



Commerce (Trade Descriptions) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 08 December 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Peter Dutton
Minister for Immigration and Border Protection

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Part 1—Preliminary

1 Name

This is the *Commerce (Trade Descriptions) Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 April 2017.	1 April 2017

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Commerce (Trade Descriptions) Act 1905*.

Note: The Act is incorporated and read as one with the *Customs Act 1901*: see section 2 of the Act.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) covering;
- (b) label;
- (c) officer;
- (d) trade description.

In this instrument:

Act means the *Commerce (Trade Descriptions) Act 1905*.

analyst means a person appointed under section 22.

Section 6

article includes quantity of a substance.

drug means a substance used as a medicine or in the composition or preparation of a medicine.

examinable goods means:

- (a) goods to which a trade description is applied; or
- (b) goods covered by Subdivision B of Division 1 of Part 2 (which is about goods whose import is prohibited unless certain trade descriptions are applied); or
- (c) goods covered by Subdivision C of Division 1 of Part 2 (which is about goods that may be imported without a trade description).

fibre means a natural or artificial fibrous material.

food has the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

Note: Food therefore includes (among other things) anything declared under section 6 of the *Food Standards Australia New Zealand Act 1991* by the Minister administering that Act to be food for the purposes of that Act.

package includes:

- (a) a container, wrapper or other thing in which an article is packed, or 2 or more articles are packed, for sale as a single item; and
- (b) a holder to which an article is attached for the purpose of sale; and
- (c) a band that is fixed round an article or articles as part of the preparation of that article or those articles for sale.

Note: Paragraph 6(1)(b) affects the meaning of a reference to a package of goods.

prepacked article means an article of goods that are packed in a way in which goods of that kind are commonly packed for sale.

priority food means food other than non-priority food within the meaning of the *Country of Origin Food Labelling Information Standard 2016* as in force when this instrument commenced. For this purpose, assume that the Standard then defined “food” as having the same meaning as in the *Food Standards Australia New Zealand Act 1991*.

shoes: see section 20.

sock lining: see section 20.

sole: see section 20.

textile products means:

- (a) woven, knitted or felted materials manufactured from fibre; or
- (b) tops, yarns, threads or lace.

upper: see section 20.

6 Interpretation—weights, measures, packages of goods and bundles of articles

- (1) In this instrument:

- (a) a reference to the weight or measure of an article is a reference to the weight or measure of the article exclusive of the weight or measure of the package in which it is packed; and
 - (b) a reference to a package of goods is a reference to a package:
 - (i) in which the goods are fully or partly enclosed; or
 - (ii) to which the goods are attached; or
 - (iii) round which the goods are wound.
- (2) For the purposes of this instrument:
- (a) 2 or more articles of the same kind are taken to be a single article if they are packed together (whether by themselves or with one or more articles of one or more different kinds) for sale as a single article; and
 - (b) a single article of a particular kind is a single article even if it is packed together with one or more articles of one or more different kinds for sale as a single article; and
 - (c) if an article is packed in a way in which it could be sold as a single item, it is taken to be packed for sale as a single item unless the contrary is shown (for example on the packaging of the article).

7 This instrument does not apply to ship's stores or aircraft's stores

This instrument does not apply to ship's stores (as defined in section 130C of the *Customs Act 1901*) or aircraft's stores (as defined in that section) brought to Australia.

Section 8

Part 2—Trade descriptions of goods imported

Division 1—Prohibition of imports without trade descriptions

Subdivision A—Prohibition

8 Prohibition of certain imports unless trade description applied

A person must not import goods that are covered by Subdivision B and are not covered by Subdivision C, unless a trade description is applied to the goods in accordance with Division 2.

Note: Section 7 of the Act:
(a) provides the basis for this section; and
(b) provides for the forfeiture of goods imported in contravention of this section.

Subdivision B—Goods whose import without trade description is prohibited

9 General goods

This Subdivision covers the goods specified in the following table.

Goods whose import without trade description is generally prohibited	
Item	Goods
1	Food
2	Articles made from china, porcelain, earthenware or enamelled hollowware that are: (a) commonly used in connection with the serving of food; or (b) kitchenware or kitchen utensils
3	Each of the following: (a) textile products; (b) articles of apparel including shoes
4	Each of the following: (a) electrical appliances; (b) electrical apparatus or accessories, including electric incandescent lights
5	Toys
6	Each of the following: (a) cigars; (b) cigarettes; (c) manufactured tobacco; (d) cigarette papers; (e) cigarette tubes
7	Fertiliser, including a substance intended for fertilising soil, or commonly used to fertilise soil, other than: (a) animal or vegetable manure; or (b) crude material for the manufacture of fertiliser

Goods whose import without trade description is generally prohibited

Item	Goods
8	Portland cement
9	Wall, hearth and floor tiles
10	Sanitary and lavatory articles of earthenware, fireclay, vitreous china or similar substances or materials
11	Goods that are imported as prepacked articles and are not covered by another item of a table in this Subdivision

10 Goods at least half clad in certain materials

This Subdivision also covers the goods specified in the following table if more than half the outside area of the goods consists of:

- (a) leather or a material resembling leather; or
- (b) fibre or a material resembling fibre; or
- (c) vulcanite or a material resembling vulcanite; or
- (d) plastic.

