

EXPLANATORY STATEMENT

Select Legislative Instrument 2016 No.

Issued by the Minister for Immigration and Border Protection

Commerce (Trade Descriptions) Act 1905

Commerce (Trade Descriptions) Regulation 2016

Authority

The *Commerce (Trade Descriptions) Act 1905* (the CTD Act) concerns trade descriptions applied to certain imported and exported goods, and includes a head of power whereby regulations may prohibit the importation and exportation of goods unless a trade description is applied to them.

Section 17 of the CTD Act provides that the Governor-General may make regulations not inconsistent with that Act prescribing all matters and things required or permitted by that Act to be prescribed or which are necessary and convenient to be prescribed for carrying out or giving effect to that Act, and particularly for the analysis of samples taken under that Act, and the extent to which certificates of analysis shall be prima facie evidence in proceedings under that Act of the facts therein stated.

Background

The *Commerce (Imports) Regulations 1940* (the 1940 Regulations) are made under section 17 of the CTD Act, and prescribe the goods and classes of goods whose importation into Australia are prohibited unless a trade description (as defined in section 3 of the CTD Act) is applied to those goods, and related matters. The objectives of the 1940 Regulations are to:

- protect legitimate traders from competitors who would mark or label their goods in a misleading manner;
- protect the Australian public health and public interest by requiring importers of manufactured goods to disclose an accurate description of their goods and the components or ingredients therein; and
- preserve the reputation of Australian industries by ensuring that inferior quality goods shall not be represented as something of a higher quality than is the case.

The 1940 Regulations will sunset and cease to have effect on 1 April 2017 by operation of section 50 of the *Legislation Act 2003* and the *Legislation (Deferral of Sunsetting—Commerce Imports) Certificate 2016*.

The purpose of the *Commerce (Trade Descriptions) Regulation 2016* (the 2016 Regulation) is to remake the 1940 Regulations to retain the operation of existing trade description requirements that apply to specified goods, and related matters. To this effect, the 1940 Regulations have been remade with modifications to simplify expressions, and to remove redundant provisions.

The Department of Immigration and Border Protection (the Department) has reviewed and assessed the performance of the 1940 Regulations and found that they were achieving their objectives efficiently and effectively, and as such should be remade.

In addition, the 2016 Regulation also includes, for the purpose of imported food, requirements contained in Division 2 of the *Country of Origin Food Labelling Information Standard 2016* (the Information Standard) so that they form part of the trade description requirements.

These requirements will require packages of imported food to also set out in a statement, either the country in which the food were made, produced, or grown, or where the package contains food from multiple origins, a statement to that effect or a statement that it is comprised of imported ingredients. As a result, these requirements will also have the effect of aligning the trade description requirements at the point of importation with the labelling requirements for the domestic sale of food specifying the country of origin of the food.

Section 16 of the CTD Act provides that the regulations under sections seven and eleven of the Act shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, unless in the opinion of the Governor-General the disclosure is necessary for the protection of the health or welfare of the public.

The 2016 Regulation does not impose a requirement to require the disclosure of trade secrets of manufacture or preparation, and as such is not contrary to the prohibition in section 16 of the CTD Act.

The details of the 2016 Regulation are set out in [Attachment A](#).

The 2016 Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights has been completed for the 2016 Regulation and is at [Attachment B](#).

Consultation

The Department conducted a public consultation between October 2015 and November 2015, and received a total of eight related public submissions from industry stakeholders and a member of the public. These submissions discussed the goods for which trade descriptions are required, their measurements, and their effectiveness.

The Department has considered all of the responses from the public submissions, and has incorporated some of those responses in the 2016 Regulation. For example, the comments in relation to the measurement of goods to which a trade description applies are incorporated into the 2016 Regulation, which sets out measurements that are consistent with those used in goods for domestic sale, i.e. kilograms and litres. Some of the responses received by the Department were not incorporated in the 2016 Regulation as they were inconsistent with domestic labelling requirements or fell out of scope of the review.

In relation to the additional requirements for imported food, consultations were undertaken by the Department of Industry, Innovation and Science prior to the making of the Information Standard, and are noted in the “Country of Origin Labelling – Decision Regulation Impact Statement”. The link to this Regulation Impact Statement is below:

<https://ris.govspace.gov.au/2015/12/22/country-of-origin-labelling-for-food/>

Commencement

Subsection 7(4) of the *Commerce (Trade Descriptions) Act 1905* (the CTD Act) provides that no regulations made for the purposes of section 7 shall take effect until after the expiration of not less than three months from notification in the *Gazette*. Having regards to this limitation, the 2016 Regulation will commence on 1 April 2017.

