

## **EXPLANATORY STATEMENT**

Issued by the Assistant Minister for Customs, Community Safety and Multicultural Affairs  
Parliamentary Secretary to the Minister for Home Affairs

### *Customs Act 1901*

#### *Customs (International Obligations) Amendment (Free Trade Agreement Implementation) Regulations 2019*

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.

The *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019* (the Customs Amendment Act) amended the Customs Act to insert new Divisions 1HA and 1M into Part VIII of the Customs Act to implement the provisions dealing with trade in goods and rules of origin.

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.

Subsection 163(1) of the Customs Act provides that refunds, rebates and remissions of duty may be made:

- in respect of goods generally or in respect of the goods included in a class of goods; and
- in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances and conditions and restrictions, that relate to goods generally or to the goods included in the class of goods.

### *Indonesia-Australia Comprehensive Economic Partnership Agreement*

Senator the Hon Simon Birmingham, Minister for Trade, Tourism and Investment, and his counterpart the Indonesian Minister for Trade H.E Enggartiasto Lukita, signed the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) on 4 March 2019 in Jakarta, Indonesia.

### *Free Trade Agreement between Australia and Hong Kong, China*

Senator the Hon Simon Birmingham, Minister for Trade, Tourism and Investment, and his counterpart the Hong Kong Secretary for Commerce and Economic Development Edward Yau, signed the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA) on 26 March 2019 in Sydney.

IA-CEPA and A-HKFTA, among other things, set out comprehensive provisions for trade in goods and services, and related customs procedures and rules of origin for claiming preferential rates of customs duty. These rules determine whether goods imported into

Australia from the territory of Hong Kong, China and from Indonesia are Hong Kong originating goods or Indonesian originating goods respectively, and are thereby eligible for preferential rates of customs duty.

The purpose of the *Customs (International Obligations) Amendment (Free Trade Agreement Implementation) Regulations 2019* (the Regulations) is to amend the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation) in relation to the refund of any excess duties paid for a good. The Regulations enable a refund of duties paid on Indonesian originating goods or Hong Kong originating goods, or on goods that would have been Indonesian originating goods or Hong Kong originating goods, in specified circumstances. The Regulations also amend provisions in respect of the refund of duties paid on goods that are originating goods under the Korea-Australia Free Trade Agreement (KAFTA), to align with provisions in the Customs Act relating to KAFTA.

Details of the amendments contained in the Regulations are at [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](#).

The Department of Foreign Affairs and Trade, in conjunction with other government agencies including the Department of Industry, Innovation and Science, consulted widely during the negotiation process of both IA-CEPA and A-HKFTA. These consultations included individual businesses, industry groups representing mining, agriculture and business sectors, state and territory governments, civil groups and representatives of trade unions.

For IA-CEPA, most stakeholders supported the pursuit of a comprehensive trade agreement that would build upon the foundation provided by the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area. There was particular support for reducing barriers for agricultural products and steel, as well as enhancing opportunities for Australian service providers and Australian investors. Concerns were raised regarding transparency, investor-state dispute settlement, temporary movement of workers, pharmaceuticals and government procurement.

For A-HKFTA, consultations were conducted through in-person meetings with relevant stakeholders, requests for written submissions and specific outreach sessions. Consultations were also conducted with Australian businesses operating in Hong Kong. The state and territory governments endorsed the inclusion of regional-level commitments and business stakeholders have welcomed the outcomes of the negotiations.

The consultations for IA-CEPA and A-HKFTA encompassed all matters set out in the Regulations. Details of these consultations were set out in the consultation attachment to the National Interest Analysis for each agreement.

The Joint Standing Committee on Treaties also conducted enquiries on IA-CEPA and A-HKFTA. The enquiries included written submissions and public hearings that resulted in a report recommending binding treaty action be taken for both.

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

Section 1 to 4 of the Regulations, and anything in the Regulations that is not covered by the table, commence the day after the instrument is registered on the Federal Register of

Legislation. Schedule 1 to the Regulations commences at the same time as Schedule 2 to the Customs Amendment Act. Schedule 2 to the Regulations commences at the same time as Schedule 3 to the Customs Amendment Act. Schedule 3 to the Regulations commences the day after the instrument is registered on the Federal Register of Legislation.

