

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Home Affairs and Parliamentary Secretary to the
Minister for Home Affairs

Customs Tariff Act 1995

Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018

The *Customs Tariff Act 1995* (the Act) gives effect to Australia's import trade classification system. The Act assigns rates of customs duty, both general and preferential, to imported goods and enables the collection of these duties. It also allows for the regulation of certain goods and the collection of trade statistics.

Subsection 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 *Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018* (the TPP-11 Implementation Act) amends the *Customs Act 1901* (the Customs Act) to fulfil Australia's obligations under Chapter 3 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the TPP-11), which deals with rules of origin. These rules determine whether goods imported into Australia from a Party to the TPP-11 are 'Trans-Pacific Partnership originating goods' and are thereby eligible for preferential rates of customs duty. 'Trans-Pacific Partnership originating goods' are goods imported from the territory of a Party to the TPP-11 that satisfy the new rules of origin contained in new Division 1GB of Part VIII of the Customs Act, inserted by the TPP-11 Implementation Act.

The associated *Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018* (the Customs Tariff Amendment Act) amends the Act to implement Australia's obligations under the TPP-11 by enacting different rates of customs duty in accordance with the TPP-11 for imported goods that are Trans-Pacific Partnership originating goods.

The purpose of the *Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* (the Amendment Regulations) is to amend the *Customs Tariff Regulations 2004* (the Customs Tariff Regulations) to prescribe goods to support the implementation of the revised customs tariff arrangements for Trans-Pacific Partnership originating goods.

For most Trans-Pacific Partnership originating goods, the rate of customs duty will be 'Free' from the commencement of the Customs Tariff Amendment 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 will be specified in new Schedule 8B to the Act with the goods identified by reference to their eight digit tariff classification under Schedule 3 to the Act.

In the TPP-11 itself, certain goods that are to be subject to the preferential duty rates are specified by reference to their tariff classification under the 2012 version of the Harmonized Commodity Description and Coding System (the Harmonized System). The Harmonized System is the worldwide classification system that has been adopted by all countries that are members of the World Customs Organization (WCO). In Australia, the Harmonized System has been implemented in the Act.

In 2017, the Harmonized System was updated to incorporate changes made by the WCO deemed to improve its' functionality. The tariff classification of a number of goods in the 2017 version is different from their classification under the 2012 version. For example, in several instances one or more tariff classifications in the 2012 have been split in order to further specify a class of goods resulting in additional headings or sub-headings in the 2017 version. The amendments in the 2017 version of the Harmonized System (the 2017 amendments) were incorporated into Schedule 3 to the Act, and are also reflected in the tariff classifications listed in the items in new Schedule 8B to the Act, inserted by the Customs Tariff Amendment Act.

One outcome of the 2017 amendments is that several new tariff classifications were created that are specified in new Schedule 8B to the Act. These 2017 tariff classifications may cover goods that were originally classified to multiple 2012 classifications with different phasing rates of duty negotiated under the TPP-11.

Therefore, if the tariff classifications listed in new Schedule 8B to the Act are used to specify the goods to which the phasing rates of customs duty apply, the concessions would be different to the concessions that the TPP-11 specifies. One result would be that goods that should be subject to a 'Free' rate of customs duty would instead be subject to a phasing rate of duty. This is because new Schedule 8B refers to tariff classification codes under the 2017 version of the Harmonized System and TPP-11 refers to tariff classification codes under the 2012 version of the Harmonized System.

As a consequence of the outcomes of the 2017 amendments, the relevant items in new Schedule 8B to the Act are expressed to apply to 'prescribed goods only'. This means that only goods that are prescribed for each of these items would be subject to the phasing rates of customs duty specified in each item in Schedule 8B. The Amendment Regulations amend the Customs Tariff Regulations to prescribe, for each of the relevant items in new Schedule 8B to the Tariff Act, the goods that are subject to phasing rates of customs duty. In doing so, the amendment ensures, despite the differences between the two versions of the Harmonized System, that the appropriate goods intended by TPP-11 are subject to a phasing rate.

Details of the Amendment Regulations are set out in [Attachment A](#). A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at [Attachment B](#).

A separate *Customs (Trans-Pacific Partnership Rules of Origin) Regulations 2018* is made to prescribe matters relating to the rules of origin that will be required to be prescribed under the Act as amended by the TPP-11 Implementation Act.

In addition, the *Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* amend the *Customs (International Obligations) Regulations 2015* to make complementary

amendments to enable a refund of duties paid on Trans-Pacific Partnership originating goods, or on goods that would have been such goods, in specified circumstances.

Government Departments conducted extensive public and targeted stakeholder consultations during the negotiations of the original Trans-Pacific Partnership Agreement and the TPP-11. The consultation process encompassed all matters set out in the Amendment Regulations. Details of these consultations were set out in the consultation attachment to the National Interest Analysis of the TPP-11.

The Joint Standing Committee on Treaties also conducted an enquiry on the TPP-11. The enquiry included written submissions and a public hearing that resulted in a report recommending binding treaty action be taken.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commences in accordance with section 2 of the Amendment Regulations. That is, sections 1 to 4 of the Amendment Regulations commences on the day after the Amendment Regulations are registered on the Federal Register of Legislation. Schedule 1 to the Amendment Regulations commences at the same time as Schedule 1 to the TPP-11 Implementation Act, which is the later of, the day after that Act receives the Royal Assent, and the day the TPP-11 enters into force for Australia.

