

## EXPLANATORY STATEMENT

Issued by the Assistant Minister for Home Affairs and Parliamentary Secretary to the  
Minister for Home Affairs

### *Customs Act 1901*

#### *Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018*

The *Customs Act 1901* (the 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 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.

Subsection 163(1) of the Act provides provide 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 *Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018* (the TPP-11 Implementation Act) amends the Act to fulfil Australia's obligations under Chapter 3 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the TPP-11), which deals with rules of origin. These rules determine whether goods imported into Australia from a Party to the TPP-11 are 'Trans-Pacific Partnership originating goods' and are thereby eligible for preferential rates of customs duty. 'Trans-Pacific Partnership originating goods' are goods imported from the territory of a Party to the TPP-11 that satisfy the new rules of origin contained in new Division 1GB of Part VIII of the Act, inserted by the TPP-11 Implementation Act.

Article 3.29 of Chapter 3 of the TPP-11 sets out provisions that apply where an importer may apply for preferential tariff treatment in relation to goods but does not make such a claim at the time of importation. A refund of any excess duties paid in relation to the goods is payable in this circumstance provided the goods would have qualified for preferential tariff treatment when it was imported into the territory of the Party, and the importer:

- makes a claim for preferential tariff treatment;
- provides a statement that the good was originating at the time of importation;
- provides a copy of the certification of origin; and
- provides such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

The purpose of the *Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* (the Amendment Regulations) is to amend the *Customs (International Obligations) Regulation 2015* to prescribe two new refund circumstances in respect of goods imported into Australia from a Party to the TPP-11, in order to fulfil the above-mentioned obligation, as follows:

- for Trans-Pacific Partnership originating goods, the refund circumstance applies when customs duty has been paid on such goods; and
- for goods that would have been Trans-Pacific Partnership originating goods if at the time the goods were imported, the importer held a certification of origin or a copy of that document for the goods, the refund circumstance applies when customs duty has been paid on such goods and the importer holds a certification of origin or a copy of document for the goods at the time of making the application for the refund.

The expression ‘certification of origin’ is defined in new subsection 153ZKU(1) of the Act, which means a certification that is in force and that complies with the requirements of Article 3.20 of Chapter 3 of the TPP-11.

Details of the Amendment Regulations are set out in [Attachment A](#). A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at [Attachment B](#).

A separate *Customs (Trans-Pacific Partnership Rules of Origin) Regulations 2018* is made to prescribe matters relating to the rules of origin that will be required to be prescribed under the Act as amended by the TPP-11 Implementation Act.

In addition, the *Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* amend the *Customs Tariff Regulations 2004* to prescribe goods to support the implementation of the revised customs tariff arrangements for Trans-Pacific Partnership originating goods.

Government Departments conducted extensive public and targeted stakeholder consultations during the negotiations of the original Trans-Pacific Partnership Agreement and the TPP-11. The consultation process 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 TPP-11. The Joint Standing Committee on Treaties also conducted an enquiry on the TPP-11. The enquiry included written submissions and a public hearing that resulted in a report recommending binding treaty action be taken.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commences in accordance with section 2 of the Amendment Regulations. That is, sections 1 to 4 of the Amendment Regulations commence on the day after the Amendment Regulations are registered on the Federal Register of Legislation. Schedule 1 to the Amendment Regulations commence at the same time as Schedule 1 to the TPP-11 Implementation Act, which is the later of the day after that Act receives the Royal Assent, and the day the TPP-11 enters into force for Australia.

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**Details of the *Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018***

**Section 1 Name**

This section provides that the name of the instrument is the *Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* (the Amendment Regulations).

**Section 2 Commencement**

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

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

Table item 2 provides that Schedule 1 to the Amendment Regulations commences at the same time as Schedule 1 to the *Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018* (the TPP-11 Implementation Act) commences.

Schedule 1 to the TPP-11 Implementation Act will commence on the later of the day on which that Act receives the Royal Assent, and the day on which the TPP-11 done at Santiago, Chile on 8 March 2018, enters into force for Australia.

**Section 3 Authority**

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

**Section 4 Schedules**

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

**Schedule 1—Amendments**

***Customs (International Obligations) Regulation 2015***

**Item 1 Section 4**

This item amends section 4 of the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation) to insert the definition of ‘Trans-Pacific

Partnership originating goods’. ‘Trans-Pacific Partnership originating goods’ has the meaning given by subsection 153ZKU(1) of the Act.

