

EXPLANATORY STATEMENT

Issued by authority of the delegate of the Comptroller-General of Customs

Customs Act 1901

Customs Amendment (Space Project and Repaired Goods) By-Laws 2023

Legislative Authority

The *Customs Act 1901* (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.

Section 271 of the Customs Act provides, in part, that where an item of a Customs Tariff is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law, the Comptroller-General of Customs may make by-laws for the purposes of that item. A “Customs Tariff” is defined in section 4 of the Customs Act to mean an Act imposing duties of customs, and includes such an Act that has not yet come into operation. The *Customs Tariff Act 1995* (Customs Tariff Act) is a Customs Tariff for the purposes of the Customs Act.

Background

Schedule 4 to the Customs Tariff Act lists classes of goods to which concessional customs duty rates may apply and specifies the concessional customs duty rate applicable to such classes of goods. Relevantly, by-laws made under section 271 (complemented by section 272) of the Customs Act prescribe goods for the purposes of items of Schedule 4 to the Customs Tariff Act and specify conditions under which the prescription of goods applies.

The *Customs By-Laws 2023* (Customs By-Laws) is made under section 271 of the Customs Act, and that instrument contains by-laws made for the purposes of table items of Schedule 4 to the Customs Tariff Act.

The *Customs (International Obligations) By-Laws 2023* (International Obligations By-Laws) is also made under section 271 of the Customs Act, and that instrument also contains by-laws made for the purposes of table items of Schedule 4 to the Customs Tariff Act with respect to Australia’s obligations under international treaties.

Goods for space projects

The *Space (Launches and Returns) Act 2018* (Space Act) establishes a regulatory framework for licensing and safety requirements for space activities within Australia and involving Australian interests.

Table item 41 of Schedule 4 to the Customs Tariff Act provides a “Free” rate of customs duty for goods, prescribed by by-law, that are for use in a space project authorised by the Minister administering the Space Act. This concession helps companies wanting to develop high technology for the space sector and encourages the transfer of expertise and technology.

For the purposes of item 41 of Schedule 4 to the Customs Tariff Act, the *Customs Amendment (Space Project and Repaired Goods) By-Laws 2023* (Amendment By-Laws) amend the Customs By-Laws to prescribe the goods eligible for the concessional customs duty rate of “Free” under that item.

Goods re-imported into Australia after being repaired, renovated, altered, or subject to other similar processes

Table item 16 of Schedule 4 to the Customs Tariff Act provides a “Free” rate of customs duty to goods that are covered by an article of a free trade agreement between Australia and another country, being an article that is prescribed by by-law and that relates to the export of goods from Australia for repair, renovation, alteration, or other similar processes.

For the purposes of item 16 of Schedule 4 to the Customs Tariff Act, the Amendment By-Laws amend the International Obligations By-Laws to prescribe:

- Article 2.6 of Chapter 2 of the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland;
- Article 2.6 of Chapter 2 of the Peru-Australia Free Trade Agreement;
- Article 2.6 of Chapter 2 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership; and
- Article 5 of Chapter 2 of the Singapore-Australia Free Trade Agreement;

as being the Articles by which goods covered are goods eligible for the concessional customs duty rate of “Free” under that item.

Purpose and effect

The purpose of the Amendment By-Laws is to amend the Customs By-Laws and International Obligations By-Laws to prescribe matters required to be prescribed for table items 16 and 41 of Schedule 4 to the Customs Tariff Act.

The amendments contained in the Amendment By-Laws have effect that prescribed goods and goods that are covered by a prescribed Article of a free trade agreement between Australia and another country, are eligible for the concessional customs duty rate under applicable items of Schedule 4 of the Customs Tariff Act. Furthermore, the amendments implement obligations under relevant free trade agreements.

Consultation

For the goods for use in space projects, the Department of Industry, Science and Resources were consulted in the making of new section 59A as inserted into the Customs By-Laws by the Amendment By-Laws. The Department of Industry, Science and Resources, as the policy owner, has undertaken engagement with applicants on the requirements of the concession.