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Details of the *Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018*

Section 1 Name

This section provides that the name of the instrument is the *Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* (the Amendment Regulations).

Section 2 Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Regulations commence.

Table item 1 provides that sections 1 to 4 of the Amendment Regulations and anything in the Amendment Regulations not elsewhere covered by the table commence on the day after the Amendment Regulations are registered on the Federal Register of Legislation.

Table item 2 provides that Schedule 1 to the Amendment Regulations commences at the same time as Schedule 1 to the *Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018* (the TPP-11 Act) commences.

Schedule 1 to the TPP-11 Act commences on the later of the day on which that Act receives the Royal Assent, and the day on which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the TPP-11) done at Santiago, Chile on 8 March 2018, enters into force for Australia.

Section 3 Authority

This section sets out the authority under which the Amendment Regulations are made, which is the *Customs Tariff Act 1995* (the Act).

Section 4 Schedules

This section is the formal enabling provision for the Schedule to the Amendment Regulations, and provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule has effect according to its terms.

Schedule 1—Amendments

Customs Tariff Regulations 2004

Item 1 Regulation 3

This item amends regulation 3 of the *Customs Tariff Regulations 2004* (the Customs Tariff Regulations) to define ‘Schedule 8B item’, which means an item in the table in Schedule 8B of the Act.

This amendment is for the purpose of the amendments contained in items 2 and 3 of the Regulations to identify goods that are prescribed for items 134, 135, 468, 568 and 569 under Schedule 8B to the Act.

Item 2 After regulation 5

This item inserts new regulation 5A into the Customs Tariff Regulations, which provides that, for each Schedule 8B item mentioned in column 2 of an item in Schedule 3 of the Customs Tariff Regulations, the goods mentioned in column 3 of the item in Schedule 3 of the Customs Tariff Regulations are prescribed. Schedule 3 to the Customs Tariff Regulations is inserted by item 3 of the Amendment Regulations.

The effect of this amendment is that goods mentioned in column 3 of Schedule 3 to the Customs Tariff Regulations are prescribed for table items 134, 135, 468, 568 and 569 under Schedule 8B to the Act and are thereby subject to the phasing rates of customs duty specified under those table items.

Item 3 At the end of the regulations

This item inserts Schedule 3 (Trans-Pacific Partnership originating goods) into the Customs Tariff Regulations.

Schedule 3 sets out each item in the table in Schedule 8B to the Customs Tariff Act that applies to prescribed goods only, and provide for the goods that are prescribed for each of those items.

For example, for item 134 of Schedule 8B to the Act, insecticides, herbicides, anti-sprouting products and plant-growth regulators classified in 3808.52.90 of Schedule 3 to the Act are prescribed. This means that only these goods will be subject to the phasing rates of duty set out in item 134 of Schedule 8B to the Act. All other goods classified to 3808.52.90 of Schedule 3 of the Act will be subject to a ‘Free’ rate of customs duty from entry into force of the TPP-11.

Statement of Compatibility with Human Rights

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

Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018

The Disallowable Legislative Instrument titled the *Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* (the Amendment Regulations) 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 of the Amendment Regulations

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One outcome of the 2017 amendments is that several new tariff classifications were created that are specified in new Schedule 8B to the Act. These 2017 tariff classifications may cover goods that were originally classified to multiple 2012 classifications with different phasing rates of duty negotiated under the TPP-11.

Therefore, if the tariff classifications listed in new Schedule 8B to the Act are used to specify the goods to which the phasing rates of customs duty apply, the concessions would be different to the concessions that the TPP-11 specifies. One result would be that goods that should be subject to a 'Free' rate of customs duty would instead be subject to a phasing rate of duty. This is because new Schedule 8B refers to tariff classification codes under the 2017 version of the Harmonized System and TPP-11 refers to tariff classification codes under the 2012 version of the Harmonized System.

As a consequence of the outcomes of the 2017 amendments, the relevant items in new Schedule 8B to the Act are expressed to apply to 'prescribed goods only'. This means that only goods that are prescribed for each of these items would be subject to the phasing rates of customs duty specified in each item in Schedule 8B. The Amendment Regulations amend the Customs Tariff Regulations to prescribe, for each of the relevant items in new Schedule 8B to the Tariff Act, the goods that are subject to phasing rates of customs duty. In doing so, the amendment ensures, despite the differences between the two versions of the Harmonized System, that the appropriate goods intended by TPP-11 are subject to a phasing rate.

The Amendment Regulations commences in accordance with section 2 of the Amendment Regulations. That is, sections 1 to 4 of the Amendment Regulations commences on the day after the Amendment Regulations are registered on the Federal Register of Legislation. Schedule 1 to the Amendment Regulations commences at the same time as Schedule 1 to the TPP-11 Implementation Act, which is the later of, the day after that Act receives the Royal Assent, and the day the TPP-11 enters into force for Australia.

Human rights implications

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

Conclusion

The Amendment Regulations are compatible with human rights as it does not raise any human rights issues.

Senator the Hon. Linda Reynolds CSC
Assistant Minister for Home Affairs and Parliamentary Secretary to the Minister for Home Affairs