OPC61655 – A

Details of the *Commerce (Trade Descriptions) Regulation 2016*

Part 1—Preliminary

Section 1 – Name

This section provides for the Legislative Instrument to be titled the *Commerce (Trade Descriptions) Regulation 2016* (the 2016 Regulation).

Section 2 – Commencement

This section sets out, in a table, the date on which the 2016 Regulation will commence, and provides that each provision of the Regulation as specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of that table, and that any other statement in column 2 is to have effect according to its terms.

Subsection 7(4) of the *Commerce (Trade Descriptions) Act 1905* (the CTD Act) provides that no regulations made for the purposes of section 7 shall take effect until after the expiration of not less than three months from notification in the *Gazette*. Having regards to this limitation, the 2016 Regulation will commence on 1 April 2017.

Section 3 – Authority

This section provides that the 2016 Regulation is made under the CTD Act. The *note* to section 3 provides that the CTD Act is incorporated and to be read as one with the *Customs Act 1901*; see section 2 of the CTD Act.

Section 4 – Schedules

This section provides for each instrument that is specified in a Schedule to this instrument to be amended or repealed as set out in the applicable items of the Schedule concerned, and for any other item contained in the Schedule to this instrument to have effect according to its own terms. In the 2016 Regulation, Schedule 1 repeals the *Commerce (Imports) Regulations 1940* (1940 Regulations). Schedule 1 does not contain any other provisions.

Section 5 - Definitions

This section includes most of the definitions contained in regulation 5 of the 1940 Regulations. These definitions are retained for the purpose of trade description requirements with modifications, mostly to simplify expressions and to retain the meaning of those terms.

However, some definitions have been broadened to give effect to new food labelling requirements. For example, the definition of “food and drink” is substituted with “food”, and has the same meaning as in the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act). The new definition covers all of the matters within the scope of the previous definition, but also includes additional matters such as items declared to be food under the FSANZ Act.

This amended definition will promote consistency between Commonwealth laws.

Another example of a broadened definition is “prescribed goods”, which is substituted with “examinable goods”. Examinable goods are:

- goods to which a trade description is applied;
- goods covered by Subdivision B of Division 1 of Part 2 (which is about goods whose import without trade description is prohibited); or
- goods covered by Subdivision C of Division 1 of Part 2 (which is about goods whose import without trade description is not prohibited).

The definition of “examinable goods” covers goods, whether or not a trade description is required, so that an analyst appointed by the Comptroller-General of Customs may inspect all specified imported goods to determine whether or not the trade descriptions on those goods have been correctly applied.

This will maintain an ability of an analyst to inspect certain goods that do not require a trade description to ascertain whether or not they are such goods.

The definitions of “brand”, “condensed milk and evaporated milk”, “coverings”, “dried fruits”, “fertilizer”, “hair”, “new and newness”, “paint”, “plants”, and “wool” in the 1940 Regulations are redundant and have not been replicated in the 2016 Regulation.

In addition, as part of the whole of Government agenda to replicate certain requirements in the *Country of Origin Food Labelling Information Standard 2016* (the Information Standard) so that they form part of the trade description requirements, this section also inserts a new definition of “priority food”.

The new term distinguishes priority food from non-priority food, which is a term used in the Information Standard, to distinguish the requirements for the statement of country of origin requirement that applies to priority food from those applying to non-priority food (see the notes for section 16 below).

Section 6 – Interpretation—weights, measures, packages of goods and bundles of articles

This section remakes subregulations 5(2), (3), (4) and (7) of the 1940 Regulations to retain their effect in relation to weights, measures and packaging of articles. For example, a reference in the 2016 Regulation to the weight or measure of an article is a reference to that weight exclusive of the weight or measure of the package in which the article is packed.

Section 7 – This instrument does not apply to ship’s stores or aircraft’s stores

This section remakes regulation 6 of the 1940 Regulations to retain the exclusion of ship’s stores and aircraft’s stores from the application of trade description requirements.

