

EXPLANATORY STATEMENT

Select Legislative Instrument 2017 No.

Issued by the Assistant Minister for Immigration and Border Protection
Parliamentary Secretary to the Minister for Immigration and Border Protection

Customs Act 1901

Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017

The *Customs Act 1901* (the Customs Act) concerns customs related functions and is the legislative authority that sets out the customs requirements for the importation, and exportation, of goods to and from Australia.

Subsection 270(1) of the Customs 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 which are necessary or convenient to be prescribed for giving effect to the Act.

The Singapore-Australia Free Trade Agreement (the SAFTA), signed in 2003, is a central pillar of Australia's economic relationship with Singapore. An 'Agreement to Amend the Singapore-Australia Free Trade Agreement' (the Amending Agreement) was signed on 13 October 2016 by the Minister for Trade, Tourism and Investment and his Singaporean counterpart, which amongst other things sets out a comprehensive update of provisions for trade in goods and services, and related customs procedures and rules of origin for claiming preferential rates of customs duty.

As a result, the Customs Act is amended by the *Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017* (the SAFTA Act) to fulfil Australia's updated obligations under new Chapter 3 of the SAFTA (as inserted by the Amending Agreement).

In particular, the SAFTA Act:

- introduces new rules of origin for goods that are imported into Australia from Singapore;
- introduces new procedures to claim preferential tariff treatment for goods that are Singaporean originating goods; and
- extends the record keeping obligations that apply to goods exported to Singapore that are claimed to be the produce and manufacture of Australia to also apply to Australian originating goods that are exported to Singapore.

The purpose of the *Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017* (the Amendment Regulations) is to amend the *Customs (International Obligations) Regulation 2015* to make complementary amendments in relation to record keeping obligations. The Amendment Regulations extend existing record keeping obligations, which apply to goods covered by

Division 1B of Part VIII of the Customs Act, to goods covered by new Division 1BA of that Part.

Additionally, the Amendment Regulations also enables a refund of duties paid on Singaporean originating goods, or on goods that would have been Singaporean originating goods, in specified circumstances.

Separate *Customs (Singaporean Rules of Origin) Regulations 2017* prescribe the new rules of origin and the new procedures to claim preferential treatment.

Details of the Amendment Regulations are set out in [Attachment A](#).

In accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights (the Statement) has been prepared and is at [Attachment B](#).

Government Departments conducted extensive public and targeted stakeholder consultations during the negotiations of the Amending Agreement. Consequently, the consultation process undertaken for the Amending Agreement also encompassed all matters set out in the Amendment Regulations. Details of these consultations were set out in the consultation attachment to the National Interest Analysis of the Amending Agreement.

The Joint Standing Committee on Treaties also conducted an enquiry on the Amending Agreement. The enquiry included written submissions and a public hearing that resulted in a report recommending binding treaty action be taken.

The Amendment Regulations will commence in accordance with the commencement provision in section 2 of those Regulations. In particular, Part 1 of Schedule 1 to the Amendments Regulations will commence at the same time as Schedule 1 to the SAFTA Act, which will be the later of the day after the Act receives the Royal Assent or the day the Amending Agreement enters into force for Australia. The Amending Agreement is scheduled to enter into force on 30 November 2017.

Part 2 of Schedule 1 to the Amendment Regulations will commence at the same time as Schedule 2 to the SAFTA Act, which commences on the third anniversary of the day on which Schedule 1 to that Act commences.

OPC62956 – A

Details of the *Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017* (the Amendment Regulations).

Section 2 – Commencement

This section sets out the date on which each of the provisions contained in the Amendment Regulations will commence.

Table item 1 provides for sections 1 to 4 and anything in the Amendment Regulations that is not covered by the table to commence on the day after the registration of the Amendment Regulations on the Federal Register of Legislation.

Table item 2 provides for Part 1 of Schedule 1 to the Amendment Regulations to commence at the same time as Schedule 1 to the *Customs Amendment (Singapore Australia Free Trade Agreement Amendment Implementation) Act 2017* (the SAFTA Act) commences.

Table item 3 provides for Part 2 of Schedule 1 to the Amendment Regulations to commence at the same time as Schedule 2 to the SAFTA Act commences.

Section 3 – Authority

This section sets out the authority under which the Amendment Regulations are made, which is the *Customs Act 1901* (the Customs Act).

Section 4 – Schedule(s)

This section is the formal enabling provision for the Schedule to the Amendment Regulations, providing that each instrument that is specified in a Schedule to the Amendment Regulations 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 effect according to its terms.

