

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 327**

Issued by the Authority of the Minister for Home Affairs

*Customs Act 1901*

*Customs Amendment Regulation 2012 (No. 10)*

Subsection 270(1) of the *Customs Act 1901* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed for giving effect to the Act or for the conduct of any business relating to Customs.

Subsection 163(1) of the Act provides in part that refunds, rebates and remissions of duty may be made:

- (a) in respect of goods generally or in respect of the goods included in a class of goods; and
- (b) in such circumstances as are prescribed, being circumstances that relate to goods generally or to the goods included in the class of goods.

The purpose of the regulation is to amend the *Customs Regulations 1926* to prescribe new refund circumstances in respect of goods imported into Australia from Malaysia, in order to fulfil Australia's obligations under the Malaysia-Australia Free Trade Agreement (the Agreement).

The Agreement was signed on 22 May 2012 and is expected to enter into force for Australia on 1 January 2013 or as soon as possible after that date.

The *Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012* (the MAFTA Act) amends the Act to fulfil Australia's obligations under Chapter 3 of the Agreement, which deals with rules of origin. These rules determine whether goods imported into Australia from Malaysia are Malaysian originating goods and are thereby eligible for preferential rates of customs duty. Malaysian originating goods are goods from Malaysia that satisfy the new rules of origin which are contained in new Division 1H of Part VIII of the Act, inserted by the MAFTA Act.

The Agreement allows for refunds of customs duty to be paid in respect of Malaysian originating goods that are imported into Australia. It is possible that an importer may pay customs duty on such goods where no duty, or a lesser amount of duty, should have been paid. It is also possible that goods imported from Malaysia would be Malaysian originating goods except that an importer did not have a valid Certificate of Origin or a Declaration of Origin, or a copy of one, at the time the goods were imported. It is proposed that an importer would be able to obtain a refund of duty in

relation to such goods if the importer holds a Certificate of Origin or Declaration of Origin, or a copy of one, at the time the refund is sought. The new refund circumstances will apply to the above circumstances.

Details of the amending regulation is set out in the Attachment.

No consultation was undertaken specifically in relation to the amendments as they implement Australia's international obligations under the Agreement.

The amending regulation would commence on the commencement of Schedule 1 to the MAFTA Act, which will be the later of 1 January 2013 or the day the Agreement enters into force for Australia.

Consultation regarding the Malaysia-Australia Free Trade Agreement was undertaken as part of the Joint Standing Committee on Treaties consideration of the Agreement.

1216850B

## Statement of Compatibility with Human Rights

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

### *Customs Amendment Regulation 2012 (No. 10)*

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### *Overview of the Regulation*

The *Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012* (the MAFTA Act) amends the *Customs Act 1901* to fulfil Australia's obligations under Chapter 3 of the Malaysia-Australia Free Trade Agreement (the Agreement), which deals with rules of origin. These rules determine whether goods imported into Australia from Malaysia are Malaysian originating goods and are thereby eligible for preferential rates of customs duty. These rules are contained in new Division 1H of Part VIII of the Act (new Division 1H).

The purpose of the regulation is to amend the *Customs Regulations 1926* to prescribe new refund circumstances in respect of goods imported into Australia from Malaysia to fulfil obligations under the Agreement.

#### *Human Rights implications*

This legislative instrument does not engage, impact on or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### *Conclusion*

This legislative instrument does not raise any human rights issues.

**Minister for Home Affairs**

## ATTACHMENT

### **DETAILS OF THE *CUSTOMS AMENDMENT REGULATION 2012 (No. 10)***

#### Section 1 - Name of regulation

This section provides that the title of the regulation is the *Customs Amendment Regulation 2012 (No. 10)*.

#### Section 2 - Commencement

This section provides that the regulation commences on the commencement of Schedule 1 to the *Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012*.

#### Section 3 - Amendment of *Customs Regulations 1926*

This section provides that Schedule 1 amends the *Customs Regulations 1926* (the Principal Regulations).

### **SCHEDULE 1 - AMENDMENTS**

#### Item [1] - After regulation 126D

Item [1] inserts new regulation 126DA into the Principal Regulations.

#### **New regulation 126DA - Other circumstances under which refunds, rebates and remissions are made—Malaysian originating**

New subregulation 126DA(1) provides that for subsection 163(1) of the Act, the following circumstances are prescribed:

- (a) duty has been paid on Malaysian originating goods;
- (b) duty has been paid on goods:
  - (i) that would have been Malaysian originating goods if, at the time the goods were imported, the importer had a Declaration of Origin or a Certificate of Origin, or a copy of one; and
  - (ii) for which the importer holds a Declaration of Origin or a Certificate of Origin, or a copy of one, at the time of making the application for the refund.