Part 2—Trade descriptions of goods imported

Division 1—Prohibition of imports without trade descriptions

Subdivision A—Prohibition

Section 8 – Prohibition of certain imports unless trade description applied

This section remakes subregulation 7(1) of the 1940 Regulations to retain the prohibition on the importation of specified goods unless a trade description is applied to those goods.

The relevant goods are those set out in sections 9 and 10 under Subdivision B of Division 1 of Part 2 to the 2016 Regulation, but does not include goods set out in the sections under Subdivision C of that Division. Subdivision C remakes the Fifth Schedule of the 1940 Regulations which sets out the goods that are not subject to the trade description requirements (see the notes for sections 11 to 12 below).

Subdivision B—Goods whose import without trade description is prohibited

Sections 9 and 10– General goods, and goods at least half clad in certain materials

These sections substantially remake subregulations 7(1) and (2) of the 1940 Regulations to specify those goods whose importation without a trade description is prohibited.

Paragraph 7(1)(ha), subregulation 7(2), and Schedule 4 of the 1940 Regulations are consolidated and remade in section 10 of the 2016 Regulation. This will maintain the trade description requirement that applies to goods where more than half the outside area of those goods consist of leather, fibre, vulcanite or material resembling these materials, and plastic.

However, the requirement in paragraph 7(1)(ha) of the 1940 Regulations relating to the total outside area of which is not less than 155 square centimetres has not been remade in the 2016 Regulation.

Additionally, paragraphs 7(1)(b), (d), (e), (h), (i), (l), and (r) of the 1940 Regulations, which prohibit the importation of medicines or medicinal preparations for internal or external use, agricultural seeds, plants, jewellery, brushware, powder puffs, watches and clocks and movements for watches and clocks, unless a trade description is applied to those goods, have not been remade in the 2016 Regulation.

In relation to paragraph 7(1)(b) of the 1940 Regulations, which concerns medicines or medicinal preparations for internal or external use, this paragraph has not been remade in the 2016 Regulation as labelling and packaging requirements for these goods already exist under the *Therapeutic Goods Act 1989*. Therefore, the importation of these goods no longer requires a trade description (see table item 10 of section 11 of the 2016 Regulation).

In relation to paragraphs 7(1)(d) and (e) of the 1940 Regulations, which concern agricultural seeds and plants, these paragraphs have not been remade in the 2016 Regulation to acknowledge the controls and requirements to import such products that already exist within the biosecurity environment, and remove duplicate processes at the point of importation.

Subdivision C—Goods whose import without trade description is not prohibited

Section 11 – Goods that may be imported without trade description applied

This section substantially remakes the list of goods that are not food and that are contained in Part I of the Fifth Schedule to the 1940 Regulations with the effect that those goods can continue to be imported into Australia without a trade descriptions being applied to them.

Table items 1 (Easter eggs, Easter caskets and confectionery in novelty shapes), 2 (Honey in the comb, being honey contained in the original frame), and 4 (Kippers) under Part I of the Fifth Schedule to the 1940 Regulations have been separately remade in section 13 of the 2016 Regulation to distinguish them from goods that are not food.

Table item 12 (Rolls of polythene and rubber separation film that are so marked in terms of nominal weight, length and width as to comply with Australian Standard Code ASK 120-1965) in Part I of the Fifth Schedule to the 1940 Regulations are no longer required and has not been remade in the 2016 Regulation.

Section 12 – Packages of goods that may be imported without trade description applied

This section substantially remakes the list of packages of goods with certain measurements or weights and that are not food that are contained in Part II of the Fifth Schedule to the 1940 Regulations, to ensure that those packages can continue to be imported into Australia without a trade description being applied to them.

“Other similar articles” in table item 2 of this section, could include the following:

- bedlinen, table linen and kitchen linen;
- blankets and travelling rugs;
- curtains and interior blinds; curtains or bed valances;
- sacks and bags of a kind used for the packing of goods;
- tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; or
- camping goods.

Table items 1, 3, 4, 7, 9, 10, 11, 13, 14, 16, 17, 20 and 21 under Part II of the Fifth Schedule to the 1940 Regulations have been separately remade in section 14 of the 2016 Regulation to distinguish them from packages of goods that are not food.

However, table items 8 (Packages of less than either one-half of an ounce or 15 grammes containing tobacco) and 15 (Packages containing vaccines of a quantity less than 25 millilitres or single doses of substances used for injections and contained in vials or ampoules) under Part II of the Fifth Schedule to the 1940 Regulations are no longer required and have not been remade in the 2016 Regulation.

