

EXPLANATORY STATEMENT

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

Customs Act 1901

Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulation 2021

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 of goods into, and the exportation of goods from, Australia.

Subsection 270(1) of the Customs Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Customs Act, prescribing all matters which by the Customs Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Customs Act.

On 15 November 2020, the Hon. Simon Birmingham, former Minister for Trade, Tourism and Investment, and his counterparts from Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam, China, Japan, New Zealand and Republic of Korea signed the Regional Comprehensive Economic Partnership Agreement (the Agreement).

The Agreement sets out, amongst other things, comprehensive provisions for trade in goods and related customs procedures and rules of origin for claiming preferential rates of customs duty. These rules determine whether goods imported into Australia from another Party to the Agreement are originating goods (referred to as 'RCEP originating goods') and are thereby eligible for preferential rates of customs duty.

The *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation Act) Act 2021* (the Customs Implementation Act) amends the Customs Act to, among other things, insert new Division 1N into Part VIII of the Customs Act to implement the provisions under the Agreement dealing with trade in goods and rules of origin.

The Customs Implementation Act also inserts new Division 4L into Part VI of the Customs Act to implement obligations relating to record keeping and verification under the Agreement.

The purpose of the *Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021* (the Regulations) is to prescribe matters relating to the new rules relating to RCEP originating goods that are required or permitted to be prescribed under the new Division 4L of Part VI and Division 1N of Part VIII of the Customs Act.

The Regulations prescribes the rules used to determine whether goods are RCEP originating goods, including the methods used to determine the regional value content of goods (a calculation used in determining whether a good made from originating and non-originating

materials is an RCEP originating good) for the purposes of some of the product-specific rules requirements.

The Regulations also prescribes the valuation rules for different kinds of goods and set out the classes of records that must be retained by Australian exporters and producers of RCEP originating goods.

Details of the 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.

The Department of Foreign Affairs and Trade (DFAT) led Australia's negotiations for the Agreement in consultation with other government agencies. Australia's negotiating positions for the Agreement were informed by the views and information provided by stakeholders through both formal and informal mechanisms.

DFAT undertook regular stakeholder engagement on the Agreement once negotiations commenced in 2012. DFAT, in conjunction with other government agencies, consulted widely with industry and other stakeholders in formulating their positions. In addition to a call for public submissions, negotiators regularly engage with representatives of the business sector, academia and civil society organisations to provide an opportunity to share their views and expectations of the negotiations. At each of the negotiating rounds Australia hosted, DFAT held dedicated stakeholder consultation events in the margins of the meeting on the following dates:

- Melbourne – 30 June 2019
- Perth – 27 April 2017
- Brisbane – 24 September 2013

After the commencement of negotiations, DFAT held biannual International Trade Negotiations Update Meetings which provided an avenue to update peak organisations (including civil society) on the status of the DFAT-led international trade negotiations and for peak organisations to ask questions about the government's trade agenda.

Details of these consultations were set out in the consultation attachment to the National Interest Analysis for the Agreement.

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

The Regulations commence on the later of the day after the Regulations are registered, and the day on which Schedule 1 to the Customs Implementation Act commences. Schedule 1 to the Customs Implementation Act commences on the later of the day after that Act receives the Royal Assent, and the day the Agreement enters into force for Australia.

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Details of the Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021

Part 1 – Preliminary

Section 1 Name

This section provides that the title of the instrument is the *Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021* (the Regulations).

Section 2 Commencement

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

Table item 1 provides for the whole instrument to commence on the later of the day after the Regulations are registered, and the day on which Schedule 1 to the *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* (the Customs Implementation Act) commences. Schedule 1 to the Customs Implementation Act commences on the later of the day after that Act receives the Royal Assent, and the day the Regional Comprehensive Economic Partnership Agreement (Agreement) enters into force for Australia.

Section 3 – Authority

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

Section 4 – Definitions

This section sets out the definitions for the purpose of the Regulations:

- *Act* means the Customs Act;
- *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* means the Agreement of that name:
 - (a) set out in Annex 1A of the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994, and
 - (b) as in force for Australia from time to time.