It is possible that, at the time that goods are imported, an importer may pay duty on Malaysian originating goods at a higher rate of duty than is imposed on such goods. It is also possible that goods may satisfy all of the requirements under the Act to be Malaysian originating goods except for the requirement that the importer has a Certificate of Origin or Declaration of Origin for the goods at the time of importation. In such circumstances, a refund of duty is payable. In accordance with the definitions

of “Certificate of Origin” and “Declaration of Origin” in the regulation, which have the same meaning as given in new subsection 153ZLB(1) of the Act, a “Declaration of Origin” will only be ‘in force’ when Malaysia decides to waive the Certificate of Origin requirement and replace it with the Declaration of Origin requirement under Article 3.15 of the Agreement.

New subregulation 126DA(2) provides that a person may not apply for duty to be refunded under paragraph 126(1)(e) of the Principal Regulations in respect of goods mentioned in new subregulation 126DA(1) to the extent that an application for refund relates to one or more of the factors that determine whether the goods are Malaysian originating goods.

Paragraph 126(1)(e) provides that refunds of duty are payable where duty has been paid through manifest error of fact or patent misconception of the law. A refund of duty could be paid under paragraph 126(1)(e) in respect of goods mentioned in subregulation 126DA(1) if it does not relate to the factors that determine whether the goods are Malaysian originating goods.

The purpose of new subregulation 126DA(2) is to restrict refunds of duty in relation to Malaysian originating goods to the extent that the refund relates to any of the factors that determine whether goods are Malaysian originating goods to new regulation 126DA only.

New subregulation 126DA(3) provides that in new regulation 126D:

*Certificate of Origin* has the meaning given in subsection 153ZLB(1) of the Act;

*Declaration of Origin* has the meaning given in subsection 153ZLB(1) of the Act;

*Malaysian originating goods* has the meaning given in subsection 153ZLB(1) of the Act.

Item [2] - Paragraph 128(1)(e)

Item [2] amends paragraph 128(1)(e) of the Principal Regulations to insert a reference to subregulation 126DA(1).

Subregulation 128(1) of the Principal Regulations prescribes, for the purpose of paragraph 163(1AA)(a) of the Act, how an application by document for a refund, rebate or remission of duty is to be made. Paragraph 128(1)(e) currently requires the application to state which circumstance applies to the goods.

The regulation would extend the operation of paragraph 128(1)(e) so that an application for a refund, rebate or remission of duty could state that the circumstance under subregulation 126DA(1) applies to the goods.

Item [3] - Paragraph 128(1A)(b)

Item [3] amends paragraph 128(1A)(b) of the Principal Regulations to insert a reference to subregulation 126DA(1).

Subregulation 128(1A) of the Principal Regulations prescribes, for the purposes of paragraph 163(1AA)(a) of the Act, how an application by computer for a refund, rebate or remission of duty is to be made. Paragraph 128(1A)(b) currently requires the application by computer to state which circumstance applies to the goods.

The operation of paragraph 128(1A)(b) is extended so that an application for a refund, rebate or remission of duty could state that the circumstance under subregulation 126DA(1) applies to the goods.

Item [4] - After subparagraph 128A(4)(vii)

Item [4] inserts new subparagraph 128A(4)(a)(viii).

Regulation 128A of the Principal Regulations specifies when an application for a refund of duty may be made in certain circumstances.

New subparagraph 128A(4)(a)(viii) includes in paragraph 128A(4)(a) the refund circumstances specified in new subregulation 126DA(1) (inserted by item [1] above). This amendment means that an application for a refund of duty in relation to a circumstance specified in new subregulation 126DA(1) can be made within 4 years from the date on which the duty was paid.

Item [5] - Subregulation 128B(6)

Item [5] inserts the definition of *Malaysian originating goods* into subregulation 128B(6) of the Principal Regulations and provides that the phrase has the meaning given in subsection 153ZLB(1) of the Act.

Item [6] - After subregulation 128B(13)

Item [6] inserts new subregulations 128B(14) and (15) in the Principal Regulations. New subregulations 128B(14) and (15) set out the amount of refund payable under new subregulation 126DA(1).

New subregulation 126B(14) provides that the amount of a refund, rebate or remission of duty that may be made in the circumstances prescribed in paragraph 126DA(1)(a) is the difference between the amount of duty paid on the goods and the amount of duty payable on the goods as Malaysian originating goods.

New subregulation 126C(15) provides that the amount of a refund, rebate or remission of duty that may be made in the circumstances prescribed in paragraph 126DA(1)(b) is the difference between the amount of duty paid on the goods and the amount of duty payable on the goods if they had been Malaysian originating goods at the time of their importation.