

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Law Enforcement and Cyber Security

Customs Act 1901

*Customs Amendment (Duty Deferral for Australian Trusted Traders) Regulations
2018*

The *Customs Act 1901* (the Customs Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

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

Section 132AA of Part VIII of the Customs Act sets out when import duty must be paid on goods imported into Australia. Under subsection 132AA(1), import duty payable on goods described in an item of the table must be paid by the time indicated in the item. Import duty on goods covered by both items 1 and 2 is payable by the time indicated in item 2.

Item 1 of the table under subsection 132AA(1) of the Customs Act provides that import duty is payable on goods entered for home consumption at the time of entry of the goods for home consumption. Item 2 of the table under subsection 132AA(1) provides that, for goods prescribed by the regulations and entered for home consumption, import duty must be paid at the time worked out under the regulations made for the purposes of this item.

The *Customs Amendment (Duty Deferral for Australian Trusted Traders) Regulations 2018* (the Amendment Regulations) amends the *Customs Regulation 2015* (the Principal Regulation) to provide that import duty on goods imported by an entity must be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption.

In order to participate in the duty deferral benefit, the Trusted Trader must:

- not have entered the goods for warehousing, or had goods entered for warehousing, at any time before entering them for home consumption;
- have a trusted trader agreement that is in force, and not suspended, with the Comptroller-General of Customs;
- have a trusted trader agreement that provides that the payment of import duties on the goods may be deferred by the entity;
- have been approved under the *A New Tax System (Goods and Services Tax) Regulations 1999* to make deferred payment of assessed Goods and Services Tax (GST) on the goods; and
- not be liable to pay wine equalisation tax or luxury car tax on any of the goods they import.

The goods must be goods in relation to which import duty, other than excluded import duty, is payable. The Amendment Regulations provide that charges imposed under the *Biosecurity Charges Imposition (Customs) Act 2015* or the *Primary Industries (Customs) Charges Act 1999* are excluded import duties.

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

The Amendment Regulations were developed in consultation with the Australian Taxation Office and the Treasury.

A regulatory impact statement (RIS) was not required (OBPR reference 22438).

Context and Background

The Australian Trusted Trader Program is a voluntary trade facilitation initiative for business that demonstrate a secure supply chain and compliant trade practices. Accredited businesses are rewarded with access to a range of trade facilitation benefits under the program including in relation to reporting, movement and clearance of goods.

The duty deferral benefit further recognises Trusted Trader importers by allowing them to defer payment of import duty in respect of certain goods they import to on or before the 21st day after the end of the month in which goods were entered for home consumption.

The duty deferral benefit will allow streamlined accounting for Trusted Traders and may save on transaction costs in respect of goods they import. Under this benefit, there will be one combined payment of import duty in the month after the goods are entered for home consumption, rather than many individual payments for individual consignments of goods throughout the month.

An entity participating in the duty deferral benefit will have already completed a rigorous assessment process to gain accreditation as a Trusted Trader under Part XA of the Customs Act. These entities therefore pose minimal risk to Australia's border and revenue, having demonstrated no instances of evasion of import duty, and a good compliance record with customs legislation and other applicable legislation.

The duty deferral benefit will not apply to goods that have been warehoused at any time before they are entered for home consumption. This is because import duty is not usually payable on goods while they are warehoused, and goods could be warehoused for some time before they are entered for home consumption. A Trusted Trader should not be able to defer payment of import duty in circumstances where duty on those goods has already been deferred because those goods have been warehoused.

At this stage, the duty deferral benefit will be available only to those Trusted Traders who defer payment of goods and services tax under the GST legislation, and who are not obliged to pay Luxury Car Tax (LCT) or Wine Equalisation Tax (WET) in respect of the goods they import.

Details of the Customs Amendment (Duty Deferral for Australian Trusted Traders) Regulations 2018

Section 1 – Name

This section specifies the name of the Regulations as the *Customs Amendment (Duty Deferral for Australian Trusted Traders) Regulations 2018* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section sets out that the Amendment Regulations are made under the *Customs Act 1901*.

Section 4 – Schedules

This section is a machinery clause that enables the Schedule to amend the *Customs Regulation 2015* (Principal Regulation). The Amendment Regulations contain one schedule.

Schedule 1 – Amendments

Customs Regulation 2015

Item 1 – Regulation 4

This item explains that the expression *excluded import duty* has the meaning given by new subsection 94A(2), inserted by item 2 below.

Item 2 – Before Division 1 of Part 12

This item inserts a new Division 1A before Division 1 of Part 12 to the Principal Regulation.

Subregulation 94A(3) of the Amendment Regulations prescribes the time by which import duty on goods must be paid by Trusted Traders for the purposes of item 2 of the table in subsection 132AA(1) of the Customs Act (other than for excluded import duties). The time by which import duty is payable is on or before the 21st day after the end of the month in which the goods were entered for home consumption.

