

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 160, 2014

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901

Customs Amendment (Korean Rules of Origin) Regulation 2014

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 the Australian Customs and Border Protection Service.

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 Korea, in order to fulfil Australia's obligations under the Korea-Australia Free Trade Agreement (the Agreement).

The Agreement was signed on 8 April 2014 in Seoul, South Korea and is expected to commence late in 2014.

The *Customs Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014* (the KAFTA 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 Korea are Korean originating goods and are thereby eligible for preferential rates of customs duty. Korean originating goods are goods from Korea that satisfy the new rules of origin which are contained in new Division 1J of Part VIII of the Act, inserted by the KAFTA Act.

The Agreement allows for refunds of customs duty to be paid in respect of Korean 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 Korea would be Korean originating goods except that an importer did not have a valid Certificate 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 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 are 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 KAFTA Act, which will be the later of 1 December 2014 or the day the Agreement enters into force for Australia.

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

OPC60863-A

Statement of Compatibility with Human Rights

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

Customs Amendment (Korean Rules of Origin) Regulation 2014

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 (Korea-Australia Free Trade Agreement Implementation) Act 2014* (the KAFTA Act) amends the *Customs Act 1901* to fulfil Australia's obligations under Chapter 3 of the Korea-Australia Free Trade Agreement (the Agreement), which deals with rules of origin. These rules determine whether goods imported into Australia from Korea are Korean originating goods and are thereby eligible for preferential rates of customs duty. These rules are contained in new Division 1J of Part VIII of the Act (new Division 1J).

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 Korea 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 Immigration and Border Protection

ATTACHMENT

DETAILS OF THE *CUSTOMS AMENDMENT (KOREAN RULES OF ORIGIN) REGULATION 2014*

Section 1 - Name of regulation

This section provides that the title of the regulation is the *Customs Amendment (Korean Rules of Origin) Regulation 2014*.

Section 2 - Commencement

This section provides that the regulation commences on the commencement of Schedule 1 to the *Customs Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014*.

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 126DA

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

New regulation 126DB - Other circumstances under which refunds, rebates and remissions are made—Korean originating

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

- (a) duty has been paid on Korean originating goods;
- (b) duty has been paid on goods:
 - (i) that would have been Korean originating goods if, at the time the goods were imported, the importer had a Certificate of Origin, or a copy of one; and
 - (ii) for which the importer holds 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 Korean 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 Korean originating goods except for the requirement that the importer has a Certificate of Origin for the goods at the time of importation. In such circumstances, a refund of duty is payable.

New subregulation 126DB(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 126DB(1) to the extent that an application for refund relates to one or more of the factors that determine whether the goods are Korean 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 126DB(1) if it does not relate to the factors that determine whether the goods are Korean originating goods.

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

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

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

Korean originating goods has the meaning given in subsection 153ZMB(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 126DB(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 operation of paragraph 128(1)(e) is extended so that an application for a refund, rebate or remission of duty could state that the circumstance under subregulation 126DB(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 126DB(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] – At the end of paragraph 128A(4)(a)

Item [4] adds new subparagraph 128A(4)(a)(ix).

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)(ix) includes in paragraph 128A(4)(a) the refund circumstances specified in new subregulation 126DB(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 126DB(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 ***Korean originating goods*** into subregulation 128B(6) of the Principal Regulations and provides that the phrase has the meaning given in subsection 153ZMB(1) of the Act.

Item [6] – At the end of regulation 128B

Item [6] adds new subregulations 128B(16) and (17) in the Principal Regulations. New subregulations 128B(16) and (17) set out the amount of refund payable under new subregulation 126DB(1).

New subregulation 128B(16) provides that the amount of a refund, rebate or remission of duty that may be made in the circumstances prescribed in paragraph 126DB(1)(a) is the difference between the amount of duty paid on the goods and the amount of duty payable on the goods as Korean originating goods.

New subregulation 128B(17) provides that the amount of a refund, rebate or remission of duty that may be made in the circumstances prescribed in paragraph 126DB(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 Korean originating goods at the time of their importation.