No separate consultation were undertaken for goods re-imported into Australia after being repaired, renovated, altered, or subject to other similar processes on this occasion. This is because consultations on all aspects of the relevant free trade agreements were dealt with prior to the entry into force of those Agreements.

Details and operation

The Amendment By-Laws is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

Items 1 and 3 of Schedule 1 to the Amendment By-Laws commence on 1 April 2023. The retrospective commencement enables applicable goods to be eligible for the concessional customs duty rate of “Free”, and as such, does not disadvantage the rights of a person (other than the Commonwealth). The retrospective eligibility for a lower customs duty rate is permitted by section 273C of the Customs Act.

Item 2 of Schedule 1 to the Amendment By-Laws commences on 31 May 2023. The retrospective commencement enables applicable goods to be eligible for the concessional customs duty rate of “Free”, and as such, does not disadvantage the rights of a person (other than the Commonwealth). The retrospective eligibility for a lower customs duty rate is permitted by section 273C of the Customs Act.

All other provisions under the Amendment By-Laws commence on the day after that instrument is registered on the Federal Register of Legislation.

Details of the Amendment By-Laws are set out in **Attachment A**.

Other

The Amendment By-Laws is an instrument made under section 271 of the Customs Act. Paragraph (e) of table item 12 in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* has effect that the Amendment By-Laws is an instrument for which section 42 of the Legislation Act, dealing with disallowance, does not apply.

Instruments made under section 271 of the Customs Act are used to implement Government decisions, international agreements and industry policy. They are not subject to disallowance to preserve certainty in relation to these matters.

As the Amendment By-Laws is an instrument for which disallowance does not apply, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Section 48A of the Legislation Act will automatically repeal the Amendment By-Laws once the amendments contained within that By-Law are spent; that is, once the amendments are made to the Customs By-Laws and the International Obligations By-Laws.

The Amendment By-Laws will be repealed by operation of Division 1 of Part 3 of Chapter 3 of the Legislation Act. Specifically, that Division operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. As the Amendment By-Laws will automatically repeal, they do not engage the sunset framework under Part 4 of the Legislation Act.

Details of the Customs Amendment (Space Project and Repaired Goods) By-Laws 2023

Section 1 Name

This section provides that the name of the instrument is the *Customs Amendment (Space Project and Repaired Goods) By-Laws 2023* (Amendment By-Laws).

Section 2 Commencement

This section sets out, in a table, the date on which each of the provisions contained in the Amendment By-Laws commences.

Table item 1 has effect that sections 1 to 4 commence on the day after the instrument is registered on the Federal Register of Legislation.

Table item 2 has effect that items 1 and 3 of Schedule 1 commences on 1 April 2023.

Table item 3 has effect that item 2 of Schedule 1 commences on 31 May 2023.

The note under the table in subsection (1) indicates that the table only relates to the provisions of this instrument as originally made and will not be amended to deal with any later amendments of this instrument.

Section 3 Authority

This section sets out the authority under which the Amendment By-Laws is made, which is the *Customs Act 1901*.

Section 4 Schedules

This section is the enabling provision for the schedules to the Amendment By-Laws and provides that, each instrument that is specified in a Schedule to the Amendment By-Laws, is amended as set out in the applicable items in the Schedule concerned and that any other item in a Schedule to this instrument has effect according to its terms.

The instrument being amended is the *Customs By-Laws 2023* (Customs By-Laws) and the *Customs (International Obligations) By-Laws 2023* (International Obligations By-Laws).

Schedule 1—Amendments

Schedule 4 to the *Customs Tariff Act 1995* (Customs Tariff Act) lists classes of goods to which concessional customs duty rates may apply and specifies the concessional customs duty rate applicable to such classes of goods. Relevantly, by-laws made under section 271 (complemented by section 272) of the Customs Act prescribe goods for the purposes of items of Schedule 4 to the Customs Tariff Act and specify conditions under which the prescription of goods apply.

Customs By-Laws 2023

Item 1 After section 59

Item 1 of the Amendment By-Laws amends the Customs By-Laws to insert new section 59A for the purposes of table item 41 of Schedule 4 of the Customs Tariff Act. New section 59A may be cited as Customs By-law No. 2300183 (new subsection 59A(1) refers).