In relation to table item 8 of Part II of the Fifth Schedule to the 1940 Regulations, this table item has not been remade in the 2016 Regulation to align with existing tobacco packaging requirements.

In relation to table item 15 of Part II of the Fifth Schedule to the 1940 Regulations, this table item has not been remade in the 2016 Regulation as it is covered by paragraph (c)

of table item 10 under section 11, which permits medicines (within the meaning of the *Therapeutic Goods Act 1989*) to be imported into Australia without a trade description.

Section 13 – Food that may be imported before 1 July 2018 without trade description applied

This section remakes the list of goods that are food in Part I of the Fifth Schedule to the 1940 Regulations to ensure that these goods can continue to be imported without a trade description being applied to them.

This section will have effect only until 30 June 2018 to recognise the end of the transitional period set out in the Information Standard. This time period will allow time for businesses affected by the Information Standard to update labels within their existing production processes and labelling cycles; see the Country of Origin Labelling – Decision Regulation Impact Statement. This section is repealed at the start of 1 July 2018.

This will align the trade description requirements at the point of importation with labelling requirements for domestic sale in relation to statements setting out the country of origin of food concerned.

Section 14 – Packages of food that may be imported before 1 July 2018 without trade description applied

This section remakes the list of specific food with certain measurements or weights in packages in Part II of the Fifth Schedule to the 1940 Regulations to ensure that such packaged food can continue to be imported without a trade description being applied to them.

Similar to section 13 above, this section will have effect only until 30 June 2018 to recognise the end of the transitional period set out in the Information Standard, to allow time for businesses affected by that Standard to update labels within their existing production processes and labelling cycles.

This will align the trade description requirements at the point of importation with labelling requirements for domestic sale in relation to statements setting out the country of origin of food concerned. This section is also repealed at the start of 1 July 2018.

Division 2—Trade description

Section 15 – Trade description of goods to except them from prohibition on import

This section provides that Division 2 of the 2016 Regulation sets out the requirements for the character and manner of application of a trade description for goods to be excepted from the prohibition in section 8 of the 2016 Regulation on importing them.

Division 2 remakes regulation 8 of the 1940 Regulations. In addition, with respect to food, this Division also replicates the country of origin labelling requirements contained in the Information Standard so that those labelling requirements form part of the trade description requirements; see the notes in section 16 below.

Section 16 – Content of trade description-source country

This section remakes the requirements in the chapeau of paragraph 8(c) and subparagraph 8(c)(i) of the 1940 Regulations, to retain the requirement to provide, in prominent and legible characters, the name of the country in which goods were made or produced.

Subsection 16(1)

In addition, and as an alternative to the requirements in paragraph 16(1)(a) of this Regulation, this section also incorporates in paragraph 16(1)(b) and (c) of the 2016 Regulation, the labelling requirements in Division 2 of the Information Standard (assuming that the Standard defined food as having the same meaning as it has in the FSANZ Act) so that they form part of the trade description requirements.

The labelling requirements of the Information Standard are incorporated in the 2016 Regulation as in force at the time the Regulation commences on 1 April 2017 to reflect the nature of the Information Standard as a non-disallowance legislative instrument (see section 14 and 44 of the *Legislation Act 2003*).

The alternative requirements apply to all food imported in a package and require those packages of food to contain a statement of the country of origin of the food, which includes as appropriate the country in which those foods were made, produced or grown. Where those imported foods were packaged using food from more than one country, the statement must indicate that the food is of multiple origins or that it is comprised of imported ingredients.

Therefore, paragraph 16(1)(a) of the 2016 Regulation will apply to all goods (including food) to which importation is prohibited unless a trade description applied to those goods.

However, if paragraph 16(1)(b) or (c) of the 2016 Regulation is chosen, the relevant trade description requirement is met if those goods contain a statement of the country of origin of the food determined in accordance with the Information Standard, and paragraph 16(1)(a) does not apply. Where either paragraph 16(1)(b) or (c) is chosen, and the goods are priority food, the statement must be written in a clearly defined box (see subsection 16(4) of the 2016 Regulation). Examples of a statement in a clearly defined box can be found in the Information Standard.