Goods at least half clad in certain materials

Item	Goods
1	Attaché cases
2	Belts
3	Bicycle saddles
4	Bridles
5	Brief cases
6	Cases for musical instruments, radios or gramophones
7	Document cases
8	Folio cases
9	Gloves
10	Handbags
11	Harnesses
12	Hat boxes or cases
13	Horse collars
14	Kit bags
15	Leggings
16	Machine belting
17	Pouches
18	Purses
19	Razor strops
20	Saddles
21	Schoolbags
22	School cases
23	Shopping bags

Part 2 Trade descriptions of goods imported
Division 1 Prohibition of imports without trade descriptions

Section 11

Goods at least half clad in certain materials

Item	Goods
24	Sporting goods, including boxing gloves, footballs, golf bags and punching bags and balls
25	Suitcases
26	Trunks
27	Wallets

Subdivision C—Goods whose import without trade description is not prohibited

11 Goods that may be imported without trade description applied

This Subdivision covers the goods specified in the following table.

Goods that may be imported without trade description applied

Item	Kind of goods
1	Fish bait, other than prawns
2	Hay
3	Each of the following: (a) garden compost; (b) tan bark; (c) farmyard manure; (d) peatmoss; (e) leaf mould
4	Each of the following: (a) toilet preparations in compacts; (b) refills of those preparations
5	Each of the following: (a) single application hair dyes or hair bleaches; (b) single application home permanent hair waving kits
6	Cakes or tablets of toilet or medicinal preparations for use: (a) in washing; or (b) as a personal deodorant
7	Fire extinguisher refills
8	Each of the following: (a) photographic film; (b) photographic printing paper
9	Rolls of wallpaper
10	Therapeutic goods (within the meaning of the <i>Therapeutic Goods Act 1989</i>) that are: (a) goods compounded or made to the order of the purchaser of the goods or of a medical practitioner, dentist or veterinary surgeon; or (b) goods, the supply of which otherwise than on the written prescription of a medical practitioner, dentist or veterinary surgeon is an offence against a law in force in the Australian Capital Territory; or

Goods that may be imported without trade description applied

Item Kind of goods

(c) medicines or medicinal preparations for internal or external use

12 Packages of goods that may be imported without trade description applied

This Subdivision also covers goods imported in packages described in the following table.

Packages of goods that may be imported without trade description applied

Item Packages

1	Packages of goods other than food more than 75 kg in weight or 150 L in capacity
2	Packages of textile products, other similar articles, wearing apparel or hardware that: (a) are not packed for sale and are not ordinarily sold by weight, measure or number; or (b) are packed for sale as a single item, one of a pair, a pair or a set
3	Packages: (a) of less than 9 articles of a kind that are not food and are ordinarily sold by number; and (b) that are made wholly or partly of a transparent material so that if the package is exposed for sale, the number of articles in the package is clear to a purchaser
4	Sacks of agricultural produce other than food more than 25 kg weight that are customarily sold by weight, such as chaff
5	Bags of clay
6	Packages of liquid colouring materials: (a) that include directions to mix the entire contents of the package, or a stated portion of the contents, with a stated volume of paint (including enamel paint, but not including a 2-pack paint or artists' paint) of a type specified in the directions; and (b) where the measure of the contents of the package, or of the stated portion, is not more than 10% of that stated volume
7	Packages of yarns less than 15 g
8	Packages of one or more articles of a kind that is not food and is ordinarily sold by number, if the number of those articles in the package is marked on: (a) the package; or (b) a label that is attached to the package
9	Packages of goods other than food on which is set out a direction that the whole of the contents of the package, or each of a stated number of smaller packages in the package, is to be diluted to a stated weight or volume, such as packages of: (a) agricultural and horticultural chemicals; or (b) legume seed inoculants
10	Packages containing paper that is packed in a quantity of more than 5 kg
11	Packages of goods (other than drugs and food) less than 25 g or 25 ml
12	Packages of textile products that are packed for sale by: (a) weight in packages of more than 4 kg; or (b) length in packages of more than 25 m; or (c) area in packages of more than 25 m ²

Note: References in the table to particular numbers of kilograms or grams are to those numbers of kilograms or grams net: see paragraph 6(1)(a).