Schedule 1–Amendments

The Singapore-Australia Free Trade Agreement (the SAFTA), signed in 2003, is a central pillar of Australia’s economic relationship with Singapore. An ‘Agreement to Amend the Singapore-Australia Free Trade Agreement’ (the Amending Agreement) was signed on 13 October 2016 by the Minister for Trade, Tourism and Investment and his Singaporean counterpart, which amongst other things sets out a comprehensive update of provisions for trade in goods and services, and related customs procedures and rules of origin for claiming preferential rates of customs duty.

As a result, the Customs Act is amended by the SAFTA Act to fulfil Australia’s updated obligations under new Chapter 3 of SAFTA, as inserted by the Amending Agreement. In particular, it will extend the existing record keeping obligations that apply to goods exported to Singapore that are claimed to be the produce and manufacture of Australia, to also apply to Australian originating goods that are exported to Singapore.

The existing framework for goods which are the produce and manufacture of Singapore under Division 1B of Part VIII of the Customs Act will continue to have effect for a transitional period of three years from the commencement of Schedule 1 to the SAFTA Act, after which it is repealed and only Singaporean originating goods will continue to be eligible for a preferential rate of customs duty.

The amendments made by the items in Part 1 of Schedule 1 to the Amendment Regulations will amend the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation) to make complementary amendments to implement the extension of relevant record keeping obligations to Australian originating goods. Additionally, this Part also enables a refund of duties paid on Singaporean originating goods, or on goods that would have been Singaporean originating goods, in specified circumstances to give effect to Article 28 of new Chapter 3 of SAFTA (as inserted by the Amending Agreement).

The amendments made by the items in Part 2 of Schedule 1 to the Amendment Regulations will amend the International Obligations Regulation after the expiration of the three-year transitional period to omit and repeal provisions relating to goods which are the produce and manufacture of Australia.

Part 1–Main amendments

Customs (International Obligations) Regulation 2015

Item 1 – Section 4 (before paragraph (a) of the definition of *Australian originating goods*)

This item amends the definition of ‘Australian originating goods’ under section 4 of the International Obligations Regulation such that in Division 1 of Part 3 of that Regulation, Australian originating goods has the same meaning given by subsection 153XD(1) of new Division 1BA of Part VIII of the Customs Act, which is inserted by the SAFTA Act.

Australian originating goods are defined in subsection 153XD(1) to mean goods that are Australian originating goods under a law of Singapore that implements the SAFTA, as amended from time to time.

This amendment is relevant to the amendments made by items 7, 11 and 12 below, which sets out the record keeping obligations that apply to exporters in relation to the exportation of Australian originating goods to Singapore.

Item 2 – Section 4 (definition of SAFTA)

This item amends section 4 of the International Obligations Regulation to repeal the definition of ‘SAFTA’ and substitute it with a new definition. The substituted definition of SAFTA means the Singapore-Australia Free Trade Agreement done at Singapore on 17 February 2003, as amended from time to time.

This is a technical amendment to ensure that the definition of SAFTA is not tied to a provision that will be repealed by the SAFTA Act after the third anniversary of the commencement of that Act (see item 9 of Schedule 2 to the SAFTA Act).

Item 3 – Section 4

This item amends section 4 of the International Obligations Regulation to insert a definition of ‘Singaporean originating goods’, which has the same meaning given by subsection 153XD(1) of new Division 1BA.

Under subsection 153XD(1), ‘Singaporean originating goods’ means goods that, under that Division, are Singaporean originating goods. These include goods that are:

- wholly obtained or produced entirely in Singapore or in Singapore and Australia;
- produced entirely in Singapore, or in Singapore and Australia, from originating materials only; or
- are produced entirely in Singapore, or in Singapore and Australia, from non-originating materials only or from non-originating materials and originating materials, and satisfy the requirements in section 153XG of new Division 1BA.

This amendment is relevant to the amendments made by items 13, 14 and 17 below, which enables the refund of duties relating to, and the calculation of refund for, Singaporean originating goods.

Items 4 and 8

These items repeal the heading of sections 7 and 8 of the International Obligations Regulation and substitute them with new headings.

The substituted heading for section 7 is ‘Record keeping for the producer or manufacturer of goods claimed to be the produce or manufacture of Australia’.

The substituted heading for section 8 is ‘Record keeping for other exporters of goods claimed to be the produce or manufacture of Australia’.

These amendments are of a technical nature and their purpose is to distinguish the recording keeping obligations for produce and manufacture of Australia under sections 7 and 8, from similar obligations for Australian originating goods in new sections 7A and 8A, inserted by items 7 and 11 of the Amendment Regulations, respectively.

Items 5 and 9

These items amend sections 7 and 8 of the International Obligations Regulation to insert new subsections 7(1A) and 8(1A) respectively.

New subsection 7(1A) provides that section 7 applies in relation to goods that:

- (a) are exported to Singapore; and
- (b) are claimed to be the produce or manufacture of Australia for the purpose of obtaining a preferential tariff in Singapore.