Under subsection 153ZU(1) of the Act, ‘Trans-Pacific Partnership originating goods’ mean goods that, under Division 1GB of Part VIII of the Act, are Trans-Pacific Partnership originating goods. These include goods that are:

- wholly obtained or produced entirely in the territory of one or more of the Parties to the TPP-11; or
- produced from originating materials in a Party to the TPP-11; or
- produced from non-originating materials in a Party to the TPP-11, and where such goods satisfy associated requirements under Subdivision D of new Division 1GB.

The amendment in this item is for the purposes of the new refund circumstances for Trans-Pacific Partnership originating goods, or goods that would be Trans-Pacific Partnership originating goods. These new circumstances is inserted by item 2 of the Amendment Regulations.

## **Item 2 Section 23 (before table item 9)**

This item amends the table under section 23 of the International Obligations Regulation to insert new table items 8C and 8D.

The TPP-11 Implementation Act amends the Act to fulfil Australia’s obligations under Chapter 3 of the TPP-11, which deals with rules of origin. These rules determine whether goods imported into Australia from a Party to the TPP-11 are ‘Trans-Pacific Partnership originating goods’ and are thereby eligible for preferential rates of customs duty. As per the notes for item 1 of the Amendment Regulations above, ‘Trans-Pacific Partnership originating goods’ are goods imported from the territory of a Party to the TPP-11 that satisfy the new rules of origin contained in new Division 1GB of Part VIII of the Act.

Article 3.29 of Chapter 3 of the TPP-11 sets out provisions that apply where an importer may apply for preferential tariff treatment in relation to goods but does not make such a claim at the time of importation. A refund of any excess duties paid in relation to the goods is payable in this circumstance provided the goods would have qualified for preferential tariff treatment when it was imported into the territory of the Party, and the importer:

- makes a claim for preferential tariff treatment;
- provides a statement that the good was originating at the time of importation;
- provides a copy of the certification of origin; and
- provides such other documentation relating to the importation of the good as the importing Party may require,  
no later than one year after the date of importation or a longer period if specified in the importing Party’s law.

Article 3.29 of Chapter 3 to the TPP-11 is given effect under new table items 8C and 8D.

Under new table item 8C, the refund circumstance that applies to Trans-Pacific Partnership originating goods is when customs duty has been paid on such goods.

Under new table item 8D, the refund circumstance that applies to goods that would have been Trans-Pacific Partnership originating goods if at the time the goods were imported, the

importer held a certification of origin (within the meaning of section 153ZKU of the Act) for the goods or a copy of a such a document for the goods, is when customs duty has been paid on such goods and the importer holds a certification of origin or a copy of a certification of origin for the goods at the time of making the application for the refund.

In respect of the timeframes in which an application for refund must be made for goods, including goods that are either Trans-Pacific Partnership originating goods or goods that would have been such goods, section 28 of the International Obligations Regulation limits applications for refund to be within four years after the day on which customs duty was paid. This timeframe is consistent with Article 3.29 of Chapter 3 of the TPP-11.

### **Item 3 Before paragraph 24(e)**

This item amends section 24 of the International Obligations Regulation to insert new paragraph 24(db).

Under section 24 of the International Obligations Regulation, a refund is not payable under 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 factors that determine whether goods are eligible goods covered by a Free Trade Agreement. Item 6 of the table in clause 1 of Schedule 6 deals with refund of customs duty paid due to manifest error of fact or patent misconception of the law.

New paragraph 24(db) includes in section 24 a reference to the goods mentioned in new table items 8C and 8D (that is inserted by item 2 of the Amendment Regulations) under section 23 of the International Obligations Regulation.

Because new table items 8C and 8D enable the refund of customs duty paid on Trans-Pacific Partnership originating goods and goods that would have been such goods, duties paid in error or in excess in respect of those goods is covered by the new table items.

The effect of this amendment is that, to the extent that an application for a refund relates to factors that determine whether goods are Trans-Pacific Partnership originating goods, the refund of duty paid on Trans-Pacific Partnership originating goods, and goods that would have been such goods, is dealt with by new table items 8C and 8D under section 23 of the International Obligations Regulations.

### **Items 4 to 6**

These items amends the definition of ‘duty payable’ and ‘relevant originating goods’ under subsection 31(2) of the International Obligations Regulation.

