

EXPLANATORY STATEMENT

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

Customs Act 1901

Customs Amendment (International Sporting Event—FIFA) By-Law 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.

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. 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. 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.

Prescribing goods for use in connection with an international sporting event

Table item 59 in Schedule 4 to the Customs Tariff Act provides a “Free” rate of customs duty for goods that are imported for use in connection with international sporting events prescribed by by-law. The concessional rate of customs duty will apply to goods as prescribed by by-law.

The Fédération Internationale de Football Association (**FIFA**) Women’s World Cup Australia New Zealand 2023, was jointly hosted by Australia and New Zealand (FIFA Women’s World Cup 2023) and comprised of matches held across five Australian cities between July and August 2023.

For the purposes of table item 59 of Schedule 4 to the Customs Tariff Act, the *Customs Amendment (International Sporting Event—FIFA) By-Law 2024* (the Amendment By-Law) amends the Customs By-Laws to prescribe the goods eligible for the concessional customs duty rate of “Free” under that item for the FIFA Women’s World Cup 2023 and imported in the period starting on 1 January 2022 and ending at the end of the day on 31 December 2022.

It was intended that goods for use in connection with the FIFA Women's World Cup Australia New Zealand 2023 would be eligible for a tariff concession for the period commencing on 1 January 2022 and ending at the end of 31 December 2028. The amendments contained in this instrument together with section 74 of the Customs By-Laws (covering the same goods but for the period between 1 January 2023 to 31 December 2028) will achieve this result.

Purpose and effect

The purpose of the Amendment By-Law is to amend the Customs By-Laws. The amendments contained in the Amendment By-Law have the effect of prescribing the goods (imported in 2022), and the international sporting event at which the goods are to be used, eligible for the concessional customs duty rate under new table item 59 of Schedule 4 to the Customs Tariff Act.

Consultation

The Office for Sport led consultations with FIFA, Football Australia, FIFA Women's World Cup 2023 and other relevant affected bodies. The Department of the Treasury and the Office for Sport were consulted in the development of the effect of section 74 of the Customs By-Laws, which except for the time period the goods need to be imported, is being replicated in the Amending By-Law.

Details and operations

The Amendment By-Law is a legislative instrument for the purposes of the *Legislation Act 2003*. All provisions under the Amendment By-Law commence on the day after that instrument is registered on the Federal Register of Legislation.

Item 1 of Schedule 1 to the Amendment By-Law applies to goods imported between 1 January 2022 and 31 December 2022. 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.

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

Other

The Amendment By-Law 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-Law 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-Law 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 repeal the Amendment By-Law once the amendments contained within that By-Law are spent; that is, once the amendments are made to the Customs By-Laws. As such, the Amendment By-Law is not subject to sunset.

Details of the Customs Amendment (International Sporting Event—FIFA) By-Law 2024

Section 1 Name

This section provides that the name of the instrument is the *Customs Amendment (International Sporting Event—FIFA) By-Law 2024* (Amendment By-Law).

Section 2 Commencement

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

Table item 1 has effect that the whole of the Amendment By-Law commences on the day after it is registered on the Federal Register of Legislation.

The amendments contained in item 1 of Schedule 1 apply to goods prescribed for item 59 of Schedule 4 to the *Customs Tariff Act 1995* (Customs Tariff Act) and imported between 1 January 2022 and 31 December 2022. The retrospective application 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).

Subsection 12(4) of the *Legislation Act 2023* provides that an Act may provide for a contrary different commencement than that provided in section 12 of that Act. Section 273C of the *Customs Act 1901* (Customs Act) allows for by-laws to retrospectively commence if they do not raise the rate of duty payable in respect of those goods from what they otherwise would be on the day on which the goods were entered for home consumption.

The new section 75, as inserted by item 1 of Schedule 1, is a by-law prescribing goods that would be eligible for a tariff concession. Put another way, this clause provides for certain goods to be exempt from import related taxes. Therefore, persons who import goods at any time from 1 January 2022 until 31 December 2022, that meet the other criteria specified in Clause 2 are eligible to receive a tariff concession on those goods under item 59 to the Customs Tariff Act.

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-Law is made, which is the *Customs Act 1901*.

Section 4 Schedules

This section is the enabling provision for the schedules to the Amendment By-Law and provides that, each instrument that is specified in a Schedule to the Amendment By-Law, 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).

Schedule 1—Amendments

Customs By-Laws 2023

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.

Item 1 After section 74

Item 1 amends the Customs By-Laws to insert new section 75, which prescribes certain goods, imported during the period starting on 1 January 2022 and ending at the end of the day on 31 December 2022, for use in connection with the Fédération Internationale de Football Association (FIFA) Women’s World Cup Australia New Zealand 2023 (FIFA Women’s World Cup 2023) for the purposes of table item 59 in Schedule 4 to the Customs Tariff Act.

The FIFA Women’s World Cup 2023 is an international sporting event prescribed by this provision.

Table item 59 in Schedule 4 to the Customs Tariff Act provides for imported goods, as prescribed by by-law, for use in connection with an international sporting event prescribed by the by-law to be eligible for the concessional customs duty rate of “Free”.

Under new subsection 75(1), section 75 may be cited as Customs By-law No. 2442119. It prescribes goods for the purposes of item 59.