New subsection 8(1A) provides that section 8 applies in relation to goods that:

- (a) are exported to Singapore; and
- (b) are claimed to be the produce or manufacture of Australia for the purpose of obtaining a preferential tariff in Singapore.

These amendments are of a technical nature and their purpose is to clarify the record keeping obligations that apply to goods that are the produce and manufacture of Australia.

Items 6 and 10

These items amend subsections 7(1) and 8(1) of the International Obligations Regulation, respectively.

Subsection 7(1) is amended such that the words ‘For section 126AB of the Act, the producer or manufacturer (whether or not the producer or manufacturer is the exporter) of goods mentioned in that section’ are omitted and substituted with ‘For the purposes of section 126AB of the Act, the producer or manufacturer (whether or not the producer or manufacturer is the exporter) of the goods’.

Similarly, subsection 8(1) is amended such that the words ‘For section 126AB of the Act, an exporter of goods mentioned in that section’ is omitted and substituted with ‘For the purposes of section 126AB of the Act, the exporter of the goods’.

Section 126AB of the Customs Act, which deals with record keeping obligations imposed on importers that export goods that are the produce or manufacture of Australia to Singapore, is amended by item 6 of Part 2 to Schedule 1 to the SAFTA Act to extend such obligations to exporters of Australian originating goods.

As a consequence of the amendments made to section 126AB of the Customs Act, the purpose of these amendments is to facilitate the amendments made by items 7 and 11 below.

Items 7 and 11

These items amend the International Obligations to insert new sections 7A and 8A respectively, which set out the recording keeping obligations that apply to exporters of Australian originating goods to Singapore.

The new sections 7A and 8A substantially replicate the record keeping obligations in existing sections 7 and 8 of the International Obligations Regulation, but do not include obligations to maintain records of a certificate of origin and a declaration under section 6 of the International Obligations Regulation. Instead, new sections 7A and 8A will require a copy of the certification of origin to be kept by the exporter for 5 years starting from the date that the document was issued.

This is because the concept of a certificate of origin, and a declaration by a representative of an exporter under section 6 of the International Obligations Regulation only relate to goods that are the produce and manufacture of Australia.

A copy of the certification of origin is required to be kept by the exporters of Australian originating goods. This document is similar to a certificate of origin, but is subject to a self-certification process provided the person making the certification has information that the good is originating (see Articles 18 and 19 of new Chapter 3 of, and Annex 3-A (Minimum Data Requirements) to, SAFTA).

Item 12 – Paragraph 9(a)

This item amends paragraph 9(a) of the International Obligations Regulation to insert ‘or are Australian originating goods,’ after the word ‘Australia’.

To complement the amendments contained in items 6 and 10 to section 126AB of the Customs Act noted above, the purpose of this amendment is to extend the requirements relating to the form in which records are kept, to also apply to those records kept by exporters for the exportation of Australian originating goods to Singapore.

For example, if the records relating to Australian originating goods are not in English, they must be kept in a place and form that would enable an English translation to be readily made.

Item 13 – Section 23 (before table item 1)

This item amends the table in section 23 of the International Obligations Regulation to insert two new table items, which would enable a refund of duty for the following goods and in the following circumstances:

- (a) (table item 1A) Singaporean originating goods, where duty has been paid on the goods;
- (b) (table item 1B) Goods that would have been Singaporean originating goods if, at the time the goods were imported, the importer held a certification of origin (within the meaning of section 153XD of the Customs Act) for the goods, or a copy of a document mentioned in paragraph (a), where both of the following apply:
 - i. duty has been paid on the goods;
 - ii. the importer holds a certification of origin (within the meaning of section 153XD of the Customs Act) for the goods, or a copy of one, at the time of making the application for the refund.

Article 28 of new Chapter 3 of SAFTA (as inserted by the Amending Agreement) contains the obligation to permit imports to apply for a refund of customs duty paid where the importer did not make a claim for preferential tariff treatment at the time of importation,

provided the goods concerned would have qualified for preferential tariff treatment when they were imported into the territory of Australia.

Item 14 – Before paragraph 24(a)

Section 24 of the International Obligations Regulation provides that a refund is not payable under table item 6 of the table in clause 1 of Schedule 6 to the *Customs Regulation 2015* (the Customs Regulation) to the extent that an application for a refund relates to one or more of the factors mentioned in this section.

This amendment amends section 24 of the International Obligations Regulation to also include a reference to new table items 1A and 1B of the table in section 23 of that Regulation.