The note to the definition of *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* indicates, as at 2021, the text of this Agreement is accessible through the Australian Treaties Library on the AustLII website.

The following words and expressions have the meanings given by subsection 153ZQB(1) of the Customs Act:

- *Agreement;*
- *Harmonized System;*
- *non-originating materials;*
- *originating materials;*
- *Party;*
- *production; and*
- *Proof of Origin.*

Part 2 – Tariff change requirement

Section 5 – Change in tariff classification requirement for non-originating materials

Annex 3A to the Agreement, amongst other matters, sets out the product specific rules of origin and chapter specific origin rules, and related requirements that may need to be satisfied in order for goods to be eligible for preferential tariff treatment. Regulations may be required to specify or provide for related requirements.

One of the requirements under Annex 3A to the Agreement that may apply to goods is the change in tariff classification requirement. Where a requirement that applies in relation to goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification (subsection 153ZQE(3) of the Customs Act refers).

For the purposes of subsection 153ZQE(3) of the Customs Act, section 5 of the Regulations provide that a non-originating material used in the production of goods that does not satisfy a particular change in tariff classification is taken to satisfy the change in tariff classification if:

- (a) it was produced entirely in a Party from other non-originating materials; and
- (b) each of those other non-originating materials satisfies the change in tariff classification, including by one or more applications of this section.

Section 5 of the Regulations apply where the non-originating materials that are used to directly produce the final good do not satisfy the change in tariff classification.

In practice, in producing a final good, a producer may use goods that are produced in one or more Parties. The components of these goods may be produced by yet another producer in that Party or another Party or may have been imported by another importer. It is possible that one or more of the non-originating materials from which the final good is produced do not meet the applicable change in tariff classification requirement in Annex 3A to the Agreement (thus failing to meet the requirements to be met for a good to be an RCEP originating good produced from non-originating materials in subsection 153ZQE(1) of the Customs Act). This may mean that the final good is non-originating.

However, section 5 of the Regulations allows the examination of each constituent component of each non-originating material that has not met the change in tariff classification requirement in Annex 3A to the Agreement, to determine whether components used in the production satisfy the

change in tariff classification requirement that applies to the final good. If each component was produced entirely in a Party, and satisfies the change in tariff classification requirement, then the non-originating material will be taken to have met the change in tariff classification requirement and the final good will be an RCEP originating good (subject to satisfying all other requirements of Division 1N of the Customs Act).

Part 3 – Regional value content requirement

Under subsection 153ZQE(6) of the Customs Act, if a requirement that applies in relation to the goods is that the goods must have a regional value content (RVC) of not less than a particular percentage worked out in a particular way:

- (a) the RVC of the goods is to be worked out in accordance with the Agreement; or
- (b) if the regulations prescribe how to work out the RVC of the goods—the RVC of the goods is to be worked out in accordance with the regulations.

For the purpose of subsection 153ZQE(6) of the Customs Act, Part 3 of the Regulations specifies different methods by which the RVC of goods can be calculated. These methods are the direct/build-up method (section 6 of the Regulations) and the indirect/build-down method (section 7 of the Regulations). These methods are specified in Article 3.5 of Chapter 3 of the Agreement.

If it is a requirement in column 5 of the table in Annex 3A to the Agreement that relevant goods are required to meet a RVC of not less than a particular percentage worked out in a particular way, then the RVC shall be calculated using either the method in section 6 or the method in section 7 of the Regulations.

Section 6 Direct/build-up method

Subsection 6(1) of the Regulations provides that the RVC of goods under the direct/build-up method is worked out using the formula:

$$\frac{\text{Value of originating materials} + \text{Direct labour costs} + \text{Direct overhead costs} + \text{Profit} + \text{Other costs}}{\text{Customs value}} \times 100$$

where:

- *customs value* means the customs value of the goods worked out under Division 2 of Part VIII of the Act.
- *direct labour costs* includes wages, remuneration and other employee benefits.
- *direct overhead costs* means the total overhead expense.
- *other costs* has the same meaning as it has in Article 3.5 of Chapter 3 of the Agreement.
- *profit* has the same meaning as it has in Article 3.5 of Chapter 3 of the Agreement.
- *value of originating materials* means the value, worked out under Part 4, of the originating materials that are acquired by the producer, or produced by the producer, and are used by the producer in the production of the goods.