Section 31 of the International Obligations Regulation sets out the formula for which the refund, rebate or remission of customs duty is to be calculated. That is, the amount of duties paid on the goods subtracted by the ‘duty payable’.

Under subsection 31(2) of the International Obligation Regulation, the expression ‘duty payable’ is defined to mean either:

- the amount of duty payable on the goods as relevant originating goods (paragraph (a) of the definition of ‘duty payable’ refers); or

- the amount of duty payable on the goods as if they had been relevant originating goods at the time of their importation (paragraph (b) of the definition of ‘duty payable’ refers).

The expression ‘relevant originating goods’ is defined to include those eligible goods that are covered by a Free Trade Agreement, i.e. Singaporean originating goods, Thai originating goods, and Chilean originating goods, etc.

To facilitate giving effect to the obligation under Article 3.29 of Chapter 3 of the TPP-11 (see the notes for item 2 of the Amendment Regulations above), the above-mentioned definitions is amended as follows.

Item 4 amends paragraph (a) of the definition of ‘duty payable’ under subsection 31(2) of the International Obligations Regulation to insert a reference to new table item 8C under section 23 of the International Obligations Regulation (is inserted by item 2 of the Regulations).

Item 5 amends paragraph (b) of the definition of ‘duty payable’ under subsection 31(2) of the International Obligations Regulation to insert a reference to new table item 8D under section 23 of the International Obligations Regulation (is inserted by item 2 of the Regulations).

Item 6 amends the definition of ‘relevant originating goods’ to insert new paragraph (db) to refer to Trans-Pacific Partnership originating goods.

Collectively, the amendments enable the calculation of the amount of refund of duties paid in excess on goods that are Trans-Pacific Partnership originating goods or would have been such goods.

## **Statement of Compatibility with Human Rights**

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

### ***Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018***

The Disallowable Legislative Instrument titled the *Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* (the Amendment Regulations) 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 of the Amendment Regulations**

The *Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018* (the TPP-11 Implementation Act) amends the Act to fulfil Australia's obligations under Chapter 3 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the TPP-11), which deals with rules of origin. These rules determine whether goods imported into Australia from a Party to the TPP-11 are 'Trans-Pacific Partnership originating goods' and are thereby eligible for preferential rates of customs duty. 'Trans-Pacific Partnership originating goods' are goods imported from the territory of a Party to the TPP-11 that satisfy the new rules of origin contained in new Division 1GB of Part VIII of the Act, inserted by the TPP-11 Implementation Act.

Article 3.29 of Chapter 3 of the TPP-11 sets out provisions that apply where an importer may apply for preferential tariff treatment in relation to goods but does not make such a claim at the time of importation. A refund of any excess duties paid in relation to the goods is payable in this circumstance provided the goods would have qualified for preferential tariff treatment when it was imported into the territory of the Party, and the importer:

- makes a claim for preferential tariff treatment;
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- provides such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

The purpose of the *Customs (International Obligations) Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Regulations 2018* (the Amendment Regulations) is to amend the *Customs (International Obligations) Regulation 2015* to prescribe two new refund circumstances in respect of goods imported into Australia from a Party to the TPP-11, in order to fulfil the above-mentioned obligation, as follows:

- for Trans-Pacific Partnership originating goods, the refund circumstance applies when customs duty has been paid on such goods; and

- for goods that would have been Trans-Pacific Partnership originating goods if at the time the goods were imported, the importer held a certification of origin or a copy of a that document for the goods, the refund circumstance applies when customs duty has been paid on such goods and the importer holds a certification of origin or a copy of document for the goods at the time of making the application for the refund.

The expression ‘certification of origin’ is defined in new subsection 153ZKU(1) of the Act, which means a certification that is in force and that complies with the requirements of Article 3.20 of Chapter 3 of the TPP-11.

The Amendment Regulations commences in accordance with section 2 of the Amendment Regulations. That is, sections 1 to 4 of the Amendment Regulations commence on the day after the Amendment Regulations are registered on the Federal Register of Legislation. Schedule 1 to the Amendment Regulations commence at the same time as Schedule 1 to the TPP-11 Implementation Act, which is the later of the day after that Act receives the Royal Assent, and the day the TPP-11 enters into force for Australia.

### **Human rights implications**

The Amendment Regulations do not engage any of the applicable rights or freedoms.

### **Conclusion**

The Amendment Regulations are compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Linda Reynolds CSC**  
**Assistant Minister for Home Affairs and Parliamentary Secretary to the Minister for Home Affairs**