Table item 41 in Schedule 4 to the Customs Tariff Act provides for imported goods, as prescribed by by-law, for use in a space project authorised by the Minister administering the *Space (Launches and Returns) Act 2018* to be eligible for the concessional customs duty rate of “Free”.

Prescribed goods

For the purposes of table item 41 of Schedule 4 to the Customs Tariff Act, new subsection 59A(2) has effect that goods that are for use in a space project authorised by the Minister administering the *Space (Launches and Returns) Act 2018* and that are imported on or after 30 November 2021 are prescribed.

Conditions

The goods prescribed are subject to the condition set out in new subsection 59A(3), which requires the goods to be:

- (a) of a kind and quantity; and
- (b) imported by an importer; and
- (c) imported in the period of time, beginning on the specified start date and ending on the specified end date;

approved in writing by the Collector.

The effect of new subsection 59A(3) is that only prescribed goods that meet the specified conditions are eligible for the concessional customs duty rate of “Free” specified in table item 41 of Schedule 4 to the Customs Tariff Act.

Customs (International Obligations) By-Laws 2023

Table item 16 of Schedule 4 to the Customs Tariff Act provides a “Free” rate of customs duty to goods that are covered by an article of a free trade agreement between Australia and another country, being an article that is prescribed by by-law and that relates to the export of goods from Australia for repair, renovation, alteration, or other similar processes.

Item 2 After section 13

Item 2 of the Amendment By-Laws amends the International Obligations By-Laws to insert new section 14 for the purposes of table item 16 of Schedule 4 to the Customs Tariff Act and the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland (AUKFTA).

New subsection 14(1) provides that new section 14 may be cited as Customs By-law No. 2300178.

For the purposes of table item 16 of Schedule 4 to the Customs Tariff Act, under new subsection 14(2), Article 2.6 of Chapter 2 of AUKFTA, done at Adelaide on 17 December 2021 and London on 16 December 2021, is prescribed.

The note under new subsection 14(2) informs the reader that AUKFTA is in Australian Treaty Series 2023 No. 3 ([2023] ATS 3) and could in 2023 be viewed, free of charge, in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Paragraph 1 of Article 2.6 sets out an obligation to the effect that neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

Paragraph 2 of Article 2.6 sets out an obligation to the effect that paragraph 1 of Article 2.6 shall not apply to a good where, prior to the good's export to the other Party for repair or alteration, the good:

- (a) was not in free circulation in the exporting Party; and
- (b) did not have a customs duty applied to it by the exporting Party.

Paragraph 3 of Article 2.6 sets out an obligation to the effect that neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

The obligations are to preclude the imposition of custom duty on those goods (covered by AUKFTA) that are re-imported into Australia after they have been exported from Australia for repair or alteration.

New section 14 of the Amendment By-Laws implements the obligations under Article 2.6 of Chapter 2 of AUKFTA for Australia. The effect of new section 14 is that goods re-imported into Australia after being repaired or altered, and covered by AUKFTA, are eligible for the concessional customs duty rate of "Free" specified in table item 16 of Schedule 4 to the Customs Tariff Act.

Item 3 At the end of Part 2

Item 3 of the Amendment By-Laws amends the International Obligations By-Laws to insert new sections 15, 16 and 17 for the purposes of table item 16 of Schedule 4 to the Customs Tariff Act and the following free trade agreements:

- (a) Peru-Australia Free Trade Agreement (PAFTA);
- (b) Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); and
- (c) Singapore-Australia Free Trade Agreement (SAFTA).

New section 15

New subsection 15(1) provides that new section 15 may be cited as Customs By-law No. 2300179.

For the purposes of table item 16 of Schedule 4 to the Customs Tariff Act, under new subsection 15(2), Article 2.6 of Chapter 2 of PAFTA, done at Canberra on 12 February 2018, is prescribed.