Subsection 6(2) of the Regulations provides that RVC must be expressed as a percentage.

The following is an example using the direct/build-up method to calculate the RVC for canned coffee where the sum of value of originating materials, direct labour costs, direct overhead costs, profits and other costs for each can of coffee is \$6.50. The customs value of each can of coffee is \$10.00. Using the relevant method, the RVC is calculated as follows:

$$\text{RVC} = \frac{\$6.50 \text{ (sum of costs as outlined above)}}{\$10.00 \text{ (customs value)}} \times 100$$

Therefore, the RVC for the canned coffee is 65 per cent (since the direct/build up method has established that 65 per cent of the good originates from within the area of the Parties).

Section 7 Indirect/build-down method

For the purpose of paragraph 153ZQE(6)(b) of the Customs Act, section 7 of the Regulations prescribes the ‘indirect/build-down method’ under which the RVC of goods is calculated.

Subsection 7(1) of the Regulations provides that the RVC of goods under the indirect/build-down method is worked out using the formula:

$$\frac{\text{Customs value} - \text{Value of non-originating materials}}{\text{Customs value}} \times 100$$

where:

- *customs value* means the customs value of the goods worked out under Division 2 of Part VIII of the Customs Act;
- *value of non-originating materials* means the value, worked out under Part 4 of these Regulations, of the non-originating materials that are acquired by the producer and are used by the producer in the production of the goods, other than non-originating materials produced by the producer.

Subsection 7(2) of the Regulations would provide that RVC must be expressed as a percentage.

The following is an example using the build-down method to calculate the RVC for canned coffee that is made from originating and imported ingredients and packaged in a steel can. The customs value of each can of coffee is \$10.00 (including the costs of international shipment – calculated as set out under Part 4 – Determination of Value) and the value of the non-originating materials (including packaging) is \$3.50. Using the relevant method, the RVC is calculated as follows:

$$\text{RVC} = \frac{\$10.00 \text{ (Customs value)} - \$3.50 \text{ (Value of the non-originating material)}}{\$10.00 \text{ (Customs value)}} \times 100$$

Therefore, the RVC for the canned coffee is 65 per cent (since the build down method has established that 35 per cent of the good originates from outside the area of the Parties).

Part 4 – Determination of value

For the purposes of new Division 1N of Part VIII of the Customs Act, new subsection 153ZQB(2) of that Act provides that the value of goods is to be worked out in accordance with the regulations, and the regulations may prescribe different valuation rules for different kinds of goods.

Part 4 of the Regulations sets out the rules to determine the value of different kinds of goods that are materials used in the production of goods for the purposes of new Division 1N of Part VIII of the Customs Act.

Part 4 of the Regulations contain sections 8 (Value of goods that are originating materials or non-originating materials), 9 (Value of packaging material and container) and 10 (Value of accessories, spare parts or tools).

Section 8 Value of goods that are originating materials or non-originating materials

For the purposes of subsection 153ZQB(2) of the Customs Act, section 8 of the Regulations explains how to work out the value of originating materials and non-originating materials used in the production of goods (subsection 8(1) of the Regulations refers).

Subsection 8(2) of the Regulations provides that the value of the materials is as follows:

- (a) for originating materials acquired in a Party, or produced in a Party, by the producer of the goods—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 on the assumption that those materials had been imported into the Party by the producer of the goods;
- (b) for non-originating materials imported into a Party—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
- (c) for non-originating materials acquired in a Party by the producer of the goods—the earliest ascertainable price paid or payable for the materials;
- (d) for non-originating materials produced in a Party by the producer of the goods—the sum of:
 - (i) all the costs incurred in the production of the materials, including general expenses; and
 - (ii) an amount that is the equivalent of the amount of profit that the producer would make for the materials in the normal course of trade.

