



AUSTRALIAN CUSTOMS NOTICE NO. 2006/10

Commerce (Imports) Regulations 1940 - labelling requirements for chinaware

ACN 2006/01 provided updated requirements for labelling of imported chinaware¹ as prescribed by the *Commerce (Trade Descriptions) Act 1905* (the Act) and *Commerce (Imports) Regulations 1940*, (the regulations). This notice supersedes ACN 2006/01.

The requirements for labelling outlined in ACN 2006/01 are not substantially changed by this ACN. However, following representations from a number of Industry groups, the options for labelling, and the date for compliance enforcement have been reviewed and adjusted.

The following information sets out the revised requirements for labelling chinaware.

Regulation 7(1)(j) of the regulations requires that a trade description be placed on imported china, porcelain, earthenware and enamelled hollowware of the following kinds:

- (i) articles of a description commonly used in connexion with the serving of food or drink for man; and
- (ii) kitchenware and kitchen utensils.

The trade description to be applied to such goods is set out in Regulation 8 of the regulations and is as follows.

The trade description must be in the form of a principal label or brand affixed in a prominent position and in as permanent a manner as practicable to the goods. The trade description must include the name of the country in which the goods were made or produced.

The most permanent way to mark chinaware is in indelible print, etching or under the glaze. Where this is not practicable, Customs will also accept high quality adhesive labels that are of a durable nature, do not obscure any other markings, and will remain on each item until the goods are past the point of retail sale.

If the trade description on the goods includes a weight or quantity, it must also say if that weight or quantity is net or gross.

Any other information included must not contradict or obscure the required trade description. This includes illustrations, wording or size of lettering.

The trade description must be in English.

Requirements for chinaware imported for sale as pre-packed items

Where items referred to in r.7(1)(j) of the regulations are imported in the packaging in which they are to be sold, the trade description must be applied to the individual items in the package.

¹ Chinaware includes items listed in Regulation 7(1)(j) of the *Commerce (Imports) Regulations 1940*.

Other Requirements

The Act prohibits the importation of goods that bear a false trade description. A false trade description means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect.

Further, although "Made in" is not explicitly required under the regulations (the legislation prescribes that "the name of the country in which the goods were made or produced" must be applied), where the name of the country in which they are made can be mistaken for a description of the goods (such as chinaware that is made in China) Customs suggests that "Made in" is also included. This will ensure neither the regulations nor the Act are contravened (by not bearing the prescribed trade description or by bearing a false or misleading trade description).

The Act provides that goods imported in contravention of the regulations are forfeited to the Crown and they therefore may be seized by Customs under a warrant issued under s.203 of the *Customs Act 1901*. While Customs may instead permit the re-labelling of contravening goods where it is considered that the contravention was neither intentional nor reckless, Customs recommends that goods comply with the legislation prior to their importation.

Enforcement of Trade Description Requirements

Customs has received considerable support from Industry for the enforcement of the requirements set out in this ACN. However, some importers are concerned that substantial lead time is required to ensure that all relevant items are labelled in accordance with the requirements specified in this notice. Therefore, additional time is to be allowed for importers to accommodate the changes. Until 31 December 2006, Customs will not seize as forfeited goods, goods referred to in r.7(1)(j) of the regulations in relation to which the trade description has been applied to the packages in which the goods are to be offered for sale (providing that all other requirements have been met). After that date, however, all imported goods referred to in r.7(1)(j) of the regulations must have applied to the individual items the prescribed trade description regardless of how the items are offered for sale.

Inquiries concerning this notice may be directed to the Manager Intellectual Property Rights on telephone number (02) 6275 6445 or fax number (02) 6229 3840.

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