The note under new subsection 15(2) informs the reader that PAFTA is in Australian Treaty Series 2020 No. 6 ([2020] ATS 6) and could in 2023 be viewed, free of charge, in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Paragraph 1 of Article 2.6 sets out an obligation to the effect that neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

Paragraph 2 of Article 2.6 sets out an obligation to the effect that neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

The obligations are to preclude the imposition of custom duty on those goods (covered by PAFTA) that are re-imported into Australia after they have been exported from Australia for repair or alteration.

New section 15 implements the obligations under Article 2.6 of Chapter 2 of PAFTA for Australia. The effect of new section 15 is that goods re-imported into Australia after being repaired or altered, and covered by PAFTA, are eligible to the for the concessional customs duty rate of “Free” specified in table item 16 of Schedule 4 to the Customs Tariff Act.

New section 16

New subsection 16(1) provides that new section 16 may be cited as Customs By-law No. 2300180.

For the purposes of table item 16 of Schedule 4 to the Customs Tariff Act, under new subsection 16(2), Article 2.6 of Chapter 2 of the CPTPP, done at Santiago on 8 March 2018, is prescribed.

Note 1 under new subsection 16(2) informs the reader that under Article 1 of the CPTPP, most of the provisions of the Trans-Pacific Partnership Agreement (Auckland Agreement), done at Auckland on 4 February 2016, are incorporated, by reference, into and made part of the CPTPP. This means, for example, that Chapters 1 and 3 of the Auckland Agreement are, because of that Article, Chapters 1 and 3 of the Santiago Agreement.

Note 2 under new subsection 16(2) informs the reader that the CPTPP is in Australian Treaty Series 2018 No. 23 ([2018] ATS 23) and could in 2023 be viewed, free of charge, in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 3 under new subsection 16(2) informs the reader that the Auckland Agreement could in 2023 be viewed, free of charge, on the website administered by the Department of Foreign Affairs and Trade (<http://www.dfat.gov.au>).

Paragraph 1 of Article 2.6 sets out an obligation to the effect that no Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of another Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

Paragraph 2 of Article 2.6 sets out an obligation to the effect that no Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of another Party for repair or alteration.

The obligations are to preclude the imposition of custom duty on those goods (covered by the CPTPP) that are re-imported into Australia after they have been exported from Australia for repair or alteration.

New section 16 implements the obligations under Article 2.6 of Chapter 2 of the CPTPP for Australia. The effect of new section 16 is that goods re-imported into Australia after being repaired or altered, and covered by the CPTPP, are eligible to the for the concessional customs duty rate of "Free" specified in table item 16 of Schedule 4 to the Customs Tariff Act.

New section 17

New subsection 17(1) provides that new section 17 may be cited as Customs By-law No. 2300181.

For the purposes of table item 16 of Schedule 4 to the Customs Tariff Act, under new subsection 17(2), Article 5 of Chapter 2 of SAFTA, done at Singapore on 17 February 2003, is prescribed.

The note under new subsection 17(2) informs the reader that SAFTA is in Australian Treaty Series 2003 No. 16 ([2003] ATS 16) and could in 2023 be viewed, free of charge, in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Paragraph 1 of Article 5 sets out an obligation to the effect that neither Party shall apply a customs duty to a good, regardless of its origin, that re-enters the Party's territory after that good has been temporarily exported from the Party's territory to the territory of the other Party for repair or alteration, regardless of whether that repair or alteration could have been performed in the territory of the Party from which the good was exported for repair or alteration or increased the value of the good.

Paragraph 2 of Article 5 sets out an obligation to the effect that neither Party shall apply a customs duty to a good, regardless of its origin, admitted temporarily from the territory of the other Party for repair or alteration.

The obligations are to preclude the imposition of custom duty on those goods (covered by SAFTA) that are re-imported into Australia after they have been exported from Australia for repair or alteration.

New section 17 implements the obligations under Article 5 of Chapter 2 of SAFTA for Australia. The effect of new section 17 is that goods re-imported into Australia after being repaired or altered, and covered by SAFTA, are eligible for the concessional customs duty rate of “Free” specified in table item 16 of Schedule 4 to the Customs Tariff Act.