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**Details of the *Customs (International Obligations) Amendment (Free Trade Agreement Implementation) Regulations 2019***

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Customs (International Obligations) Amendment (Free Trade Agreement Implementation) Regulations 2019* (the Regulations).

**Section 2 – Commencement**

This section sets out the date on which each of the provisions contained in the Regulations commences.

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

Table items 2, 3 and 4 provide for:

- Schedule 1 to the Regulations to commence at the same time as Schedule 2 to the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019* (the Customs Amendment Act), which will be the later of the day after the Act receives the Royal Assent and the day the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) enters into force for Australia.
- Schedule 2 to the Regulations to commence at the same time as Schedule 3 to the Customs Amendment Act, which will be the later of the day after the Act receives the Royal Assent and the day the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA) enters into force from Australia.
- Schedule 3 to the Regulations to commence the day after this instrument is registered.

**Section 3 – Authority**

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

**Section 4 – Schedules**

This section is the formal enabling provision for the Schedules to the Regulations, and provides that each instrument that is specified in a Schedule to the 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–Indonesia**

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

#### Item 1 – Section 4 (after paragraph (ca) of the definition of *Certificate of Origin*)

This item amends the definition of ‘Certificate of Origin’ under section 4 of the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation) so that Certificate of Origin has the meaning given by subsection 153ZLK(1) of new Division 1HA of Part VIII of the Customs Act, which is inserted by the Customs Amendment Act.

Certificate of Origin is defined in subsection 153ZLK(1) of the Customs Act to mean a certificate that is in force and that complies with the requirements of Article 4.20 of Chapter 4 of IA-CEPA.

This amendment is relevant to the amendments made by item 4 below.

#### Item 2 – Section 4 (before paragraph (b) of the definition of *Declaration of Origin*)

This item amends the definition of ‘Declaration of Origin’ under section 4 of the International Obligations Regulation so that Declaration of Origin has the meaning given by subsection 153ZLK(1) of new Division 1HA of Part VIII of the Customs Act, which is inserted by the Customs Amendment Act.

Declaration of Origin is defined in subsection 153ZLK(1) of the Customs Act to mean a declaration that is in force and that complies with the requirements of Article 4.20 of Chapter 4 of IA-CEPA.

This amendment is relevant to the amendments made by item 4 below.

#### Item 3 – Section 4

This item amends section 4 of the International Obligations Regulation to insert a definition of ‘Indonesian originating goods’, which has the same meaning as given by subsection 153ZLK(1) of new Division 1HA of Part VIII of the Customs Act.

Under subsection 153ZLK(1) of the Customs Act, ‘Indonesian originating goods’ means goods that, under that Division, are Indonesian originating goods. These include goods that are:

- wholly obtained or produced in Indonesia;
- produced in Indonesia from originating materials; or
- produced in Indonesia, or in Indonesia and Australia, from non-originating materials only or from non-originating materials and originating materials, and satisfy the requirements in section 153ZLN of new Division 1HA;

and satisfy any other applicable requirements in new Division IHA of Part VIII of the Customs Act.

This amendment is relevant to the amendments made by items 4, 5 and 8 below, which enable the refund of duties relating to, and the calculation of refund for, Indonesian originating goods.

#### Item 4 – Section 23 (after table item 8D)

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

- (a) (table item 8E) Indonesian originating goods, where duty has been paid on the goods;
- (b) (table item 8F) Goods that would have been Indonesian originating goods if, at the time the goods were imported, the importer held a Certificate of Origin, or a Declaration of Origin, or a copy of either of those documents, for the goods in circumstances where both of the following apply:
  - i. duty has been paid on the goods;
  - ii. the importer holds a Certificate of Origin, or a Declaration of Origin, for the goods, or a copy of either of those documents, at the time of making the application for the refund.

Article 4.17 Chapter 4 of IA-CEPA provides that to claim preferential tariff treatment, an importer must have valid documentary evidence of the origin of the goods. Australia may require the documentary evidence to be provided at or after the time of importation of the goods.

#### Item 5 – After paragraph 24(db)

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 item amends section 24 of the International Obligations Regulation to also include a reference to new table items 8E and 8F 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 item 6 in respect of goods mentioned in table items 8E and 8F of the table in section 23 if it does not relate to the factors that determine whether the goods are Indonesian originating goods.