Section 13

13 Food that may be imported before 1 July 2018 without trade description applied

(1) This Subdivision also covers food specified in the following table.

Food that may be imported before 1 July 2018 without trade description applied	
Item	Food
1	Confectionery in novelty shapes, such as Easter eggs and Easter caskets
2	Honey in the comb that is contained in the original frame
3	Kippers

(2) This section is repealed at the start of 1 July 2018.

14 Packages of food that may be imported before 1 July 2018 without trade description applied

(1) This Subdivision also covers food imported in packages described in the following table.

Packages of food that may imported before 1 July 2018 without trade description applied	
Item	Packages
1	Packages of food more than 75 kg in weight or 150 L in capacity
2	Packages of food: (a) of less than 9 articles of a kind that are ordinarily sold by number; and (b) that are made wholly or partly of a transparent material so that if the package is exposed for sale, the number of articles in the package is clear to a purchaser
3	Sacks of agricultural produce that is food customarily sold by weight (such as wheat, maize, oats and potatoes), with weight more than 25 kg
4	Packages of ice cream or other frozen confections less than 300 ml
5	Packages of a single pie or pasty less than 250 g
6	Packages of a single cake, sponge or pudding less than 125 g
7	Packages of dried vegetables less than 15 g
8	Packages of wines labelled before 1 November 1969
9	Packages of alcoholic liquors in quantities of less than 75 ml or more than 10 L
10	Packages of one or more articles of food of a kind that is ordinarily sold by number, if the number of those articles in the package is marked on: (a) the package; or (b) a label that is attached to the package
11	Packages: (a) of articles of food (such as jelly crystals, blancmange powders, custard powders, junket tablets or junket powders), other than powdered milk or condensed milk; and (b) on which is set out a direction that the whole of the contents of the package, or each of a stated number of smaller packages in the package, is to be diluted to a stated weight or volume
12	Packages of food (other than pepper or other spices, herbs, instant tea or dried vegetables) less than 25 g or 25 ml

Packages of food that may imported before 1 July 2018 without trade description applied

Item Packages

13	Packages of confectionery, nuts, popcorn, potato crisps or savouries that are: (a) packages of less than 85 g weight or, for chocolate moulded in slab, block or bar form with or without added matter, less than 30 g weight; or (b) packages of another article if the substantial value of the combined articles is represented by that other article
14	Packages of dried fruit that are: (a) packages of less than 85 g weight; or (b) packages of another article if the substantial value of the combined articles is represented by that other article

Note: References in the table to particular numbers of kilograms or grams are to those numbers of kilograms or grams net: see paragraph 6(1)(a).

(2) This section is repealed at the start of 1 July 2018.

Division 2—Trade description

15 Trade description of goods to except them from prohibition on import

This Division sets out requirements for the character and manner of application of a trade description for goods to be excepted from the prohibition in section 8 on importing them.

16 Content of trade description—source country

- (1) The trade description must include, in prominent and legible characters:
 - (a) the name of the country in which the goods were made or produced; or
 - (b) if the goods are food imported in a package—a statement of the country of origin of the food (determined in accordance with the *Country of Origin Food Labelling Information Standard 2016*, as in force when this instrument commenced, and assuming that the Standard defined **food** as having the same meaning as it has in the *Food Standards Australia New Zealand Act 1991*); or
 - (c) if the goods are food from more than one country imported in a package—a statement that indicates that the food is of multiple origins or that it is comprised of imported ingredients.
- (2) Neither paragraph (1)(b) nor paragraph (1)(c) prevents paragraph (1)(a) from applying in relation to goods that are food and are imported before 1 July 2018.
- (3) Paragraph (1)(a) does not apply to the trade description of goods that are food and are imported after 30 June 2018.

Format of statement about priority food imported as prepacked articles

- (4) A statement described in paragraph (1)(b) or (c) about priority food imported as prepacked articles must be written in a clearly defined text box.

17 Content of trade description—true description of goods

- (1) The trade description must include a true description of the goods, in prominent and legible characters.
- (2) Subsection (1) does not apply to goods specified in item 2, 5, 8, 9 or 10 of the table in section 9.

18 English language trade description

The trade description must be in the English language.

19 Manner of applying trade description

Goods imported as prepacked articles

- (1) For goods imported as prepacked articles, the trade description must be marked on:

-
- (a) the packages in which the goods are packed; or
 - (b) a label attached to the package.

