set out in Part XVA of the Act. Goods that are covered by a TCO may then be imported into Australia at a concessional rate of Free.

The Amendment Regulation would also repeal a definition that becomes redundant as a result of the Amendment Regulation.

The Amendment Regulation will commence on the day after it is registered on the Federal Register of Legislation.

Human Rights implications

This Amendment Regulation does not engage any of the applicable rights or freedoms.

Conclusion

This Amendment Regulation is 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**