The alternative arrangement will operate until 1 July 2018 after which goods that are imported foods in packages can only satisfy the relevant trade description requirement by satisfying either paragraph 16(1)(b) or (c) of the 2016 Regulation.

Subsections 16(2) and (3)

Subsection 16(2) of the 2016 Regulation provides that, neither paragraph 16(1)(b) nor paragraph 16(1)(c) prevents paragraph 16(1)(a) from applying in relation to goods that are food and are imported before 1 July 2018. These subregulations reflect the alternative nature of paragraphs 16(1)(a), (b) and (c) of the 2016 Regulation.

Subsection 16(3) of the 2016 Regulation provides that paragraph 16(1)(a) does not apply to the trade description of goods that are food and are imported after 30 June 2018.

Together, the two subsections reflect the transitional period in the Information Standard so that the alternative requirements in paragraphs 16(1)(b) and (c) are not compulsory until 1 July 2018.

Subsection 16(4)

Subsection 16(4) of the 2016 Regulation requires the statement in paragraphs 16(1)(b) and (c) about priority food imported as pre-packed articles to be written in a clearly defined text box. This requirement replicates the requirement in subsections 15(4) and 16(4) of the Information Standard.

While both priority food and non-priority food will need to contain a statement about the country of origin of the food, only priority food will require that statement to be set out in a clearly defined box.

The Information Standard came into effect on 1 July 2016. Businesses may choose to adopt the changes at any time during the transition period, which ends on 30 June 2018. Products compliant with the Food Standards Code origin requirements prior to 30 June 2018, but imported on or after 1 July 2018, will be deemed to have complied with the Information Standard.

Transitional period

As per the notes for sections 13 and 14, the transitional period between commencement of the 2016 Regulation and 1 July 2018 allows time for businesses affected by the Information Standard to update labels within their existing production processes and labelling cycles; see the Country of Origin Labelling – Decision Regulation Impact Statement.

Section 17 – Content of trade description-true description of goods

This section remakes the requirement in the chapeau of paragraph 8(c) and subparagraph 8(c)(ii) of the 1940 Regulations that a trade description for certain goods must set out the true description of those goods in prominent and legible characters.

Section 18 – English language trade description

This section remakes paragraph 8(f) of the 1940 Regulations to retain the requirement that a trade description must be in the English language.

Section 19 – Manner of applying trade description

This section remakes paragraphs 8(a), (b) and (e) of the 1940 Regulations to retain requirements concerning the manner in which trade descriptions are to be applied to goods imported as pre-packed articles and goods other than goods imported as pre-packed articles.

“Prepacked article” is defined in section 5 of the 2016 Regulation to mean an article of goods that are packed in a way in which goods of that kind are commonly packed for sale.

Section 20 – Extra rules about trade description of shoes

This section remakes regulation 15B of the 1940 Regulations to retain the additional trade description requirements that apply to imported shoes.

Part 3 – Inspection and analysis

Section 21 – Goods that may be inspected, examined and sampled by an officer

This section remakes regulation 23 of the 1940 Regulations to prescribe “examinable goods” for the purposes of subsection 5(1) of the CTD Act, as goods to which an officer, in certain circumstances, may inspect and examine.

Section 22 – Appointment of analysts

This section remakes subregulation 24(1) of the 1940 Regulations to retain the Minister’s ability to appoint qualified persons to be analysts for the purposes of the 2016 Regulation.

Subregulation 24(2) of the 1940 Regulations refers to the Australian Government Analyst in the Analytical Services Branch in the Department of Science and Technology having the powers of a person appointed as an analyst by the Minister. This provision has not been remade in the 2016 Regulation because the relevant office of Australian Government Analyst no longer exists.

Section 23 – Analysis and examination of samples of examinable goods

Subsection 23(1) remakes subregulation 24(3) of the 1940 Regulations to retain the ability of an analyst to analyse or examine samples of examinable goods taken by an officer under the CTD Act; see the notes for section 21 above relating to examinable goods for the purpose of subsection 5(1) of the CTD Act.

Subsection 23(2) remakes with modification subregulation 25(1) of the 1940 Regulations, such that in proceedings under the CTD Act or the 2016 Regulation relating to examinable goods, a certificate given by an analyst of the results of an examination or analysis of a sample of those goods is prima facie evidence of the matters stated in the certificate. That they are prima facie evidence allows evidence to the contrary to be adduced in any proceedings.