Other goods

- (2) For goods imported other than as prepacked articles the trade description must be in the form of a principal label or brand (including a mark, device, name, word, letter, numeral or symbol and a combination of 2 or more of those things) attached in a prominent position, and as permanently as practicable, to:
 - (a) the goods; or
 - (b) if attachment to the goods is impracticable—the principal coverings containing the goods for wholesale or retail.

Trade description not to be contradicted or obscured by other matter

- (3) A matter included on the label, brand or package must not contradict or obscure the trade description.

20 Extra rules about trade description of shoes

Statement about composition of sole, upper and quarter lining

- (1) The trade description of a shoe must include a true statement of the composition of each of the sole, upper and quarter lining of the shoe, indicating which one of those parts of the shoe that statement describes and according with whichever of the following paragraphs is relevant:
 - (a) the words “all leather”;
 - (b) if the part consists partly of leather—a statement of the materials composing the relevant part of the shoe;
 - (c) the word “synthetic” or “non-leather”.
- (2) For the purposes of subsection (1), a sole is taken to consist entirely of leather if the only material in the sole, other than leather, consists of one or more of the following:
 - (a) ordinary fillers of cork or waterproof felt;
 - (b) canvas used to reinforce the inner sole of the shoe;
 - (c) shanks made entirely of leather board, fibreboard, wood, metal or plastic, or a combination of such materials if the shanks are used only for strengthening the sole of the shoe at the waist;
 - (d) wood, plastic or metal used in the heel of the shoe;
 - (e) stiffening made entirely of leather board, fibreboard, metal, plastic, canvas or other similar substance, glue or other similar substance, or a combination of such materials, if the stiffening is used only to support the upper of the shoe at the heel or toe.

Application of trade description

- (3) The trade description must be impressed or embossed on the shoe in legible letters not less than 2.5 mm in height in one of the following positions:
 - (a) on the waist of the outer sole of the shoe;
 - (b) on the inside of the upper above the waist of the shoe;

Part 2 Trade descriptions of goods imported

Division 2 Trade description

Section 20

- (c) on the heel seat or waist area of the sock lining or, if there is no sock lining, on the heel seat or waist area of the inner sole;
 - (d) on the tongue of the shoe.
- (4) However, if the material of the shoe does not reasonably allow the trade description to be impressed or embossed on it, the trade description must be:
- (a) impressed or embossed on a label of rubber, plastic, durable cloth or another durable material; and
 - (b) attached to the shoe by vulcanisation, adhesion or another secure means.

This section does not apply to ski boots

- (5) This section does not apply to ski boots if the boots:
- (a) are designed to fit ski bindings; and
 - (b) have moulded plastic uppers and rigid soles; and
 - (c) do not have a replaceable sole section.

Definitions

- (6) In this instrument:

shoes means boots, shoes, sandals or other footwear but does not include socks, stockings or other hose.

sock lining means the thin slip of leather, paper or material that is attached to the upper surface of the inner sole of a shoe.

sole of a shoe means the part of the shoe (including the heel) that is under the foot of a person when the shoe is worn, other than:

- (a) the inner sole; or
- (b) the sock lining; or
- (c) thread, wax, rivets, pegs, nails, toe plates, heel plates, heel tips or heel caps.

upper of a shoe means the outer covering of the part of the shoe above the inner sole, but does not include a thread, lace, eyelet, buckle, button or other decoration.

Part 3—Inspection and analysis

21 Goods that may be inspected, examined and sampled by officers

Examinable goods are prescribed for the purposes of subsection 5(1) of the Act (which allows an officer to inspect and examine prescribed goods that are imported or being prepared for export).

22 Appointment of analysts

The Minister may appoint persons who have the necessary qualifications to be analysts for the purposes of this instrument.

23 Analysis and examination of samples of examinable goods

- (1) An analyst may analyse or examine samples of examinable goods that are taken by an officer under the Act.
- (2) In proceedings under the Act or this instrument relating to examinable goods, a certificate given by an analyst of the results of an examination or analysis of a sample of those goods is prima facie evidence of the matters stated in the certificate.

Note: The Act is incorporated and read as one with the *Customs Act 1901*: see section 2 of the Act.

Part 4—Transitional matters

24 *Commerce (Imports) Regulations 1940—transition*

- (1) Section 8 applies to goods imported on or after the commencement of this instrument.
- (2) If:
 - (a) a thing was done for a particular purpose under the *Commerce (Imports) Regulations 1940* as in force immediately before those Regulations were repealed; and
 - (b) the thing could be done for that purpose under this instrument;the thing has effect for the purposes of this instrument as if it had been done under this instrument.
- (3) A reference in subsection (2) to a thing being done includes a reference to an appointment, certificate or other instrument being made or given.

Schedule 1—Repeals

Commerce (Imports) Regulations 1940

1 The whole of the Regulations

Repeal the Regulations.