

EXPLANATORY STATEMENT

Issued by the Delegate of the Minister for Home Affairs

Customs Act 1901

Notice of Intention to Propose Customs Tariff Alteration 2024

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.

The *Customs Tariff Act 1995* (Customs Tariff Act) gives effect to Australia's import trade classification system. It is used to assign rates of customs duty, both general and preferential, to imported goods and enables the collection of these duties.

Background

Subsection 273EA(1) of the Customs Act has effect that, when Parliament is not sitting for a period of at least seven days, the Minister may under section 273EA of the Customs Act make a legislative instrument giving notice that within seven sitting days of the House of Representatives after the date of registration of the notice, the Minister will propose in Parliament a Customs Tariff or Customs Tariff alteration in accordance with particulars specified in the instrument and operating as from such time as specified in the instrument. Subsection 273EA(1) further provides that a legislative instrument that does not raise duty may apply retrospectively up to six months before the time of registration of the instrument.

This mechanism is used for initially effecting alterations to the Customs Tariff Act, particularly when such alterations are required to take effect within a short timeframe which cannot be achieved through passage of a Customs Tariff Amendment Bill. Following the introduction of a Customs Tariff Proposal in the House of Representatives, the alterations contained in the Proposal would be incorporated into the Customs Tariff Act by a Customs Tariff Amendment Bill.

Purpose and effect

The Australian Government will abolish 457 'nuisance' tariffs, which are tariffs that have been identified as raising little revenue, having negligible benefits for domestic producers and imposing a compliance burden on Australian businesses, in the biggest unilateral tariff reform in two decades. From 1 July 2024, tariffs will be abolished on a range of imported goods including household necessities such as toothbrushes, tools, fridges, dishwashers and clothing. This is an important step in simplifying Australia's trade system and removing compliance burdens for Australian firms. These tariffs do nothing to protect Australian businesses as they apply to goods that predominately arrive under a concessional rate.

The *Notice of Intention to Propose Customs Tariff Alteration 2024 (Notice)* therefore advises of the intention to propose Customs Tariff alterations which will reduce to 'Free' the customs duty rate applicable to goods classified to 457 tariff headings and subheadings under the Customs Tariff Act.

Where goods are not the produce or manufacture of a Preference Country and are not originating goods within the meaning of Part VIII of the Customs Act, section 16 of the Customs Tariff Act provides that the applicable customs duty is calculated by reference to the general rate of customs duty, which is specified in the third column of the tariff subheading to which the goods are classified in Schedule 3 to the Customs Tariff Act.

The general rate is defined in the Customs Tariff Act as the rate of duty, other than a rate that applies in relation to a Preference Country. Preference country is defined in the Customs Tariff Act as being Papua New Guinea, a Forum Island Country, a Least Developed Country, a Developing Country, Canada or Singapore. Certain goods classified in Schedule 3 to the Customs Tariff Act may be subject to a general customs rate of duty up to 5 per cent of the value of the goods being imported. Where goods are the produce or manufacture of a Preference Country, the goods may be subject to a preferential rate of customs duty in Schedule 3 to the Customs Tariff Act that is less than or equal to the general rate.

For example, frozen yams, which are classified to tariff subheading 0714.30.10, have three different rates applied through Schedule 3 as shown below:

0714.30	-Yams (<i>Dioscorea spp.</i>):	
0714.30.10	---Frozen	5%
		DCS: Free
		CA: Free

The general rate of customs duty for frozen yams is 5 per cent. A 'Free' rate of customs duty applies where the goods are eligible for the Developing Country (DCS) rate or where the goods are the produce or manufacture of Canada (CA).

The Notice proposes alterations to certain tariff headings and subheadings in Schedule 3 to the Customs Tariff Act to repeal the applicable general and preferential rates of customs duty, and substitute these rates, where necessary, with a general rate of 'Free'. This will have the effect of reducing the duty rate applicable to all goods classified to the specified tariff heading or subheading to 'Free', resulting in no customs duty being payable at the time of the goods' entry into home consumption.

A broad range of consumer goods will be made subject to a customs duty rate of 'Free' under this Notice. These include kitchen knives, puzzles, toothbrushes, weighing scales, certain types of vegetables, electrical appliances such as electric blankets, combined refrigerator-freezers and washing machines, certain clothing and footwear products, hand powered and electric tools such as hammers and drills, certain types of paper and writing utensils such as ball point pens and pencils, and sanitary articles such as pads of paper and plastics and sanitary underwear.

To ensure that Australia is meeting its commitments to its free trade agreement partners, alterations will also be made to customs duty rates in Schedule 14 to the Customs Tariff Act. Schedule 14 provides the preferential rates of customs duty applicable to goods that are RCEP originating under the Regional Comprehensive Economic Partnership (RCEP) Agreement and within the meaning of Division 1N of Part VIII of the Customs Act. Aside from Schedule 3, Schedule 14 is the only schedule to the Customs Tariff Act in which the preferential customs duty rates have not already been incrementally reduced to 'Free' in respect of some of the 457 tariff headings and subheadings affected by this measure.

The preferential customs duty rates in column 3 of the table in Schedule 14 to the Customs Tariff Act apply to the tariff headings and subheadings in column 2 of the table. A 'Free' rate of customs duty applies to RCEP originating goods classified to the tariff headings and subheadings not listed in the table in Schedule 14.

Where the Notice reduces to 'Free' the customs duty rate for tariff headings and subheadings listed in Schedule 3 and these tariff headings or subheadings are listed in Schedule 14, the Notice preserves the phasing down of customs duty rates that have occurred prior to 1 July 2024 and applies a duty rate of 'Free' to the respective table item in Schedule 14 from 1 July 2024. The alterations ensure that the preferential customs duty rate applied to RCEP originating goods is not higher than the applicable general rate in Schedule 3.