These certificates will only provide evidence of a technical matter of fact, for example that certain goods are as described in their trade description or to establish the true nature of goods.

However, subregulation 25(2) of the 1940 Regulations, which provides for judicial notice of the signature of an analyst on a certificate, has not been remade in the 2016 Regulation, as subsection 150(3) of the *Evidence Act 1995* has the same effect.

Part 4—Transitional matters

Section 24 – Commerce (Imports) Regulations 1940-transition

This section applies to goods imported on or after the commencement of the 2016 Regulation so that if:

- a thing was done for a particular purpose under the 1940 Regulations as in force immediately before those Regulations were repealed; and
- the thing could be done for that purpose under the 2016 Regulation; the thing has effect for the purposes of the 2016 Regulation as if it had been done under that Regulation. This includes a reference to an appointment, certificate, or other instrument being made or given.

This section will ensure that the repeal of the 1940 Regulations by Schedule 1 of the 2016 Regulation does not also cease things done for the purpose of the 1940 Regulations. By way of an example, this section will apply to save an appointment of an analyst under the 1940 Regulations so that it will continue to have effect as an appointment under the 2016 Regulation.

Schedule 1—Repeals

Clause 1 – The whole of the Regulations

This clause repeals the 1940 Regulations.

The purpose of this clause is to repeal the 1940 Regulations before they cease on 1 April 2017 by operation of section 50 of the *Legislation Act 2003* and the *Legislation (Deferral of Sunsetting—Commerce Imports) Certificate 2016*.

Statement of Compatibility with Human Rights

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

Commerce (Trade Descriptions) Regulation 2016

The Legislative Instrument, titled the *Commerce (Trade Descriptions) Regulation 2016* (the 2016 Regulation), is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Commerce (Trade Descriptions) Act 1905* (the CTD Act) concerns trade descriptions applied to certain imported and exported goods, and includes a head of power whereby regulations may prohibit the importation and exportation of goods unless a trade description is applied to them.

Section 17 of the CTD Act provides that the Governor-General may make regulations not inconsistent with that Act prescribing all matters and things required or permitted by that Act to be prescribed or which are necessary and convenient to be prescribed for carrying out or giving effect to that Act, and particularly for the analysis of samples taken under that Act, and the extent to which certificates of analysis shall be prima facie evidence in proceedings under that Act of the facts therein stated.

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- protect legitimate traders from competitors who would mark or label their goods in a misleading manner;
- protect the Australian public health and public interest by requiring importers of manufactured goods to disclose an accurate description of their goods and the components or ingredients therein; and
- preserve the reputation of Australian industries by ensuring that inferior quality goods shall not be represented as something of a higher quality than is the case.

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The purpose of the *Commerce (Trade Descriptions) Regulation 2016* (the 2016 Regulation) is to remake the 1940 Regulations to retain operation of the existing trade description requirements that apply to specified goods, and related matters. To this effect, the 1940 Regulations have been remade with modifications to simplify expressions, and to remove redundant provisions.

The Department of Immigration and Border Protection has reviewed and assessed the performance of the 1940 Regulations and found that they were achieving their objectives efficiently and effectively, and as such should be remade.

In addition, the 2016 Regulation also includes, in relation to imported food, requirements contained in Division 2 of the *Country of Origin Food Labelling Information Standard 2016* (the Information Standard) so that they form part of the trade description requirements.

These requirements will require packages of imported food to also set out in a statement either, the country in which the foods were made, produced, or grown, or where the package contains foods from multiple origins, a statement to that effect or a statement that it is comprised of imported ingredients. As a result, these requirements will also have the effect of aligning the trade description requirements at the point of importation with the labelling requirements for the domestic sale of food specifying the country of origin of the food.

Section 16 of the CTD Act provides that the regulations under sections seven and eleven of the Act shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, unless in the opinion of the Governor-General the disclosure is necessary for the protection of the health or welfare of the public.

The 2016 Regulation does not impose a requirement to require the disclosure of trade secrets of manufacture or preparation, and as such is not contrary to the prohibition in section 16 of the CTD Act.

The 2016 Regulation commences on 1 April 2017.

Human rights implications

The 2016 Regulation does not engage any of the applicable rights or freedoms.

Conclusion

The 2016 Regulation is compatible with human rights as it does not raise any human rights issues.

The Hon. Peter Dutton MP, Minister for Immigration and Border Protection