The purpose of new paragraph 24(dc) is to restrict refunds of duty in relation to Indonesian originating goods to the extent that the application for a refund relates to any of the factors that determine whether goods mentioned in items 8E and 8F of the table in section 23 are Indonesian originating goods.

### Items 6, 7 and 8

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

Items 6 and 7 insert a reference to the new table items 8E and 8F respectively into the definition of ‘duty payable’ under subsection 31(2).

Item 8 inserts new paragraph 31(2)(dc), for Indonesian originating goods, into the definition of ‘relevant originating goods’.

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

## Schedule 2–Hong Kong, China

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

#### Item 1 – Section 4 (after paragraph (a) of the definition of *Declaration of Origin*)

This item amends the definition of ‘Declaration of Origin’ under section 4 of the International Obligations Regulation so that Declaration of Origin has the meaning given by subsection 153ZPB(1) of new Division 1M of Part VIII of the Customs Act, which is inserted by the Customs Amendment Act.

Declaration of Origin is defined in subsection 153ZPB(1) of the Customs Act to mean a declaration that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of A-HKFTA.

This amendment is relevant to the amendments made by item 3 below.

#### Item 2 – Section 4

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

Under subsection 153ZPB(1) of the Customs Act, ‘Hong Kong originating goods’ means goods that, under that Division, are Hong Kong originating goods. These include goods that are:

- wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia;
- produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials; or
- produced in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials only or from non-originating materials and originating materials, and satisfy the requirements in section 153ZPE of new Division 1M of Part VIII of the Customs Act;

and satisfy any other applicable requirements in new Division 1M of Part VIII of the Customs Act.

This amendment is relevant to the amendments made by items 3 and 7 below, which enable the refund of duties relating to, and the calculation of refund for, Hong Kong originating goods.



### Item 3 – Section 23 (at the end of the table)

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

- (c) (table item 15) Hong Kong originating goods, where duty has been paid on the goods;
- (d) (table item 16) Goods that would have been Hong Kong originating goods if, at the time the goods were imported, the importer held a Declaration of Origin or a copy of a Declaration of Origin for the goods in circumstances where both of the following apply:
  - iii. duty has been paid on the goods;
  - iv. the importer holds a Declaration of Origin or a copy of a Declaration of Origin for the goods at the time of making the application for the refund.

Article 3.21 of Chapter 3 of A-HKFTA contains the obligation to permit importers 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 4 – At the end of section 24

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 to the extent that an application for a refund relates to one or more of the factors mentioned in this section.

This item amends section 24 of the International Obligations Regulation to also include a reference to new table items 15 and 16 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 item 6 in respect of goods mentioned in table items 15 and 16 of the table in section 23 if it does not relate to the factors that determine whether the goods are Hong Kong originating goods.

The purpose of new paragraph 24(h) is to restrict refunds of duty in relation to Hong Kong originating goods to the extent that the application for a refund relates to any of the factors that determine whether goods mentioned in items 15 and 16 of the table in section 23 are Hong Kong originating goods.

### Items 5, 6 and 7

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

Items 5 and 6 insert a reference to the new table items 15 and 16 respectively into the definition of ‘duty payable’ under subsection 31(2).

Item 7 inserts new paragraph 31(2)(h), for Hong Kong originating goods, into the definition of ‘relevant originating goods’.

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

### **Schedule 3–Technical Amendments**

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

##### Item 1 – Section 23 (cell at table item 10, column headed “Class of goods”)

This item amends the table in section 23 of the International Obligations Regulation to omit the words ‘at the time the goods were imported’ and substitute them with the words ‘at the time for working out the rate of import duty on the goods’.

Table item 10 enables a refund of duty for goods that would have been Korean originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of one for the goods.

Subsections 153ZMC(1), 153ZMD(1) and 153ZME(1) of the Customs Act require that for goods that are Korean originating goods, an importer must have, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods.

The amendment to table item 10 aligns the time at which an importer is required to have held a Certificate of Origin with the requirements of subsections 153ZMC(1), 153ZMD(1) and 153ZME(1), in order to enable a refund of duty under section 23.

This is a technical amendment that does not change the operation of section 23.