Table item 6 of the table in clause 1 of Schedule 6 to the Customs Regulation provides that refunds of duty are payable where duty has been paid because of manifest error of fact or patent misconception of the law. A refund of duty could be paid under paragraph item 6 in respect of goods mentioned in table items 1A and 1B of the table in section 23 if it does not relate to the factors that determine whether the goods are Singaporean originating goods.

The purpose of new paragraph 24(aa) is to restrict refunds of duty in relation to Singaporean originating goods to the extent that the refund relates to any of the factors that determine whether goods are Singaporean originating goods under new table items 1A and 1B only.

Items 15, 16 and 17

These items amend the definitions of ‘duty payable’ and ‘relevant originating goods’ in subsection 31(2) of the International Obligations Regulation.

Items 15 and 16 insert a reference to the new table items 1A and 1B (inserted into section 23 of the International Obligations Regulation by item 13 above) into the definition of ‘duty payable’ under subsection 31(2).

Item 17 inserts new subparagraph (aa), for Singaporean originating goods, into the definition of ‘relevant originating goods’.

The purpose of these amendments is to enable the refund of duty paid on Singaporean originating goods to be calculated in accordance with section 31 of the International Obligations Regulation, and subsequently made by a collector.

Part 2–Other amendments

Items 18, 19 and 20

These items will amend sections 4 and 6 to 8, and paragraph 9(a) of the International Obligations Regulation to repeal, on the third anniversary of the commencement of the SAFTA Act, all provisions and requirements that apply to the produce and manufacture of Australia.

The purpose of these amendments is to complement the amendments that will be made by Schedule 2 to the SAFTA Act that will repeal existing Division 1B of Part VIII to the

Customs Act. The amendments made by the SAFTA Act and the amendments that will be made by these items will occur at the same time.

However, where an exporter exports goods that are the produce and manufacture of Australia to Singapore (the relevant exporter) immediately before the repeal of sections 6 to 8 in relation to records that must be kept by exporters, the relevant exporters, by operation of the saving provisions under item 10 of Schedule 2 to the SAFTA Act, will still be required to keep relevant records for at least 5 years.

Statement of Compatibility with Human Rights

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

Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017

The *Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017* (the Legislative Instrument) is compatible with 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 Singapore-Australia Free Trade Agreement (the SAFTA), signed in 2003, is a central pillar of Australia's economic relationship with Singapore. An 'Agreement to Amend the SAFTA' (the Amending Agreement) was signed on 13 October 2016 by the Minister for Trade, Tourism and Investment and his Singaporean counterpart, which amongst other things sets out a comprehensive update of provisions for trade in goods and services, and related customs procedures and rules of origin for claiming preferential rates of customs duty.

As a result, the *Customs Act 1901* (the Customs Act) is amended by the *Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017* (the SAFTA Act) to fulfil Australia's updated obligations under new Chapter 3 of SAFTA, as inserted by the Amending Agreement. In particular, it will extend the record keeping obligations that apply to goods exported to Singapore that are claimed to be the produce and manufacture of Australia, to also apply to Australian originating goods that are exported to Singapore.

The existing framework for produce and manufacture of Singapore under Division 1B of Part VIII of the Customs Act will continue to have effect for a transitional period of three years from the commencement of the SAFTA Act, after which it is repealed and only Singaporean originating goods will continue to be eligible for a preferential rate of customs duty.

The amendments made by the items in Part 1 of Schedule 1 to the Amendment Regulations will amend the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation) to make complementary amendments to support the extension of relevant record keeping obligations to Australian originating goods. This Part also enables a refund of duties paid on Singaporean originating goods, or on goods that would have been Singaporean originating goods, in specified circumstances.

The amendments made by the items in Part 2 of Schedule 2 to the Amendment Regulations will amend the International Obligations Regulation after the expiration of the three-year transitional period to omit and repeal provisions relating to goods which are the produce and manufacture of Australia.

Separate *Customs (Singaporean Rules of Origin) Regulations 2017* is made to prescribe for, and in relation to, matters necessary to complement other amendments made by the SAFTA Act.

Human rights implications

The human rights implications of amendments necessary to the Customs Act to give effect to the Amending Agreement have been assessed and are set out in the Statement of Compatibility with Human Rights contained in the Explanatory Memorandum for the SAFTA Act.

The amendments contained in the Legislative Instrument do not change the scope of the amendments set out in the SAFTA Act, but rather provide for complementary amendments such that record keeping obligations are extended to exporters that export Australian originating goods to Singapore in accordance with the SAFTA Act, and enable a refund of duties paid on originating goods, or on goods that would have been originating goods, in accordance with Article 28 of new Chapter 3 of amended SAFTA.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights implications in addition to those addressed by the Statement of Compatibility with Human Rights that is contained in the Explanatory Memorandum for the SAFTA Act.

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Parliamentary Secretary to the Minister for Immigration and Border Protection**