

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 197, 2014

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

Customs Act 1901

Customs Amendment (Japanese 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 Japan, in order to fulfil Australia's obligations under the Japanese-Australia Economic Partnership Agreement (the Agreement).

The Agreement was signed on 8 July 2014 in Canberra, Australia and is expected to commence early in 2015.

The *Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014* (the JAEPA 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 Japan are Japanese originating goods and are thereby eligible for preferential rates of customs duty. Japanese originating goods are goods from Japan that satisfy the new rules of origin which are contained in new Division 1K of Part VIII of the Act, inserted by the JAEPA Act.

The Agreement allows for refunds of customs duty to be paid in respect of Japanese 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 Japan would be Japanese originating goods except that an importer did not have a valid Certificate of Origin or origin certification document, or a copy of one, at the time the goods were imported. As a result, the Regulation will allow an importer to obtain a refund of duty in relation

to such goods if the importer holds a Certificate of Origin or origin certification document, or a copy of one, at the time the refund is sought.

Under new subsection 153ZNB(1) of the Act, “Certificate of Origin” is defined as a certificate that is in force and that complies with the requirements of Article 3.15 of the Agreement and “origin certification document” is defined as a document in force and that complies with the requirement of Article 3.16 of the Agreement. Upon the entry into force of the Agreement and therefore the commencement of the JAEPA Act, the “Certificate of Origin” and the “origin certification document” will be the only origin documents ‘in force’ for the purposes of claiming preferential rates of customs duty for goods that are Japanese originating goods under Article 3.15 and Article 3.16 of the Agreement.

Details of the Regulation are set out in the Attachment.

Sections 1 to 4 of the Regulation commence the day after the instrument is registered. Schedule 1 of the Regulation will commence at the same time as Schedule 1 to the JAEPA Act, which will be the later of the day the Act receives Royal Assent and the day the Agreement enters into force for Australia.

No particular consultation was undertaken with regard to this Regulation; however, consultation regarding the Japan-Australia Economic Partnership Agreement was undertaken as part of the Joint Standing Committee on Treaty’s consideration of the Agreement.

OPC60924-A

Statement of Compatibility with Human Rights

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

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

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 Japan 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 (JAPANESE RULES OF ORIGIN) REGULATION 2014*

Section 1 - Name

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

Section 2 - Commencement

This section provides that sections 1 to 4 of the Regulation commence on the day after the instrument is registered. It also provides that Schedule 1 of the Regulation will commence at the same time as Schedule 1 to the *Customs Amendment (Japan-Australia Economic Partnership Agreement) Act 2014* (the JAEPA Act), which will be the later of the day the JAEPA Act receives Royal Assent and the day the Japan-Australia Economic Partnership Agreement enters into force for Australia.

Section 3 - Authority

This section provides that the instrument is made under the *Customs Act 1901*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has this effect according to its terms.

SCHEDULE 1 - AMENDMENTS

Customs Regulations 1926

Item [1] - After regulation 126D

Item [1] inserts new regulation 126DAA into the *Customs Regulations 1926* (the Principal Regulations).

New regulation 126DAA - Other circumstances under which refunds, rebates and remissions are made—Japanese originating goods

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

- (a) duty has been paid on Japanese originating goods;
- (b) duty has been paid on goods:

(i) that would have been Japanese originating goods if, at the time the goods were imported, the importer had a Certificate of Origin or origin certification document, or a copy of one; and

(ii) for which the importer holds a Certificate of Origin or origin certification document, 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 Japanese 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 Japanese originating goods except for the requirement that the importer has a Certificate of Origin, or origin certification document, for the goods at the time of importation. In such circumstances, a refund of duty is payable.

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

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

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

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

Japanese originating goods has the meaning given in subsection 153ZNB(1) of the Act;

origin certification document has the meaning given in subsection 153ZNB(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 126DAA(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 126DAA(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 126DAA(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 126DAA(1) applies to the goods.

Item [4] – After subparagraph 128A(4)(a)(vii)

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

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

Item [6] – After 128B(13)

Item [6] adds new subregulations 128B(13A) and (13B) in the Principal Regulations. New subregulations 128B(13A) and (13B) set out the amount of refund payable under new subregulation 126DAA(1).

New subregulation 128B(13A) provides that the amount of a refund, rebate or remission of duty that may be made in the circumstances prescribed in paragraph 126DAA(1)(a) is the difference between the amount of duty paid on the goods and the amount of duty payable on the goods as Japanese originating goods.

New subregulation 128B(13B) provides that the amount of a refund, rebate or remission of duty that may be made in the circumstances prescribed in paragraph 126DAA(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 Japanese originating goods at the time of their importation.