**Statement of Compatibility with Human Rights**

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

***Customs (International Obligations) Amendment  
(Free Trade Agreement Implementation) Regulations 2019***

The *Customs (International Obligations) Amendment (Free Trade Agreement Implementation) Regulations 2019* are 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 Disallowable Legislative Instrument**

The Hon Simon Birmingham, Minister for Trade, Tourism and Investment, and the Indonesian Minister for Trade H.E Enggartiasto Lukita signed the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) on 4 March 2019 in Jakarta, Indonesia. On 26 March 2019, Senator Birmingham and the Hong Kong Secretary for Commerce and Economic Development, Edward Yau signed the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA) in Sydney. IA-CEPA and A-HKFTA set out, amongst other things, comprehensive provisions for trade in goods and services and related customs procedures and rules of origin for claiming preferential rates of customs duty.

Schedule 2 and Schedule 3 to the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019* (the Implementation Act) amend the *Customs Act 1901* (the Customs Act) to fulfil Australia's obligations under Chapter 4 of IA-CEPA and Chapter 3 of A-HKFTA respectively, which detail the rules of origin of each agreement.

For IA-CEPA, these new rules determine whether goods imported into Australia from Indonesia are Indonesian originating goods and are thereby eligible for preferential rates of customs duty. Indonesian originating goods are goods from the territory of Indonesia that satisfy the Rules of Origin; the framework of which is contained in new Division 1HA of Part VIII of the Customs Act.

For A-HKFTA, these new rules determine whether goods imported into Australia from Hong Kong, China are Hong Kong originating goods and are thereby eligible for preferential rates of customs duty. Hong Kong originating goods are goods from the territory of Hong Kong, China that satisfy the Rules of Origin; the framework of which is contained in new Division 1M of Part VIII of the Customs Act.

Article 4.17 of Chapter 4 of IA-CEPA allows the importing Party to accept a claim for preferential tariff treatment after the time of importation, in accordance with its laws and regulations. In order to claim preferential tariff treatment, the importer shall possess a valid Certificate of Origin or a valid Declaration of Origin. The importing Party may:

- in accordance with its laws and regulations, require presentation of such documentary evidence of origin after the time of importation; and

- require that an importer who presents documentary evidence of origin provides other documents or information to support the claim.

Article 3.21 of Chapter 3 of A-HKFTA 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 they were imported into the territory of the Party, and the importer:

- has paid the prevailing non-preferential rate of duty on the goods;
- 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 declaration 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 Instrument is to amend the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulations) to prescribe new refund circumstances in respect to goods imported into Australia from Indonesia and Hong Kong, China, in order to fulfil the above-mentioned obligations, as follows:

- for Indonesian originating goods, the refund circumstance applies when customs duty has been paid on such goods;
- for goods that would have been Indonesian originating goods if at the time the goods were imported, the importer held a Certificate of Origin or a Declaration of Origin or a copy of either of those documents for the goods, the refund circumstance applies when customs duty has been paid on such goods and the importer holds a Certificate of Origin or a Declaration of Origin or a copy of either of those documents for the goods at the time of making the application for the refund;
- for Hong Kong originating goods, the refund circumstance applies when customs duty has been paid on such goods; and
- for goods that would have been Hong Kong originating goods if at the time the goods were imported, the importer held a Declaration 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 Declaration of origin or a copy of document for the goods at the time of making the application for the refund.

For Indonesian originating goods, the expressions 'Certificate of Origin' and 'Declaration of Origin' are defined in the Instrument as having the meaning given by new subsection 153ZLK(1) of the Customs Act, being a certificate or declaration that is in force and that complies with the requirements of Article 4.20 of Chapter 4 of IA-CEPA.

For Hong Kong originating goods, the expression 'Declaration of Origin' is defined in the Instrument as having the meaning given by new subsection 153ZPB(1) of the Customs Act, being a declaration that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of A-HKFTA and including the information as set out in Annex 3-A of A-HKFTA.

The Instrument also makes a technical amendment to the time when an importer needs to have a certificate of origin in relation to the refund circumstances for goods that are Korean

originating or would have been Korean originating in accordance with the Korea-Australia Free Trade Agreement.

### **Human rights implications**

This Disallowable Legislative Instrument does not engage human rights. The amendments are technical amendments which give effect to the preferential tariff treatment and refund circumstances required by Schedule 2 and Schedule 3 to the Implementation Act to fulfil Australia's obligations under Chapter 4 of IA-CEPA and Chapter 3 of A-HKFTA respectively.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon Jason Wood MP**  
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**Parliamentary Secretary to the Minister for Home Affairs**