For table item 59 in Schedule 4 to the Customs Tariff Act, new subsection 75(2) has the effect that goods (other than excise-equivalent goods) for use in connection with the Fédération Internationale de Football Association (FIFA) Women’s World Cup 2023 are prescribed.

Customs By-law No. 2442119 covers the same scope of goods as Customs By-law No. 2320518 to the extent the goods are imported between 1 January 2022 and 31 December 2022. Customs By-law No. 2320518 applies to goods imported between 1 January 2023 and 31 December 2028.

Goods for use in connection with the FIFA Women’s World Cup 2023

The phrase in subsection 75(2) “in connection” with the FIFA Women’s World Cup Australia New Zealand 2023 is to include an event, competition or activity that is directly or indirectly related to the FIFA Women’s World Cup Australia New Zealand 2023 that is officially organised, supported, sanctioned or endorsed by an entity identified under new paragraph

75(3)(a), and which are designed to promote, celebrate, enhance or facilitate the hosting and staging of the FIFA Women's World Cup Australia New Zealand 2023. This may include the following events and activities:

- (a) the FIFA congress, banquets, opening, closing, award and other ceremonies and the draw;
- (b) any media and marketing events, including press conferences and launch activities;
- (c) any seminars, meetings, conferences and workshops;
- (d) any official public viewing or other fan-related events;
- (e) any cultural activities and events, in particular concerts, exhibitions, displays, shows or other expressions of culture;
- (f) any sustainability activities, including events, activities and/or programmes developed by FIFA which promote sustainable event management and/or sustainable development and contribute to FIFA's mission to building a better future;
- (g) any football matches and training sessions; and
- (h) any other activities that FIFA, an entity identified under new paragraph 75(3)(a), consider relevant for the staging, organisation, preparation, marketing, promotion or winding-up of the Women's World Cup Australia New Zealand 2023.

Excise-equivalent goods are excluded

New subsection 75(2) excludes excise-equivalent goods from goods prescribed as eligible for a tariff concession for the purposes of item 59.

Excise-equivalent goods is defined in section 4 of the Customs Act to mean goods prescribed by the regulations for the purposes of this definition.

The note to subsection 75(2) indicates that goods classified to a tariff subheading listed in clause 1 of Schedule 1 to the *Customs Regulation 2015* are excise-equivalent goods. This list is incorporated as in force from time to time, consistent with the operation of paragraph 14(1)(a) of the *Legislation Act 2003*.

Conditions

New subsection 75(3) provides that subsection 75(2) only applies to goods subject to all of the outlined conditions.

Conditions on who can import goods

New paragraph 75(3)(a) sets out a condition that the goods must be imported by certain entities or persons listed in the subparagraphs.

Subparagraph (i) identifies the Swiss legal entity known as FIFA (UID CHE 107.301.064) and includes continental football confederations. Those confederations includes:

- Asian Football Confederation;
- Confederation of African Football;
- Confederation of North, Central American and Caribbean Association Football;
- Confederación Sudamericana de Fútbol;
- Oceania Football Confederation; and
- Union of European Football Associations.

Subparagraph (ii) sets out that FIFA subsidiaries are included in the cohort of entities eligible to claim the concessional rate of duty. *FIFA subsidiary* is defined in new subsection 75(4).

Subparagraph (iii) sets out that Football Australia Limited (ACN 106 478 068) is included in the cohort of entities eligible to claim the concessional rate of duty. This entity is the national sporting organisation that has been granted the rights to host the FIFA Women’s World Cup Australia New Zealand 2023 in Australia.

Subparagraph (iv) sets out that FWWC2023 Pty Ltd (ACN 650 853 302) is included in the cohort of entities eligible to claim the concessional rate of duty. This is the legal entity established on 11 June 2021 as a central entity for the operational delivery of the tasks, activities and sub-projects in relation to the FIFA Women’s World Cup Australia New Zealand 2023 in Australia.

Subparagraph (v) provides that a person or body in connection with an entity referred to in the previous subparagraphs – i.e. FIFA (including continental football confederations), FIFA subsidiary, Football Australia Limited (ACN 106 478 068), or FWWC2023 Pty Ltd (ACN 650 853 302) – are included in the cohort of persons eligible to claim the concessional rate of duty. The phrase “any person or body in connection with” is to include any employee, contractor, subcontractor, or members (national associations) of FIFA (including their employees, contractors or subcontractors).

The effect of this subparagraph is the importer must be: (i) a person or body in connection with FIFA (including continental football confederations), (ii) a person or body in connection with a subsidiary of FIFA, (iii) a person or body in connection with Football Australia Limited, or (iv) a person or body in connection with FWWC2023 Pty Ltd.

Must provide evidence to a Collector if requested

New paragraph 75(3)(b) sets out a condition that the person or body (i.e. the importer) provides evidence of the goods being imported for the purposes of the FIFA Women’s World Cup Australia New Zealand 2023 (i.e. the prescribed international sporting event).

Time of importation

New paragraph 75(3)(c) sets out a condition that the goods were imported between 1 January 2022 and 31 December 2022.

Use of the goods

New paragraph 75(3)(d) sets out a condition that the goods are for consumption in Australia, or are exported from Australia after their use, or are donated after their use to either: an entity whose purpose is related to the practice of sports or social development, or a registered charity within the meaning of the Customs Tariff Act.

New subsection 75(4) sets out the definitions for the purpose of the by-law.