The alterations outlined in the Notice will commence on 1 July 2024 and will apply to goods imported into Australia on or after this date.

Consultation

The Department of the Treasury undertook public consultation on the list of tariff headings and subheadings included in the list. Submissions were received from individuals, businesses and peak industry bodies, who overall supported the alterations.

The Department of the Prime Minister and Cabinet, the Department of Foreign Affairs and Trade, the Department of Industry, Science and Resources and the Department of Agriculture, Fisheries and Forestry were involved in the development of the list.

The Office of Impact Analysis has advised that the proposed amendments are unlikely to have a more than minor impact. The OIA reference number is OIA23-05095.

Details

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

Other

Subsection 273EA(3) of the Customs Act has effect that section 42 (disallowance) of the *Legislation Act 2003* (**Legislation Act**) does not apply to notices in the form of a legislative instrument made under subsection (1) of that section.

Notices made under subsection 273EA(1) of the Customs Act are in accordance with that provision followed by a Customs Tariff or Customs Tariff alteration proposed in the House of Representatives. Customs Tariffs and Customs Tariff alterations proposed in this manner are not legislative instruments, but are motions moved in the House of Representatives. As such, none of the provisions of the Legislation Act relating to instruments (including any of those related to disallowance) apply to the proposal of a Customs Tariff or Customs Tariff alteration. Customs Tariffs and Customs Tariff alterations are instead subject to the orders, procedures and oversight of the House of Representatives.

Following the proposal of a Customs Tariff or Customs Tariff alteration in the House of Representatives, legislation must then be enacted by the Parliament to incorporate the proposed tariff changes into law and enable concessional treatment or the collection of

customs duties on an ongoing basis. Further oversight of the proposal therefore takes place by both Houses of the Parliament when a Bill to make these proposed amendments is introduced into the Parliament.

The potential for successful disallowance of customs tariff changes implemented through notice given under subsection 273EA(1) would affect business' certainty in relation to the cost of importing goods. For example, an importer who relies on a tariff concession implemented through a tariff proposal notice and, accordingly, pays a reduced amount of customs duty could potentially face the prospect of being required to pay the relevant additional amount of duty if the notice were to be disallowed. They may have sold the goods at a lower price and would no longer have the opportunity to recoup the cost of the additional duty from the customer. Thus disallowance would place the direct burden of the additional duty on the importing business.

The Notice is made under subsection 273EA(1) of the Customs Act and as such is not an instrument to which disallowance applies. Because of this, 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*.

ATTACHMENT A

Details of the Notice of Intention to Propose Customs Tariff Alteration 2024

Schedule 1—Alteration to the Customs Tariff Act 1995

Schedule 1 to the *Notice of Intention to Propose Customs Tariff Alteration 2024 (Notice)* outlines the proposed alterations to the *Customs Tariff Act 1995* (Customs Tariff Act) to reduce to ‘Free’ the general rate of customs duty and certain preferential rates of customs duty that apply to goods classified to certain tariff headings and subheadings. The proposed alterations operate starting on 1 July 2024.

Customs Tariff Act 1995

Item 1 Bulk amendment

Schedule 3 to the Customs Tariff Act sets out in tables the tariff headings and subheadings and the general rate of customs duty that applies to all imported goods classified to that tariff heading or subheading. For the most part the general rate of duty is either 5 per cent or ‘Free’, depending on the tariff heading or subheading of the goods. The general rate is the rate of customs duty in column 3 of the table in Schedule 3, other than the rate that applies in relation to a Preference Country, being Papua New Guinea, a Forum Island Country, a Least a Developed Country, a Developing Country, Canada or Singapore. Preferential rates that apply to goods where they are the produce or manufacture of a Preference Country are, where applicable, also listed in Schedule 3. These preferential customs duty rates may be equal to or less than the applicable general rate that applies to the tariff heading or subheading.

Item 1 provides that each rate of customs duty listed in column 3 of the tariff headings and subheadings listed in the table under that item of the Notice will be repealed and substituted with a rate of customs duty of ‘Free’.

The effect of the alterations made by this item is that the general rate of customs duty for goods, classified to tariff headings and subheadings listed in the table, are reduced to the rate of customs duty of ‘Free’.

Items 2 to 180

Schedule 14 of the Customs Tariff Act provides preferential rates of customs duty for goods that are RCEP originating goods under the Regional Comprehensive Economic Partnership (RCEP) Agreement, and within the meaning of Division 1N of Part VIII of the Customs Act. The third column of the table in Schedule 14 provides the preferential rates of customs duty, and incremental reductions where applicable, for the tariff headings and subheading listed in column two of that table. A ‘Free’ rate of customs duty applies to goods classified to tariff headings and subheadings not listed in the table in Schedule 14.

Items 2 to 180 repeal cells of specified table items under column 3 and substitute with revised incremental reductions that apply to the RCEP originating goods classified to the tariff heading or subheading in column 2 of that table item. The revised reductions retain the phasing rates that have commenced between 1 January 2022, the date that the RCEP Agreement entered into force, and 1 January 2024 and inserts the reduction to the customs duty rate of ‘Free’ which occurs on 1 July 2024.

This formulation ensures that incremental reductions that have already taken place are retained, while ensuring that the preferential rate of customs duty applied to RCEP originating goods is not higher than the general rate of customs duty.

The effect of the alterations made by these items is to maintain the staged customs duty rate reductions in place as at 1 January 2024 applicable to goods classified to the headings and subheadings affected by the proposal which are also provided for under the RCEP Agreement, then to reduce the customs duty on those goods to the rate of “Free” from 1 July 2024.