Subregulation 94A(2) of the Amendment Regulations defines an *excluded import duty* to mean:

- a charge imposed under section 7 of the *Biosecurity Charges Imposition (Customs) Act 2015* (the Biosecurity Charges Imposition (Customs) Act), to the extent that the charge is an import duty; or
- a charge imposed under Schedule 8 to the *Primary Industries (Customs) Charges Act 1999* (the Primary Industries (Customs) Charges Act) on forest products imported into Australia.

Section 7 of the Biosecurity Charges Imposition (Customs) Act allows a regulation to prescribe a charge in relation to a prescribed matter connected with the administration of the *Biosecurity Act 2015*. The prescribed matters, and the charges relating to each, are set out in the *Biosecurity Charges Imposition (Customs) Regulation 2016*. Some of the charges are import duties that apply to a consignment of imported goods, while others apply to individual animals that are imported.

Schedule 8 to the Primary Industries (Customs) Charges Act imposes a charge on the import of forest products into Australia, which is payable by the importer of the forest products.

The charges imposed under the Biosecurity Charges Imposition (Customs) Act and the Primary Industries (Customs) Charges Act are excluded from the duty deferral benefit because it has been decided not to include these charges in the duty deferral benefit at this stage.

Subregulation 94A(1) of the Amendment Regulations sets out the circumstances in which goods are prescribed for the purposes of item 2 of the table under subsection 132AA(1) of the Customs Act. All of these circumstances must be met in order for payment of import duty to be deferred under the duty deferral benefit.

The first circumstance, that the goods have not been entered for warehousing at any time before the goods were entered for home consumption, reflects that a Trusted Trader should not be able to defer payment of import duty in circumstances where that duty has already been deferred, because those goods have been warehoused.

The second circumstance, that a trusted trader agreement is in force, and not suspended, between the Comptroller-General of Customs and the entity, reflects the intention that an entity must have Trusted Trader status to be able to defer the payment of import duty in respect of goods they import (other than goods to which excluded import duties apply).

The third circumstance, that the trusted trader agreement provides that the payment of import duty on the goods may be deferred by the entity, reflects the policy intention that the duty deferral benefit is not compulsory. Rather, entities will have the option of participating in the duty deferral benefit, as reflected in the trusted trader agreement between the Comptroller-General of Customs and the entity.

The fourth circumstance is that the entity is approved under Division 33 of Part 2-7 of the *A New Tax System (Goods and Services Tax) Regulations 1999* to make deferred payments of assessed Goods and Services Tax (GST) on the goods. Under the taxation legislation, GST on

imported goods is payable at the same time as import duty. However, the policy position is that payment of GST on goods cannot be deferred under the Amendment Regulations unless deferral has been granted. Therefore the duty deferral benefit is only available to those Trusted Traders who have been approved under the GST legislation to make deferred payments of GST on the goods they import.

The fifth circumstance is that the entity is not liable to pay wine tax (within the meaning of the *A New Tax System (Wine Equalisation) Tax Act 1999* (WET) or luxury car tax (within the meaning of the *A New Tax System (Luxury Car Tax) Act 1999*) (LCT) on any of the goods they import. Under the WET and LCT legislation, WET and LCT are paid on goods at the same time as import duty. However, the policy position is that WET and LCT on goods must be paid at the time the goods are entered for home consumption, and cannot be deferred (that is, cannot be paid at the same time as deferred import duty). It is for this reason that goods on which WET and LCT are payable are excluded from the duty deferral benefit.

Item 3 – At the end of Part 18

This item clarifies that the amendments made by the Amendment Regulations apply in relation to goods entered for home consumption on or after commencement. This provision puts beyond doubt that the amendments apply to goods entered for home consumption before commencement but for which duty had not been paid before the date of commencement.

Statement of Compatibility with Human Rights

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

Customs Amendment (Duty Deferral for Australian Trusted Traders) Regulations 2018

These Regulations are 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 the Legislative Instrument

These Regulations amend the *Customs Regulation 2015* (the Principal Regulation) to provide that import duty on goods imported by an entity must be paid on or before the 21st day after the end of the month in which the goods were entered for home consumption.

In order to defer the payment of import duties on goods under these Regulations, an entity must:

- not have warehoused the goods, or had the goods warehoused, at any time before entering them for home consumption;
- have a trusted trader agreement that is in force, and not suspended, with the Comptroller-General of Customs;
- have a trusted trader agreement that provides that the payment of import duties on the goods may be deferred by the entity;
- have been approved under the *A New Tax System (Goods and Services Tax) Regulations 1999* to make deferred payment of assessed Goods and Services Tax (GST) on the goods;
- not be liable to pay wine tax or luxury car tax on any of the goods they import.

The goods must be goods in relation to which import duty, other than excluded import duty, is payable. The Regulations would provide that charges imposed under the *Biosecurity Charges Imposition (Customs) Act 2015* or the *Primary Industries (Customs) Charges Act 1999* are excluded import duties.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

Hon Angus Taylor MP

Minister for Law Enforcement and Cyber Security