Paragraphs 8(2)(a) and (b) of the Regulations incorporate the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the GATT). The GATT is not a disallowable legislative instrument and as such, in accordance with paragraph 14(1)(b) and subsection 14(2) of the *Legislation Act 2003* (the Legislation Act), the application, adoption or incorporation of this document would normally be to the document in force at the time the Regulations commence.

Subsection 153ZQB(5) of the Customs Act provides that, despite subsection 14(2) of the Legislation Act, regulations made for the purposes of Division 1N of Part VIII of the Customs Act may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

The term GATT as defined under section 4 of the Regulations as the version of the GATT as in force for Australia from time to time. This means that should the relevant provisions of the GATT be changed, the current version of the GATT would also be captured by the Regulations without the need for further amendments.

A note under section 4 of the Regulations provides that the GATT is available to be viewed for free on the Australian Treaties Library on the AustLII website.

For the purposes of paragraph 8(2)(b) of the Regulations, in working out the value of particular non-originating materials, subsection 8(3) requires that the following costs must be included:

- (a) the cost of freight of the non-originating materials to the port or place of entry in the Party;
- (b) the cost of insurance related to that freight.

In addition, for the purposes of paragraph 8(2)(b), (c) or (d) of the Regulations, in working out the value of particular non-originating materials, subsection 8(4) of the Regulations allow for the following amounts to be deducted:

- (a) the costs of freight, insurance, packing and other transport related costs incurred in transporting the non-originating materials to the producer of the goods;
- (b) duties, taxes and customs brokerage fees on the non-originating materials that:
 - (i) have been paid in a Party; and
 - (ii) have not been waived or refunded; and
 - (iii) are not refundable or otherwise recoverable;including any credit against duties or taxes that have been paid or that are payable;
- (c) the costs of waste and spoilage resulting from the use of the non-originating materials in the production of the goods, reduced by the value of renewable scrap or by products.

Section 9 Value of packaging material and container

Section 153ZQF of the Customs Act deals with packaging materials and containers.

Subsection 153ZQF(1) of the Customs Act provides that, if:

- (a) goods are packaged for retail sale in packaging material or a container; and
- (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

However, if a requirement that applies in relation to the goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way, subsection 153ZQF(2) of the Customs Act provides that the regulations must provide for the following:

- (a) the value of the packaging material or container to be taken into account for the purposes of working out the RVC of the goods;
- (b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

For the purpose of subsection 153ZQF(2) of the Customs Act, section 9 of the Regulations provides that if paragraphs 153ZQF(1)(a) and (b) of the Customs Act are satisfied in relation to goods and the goods must have a RVC of not less than a particular percentage worked out in a particular way:

- (a) the value of the packaging material or container in which the goods are packaged must be taken into account for the purposes of working out the RVC of the goods under Part 3 of the Regulations; and
- (b) if that packaging material or container is an originating material—for the purposes of sections 6 and 8 of these Regulations, that packaging material or container must be taken into account as an originating material used in the production of the goods; and
- (c) if that packaging material or container is a non-originating material—for the purposes of sections 7 and 8 of these Regulations, that packaging material or container must be taken into account as a non-originating material used in the production of the goods.

Section 10 Value of accessories, spare parts, tools or instructional or other information materials

Section 153ZQG of the Customs Act deals with the value of accessories, spare parts, tools or instructional or other information materials.

Subsection 153ZQG(1) of the Customs Act provides that, if:

- (a) goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
- (b) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and
- (c) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the accessories, spare parts, tools or instructional or other information materials are to be disregarded for the purposes of Subdivision D of Division 1N of Part VIII of the Customs Act.

However, if a requirement that applies in relation to the goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way, subsection 153ZQG(2) of the Customs Act provides that the regulations must provide for the following:

- (a) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the RVC of the goods;

- (b) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

For the purpose of subsection 153ZQG(2) of the Customs Act, section 10 of the Regulations would provide that, if paragraphs 153ZQG(1)(a), (b) and (c) of the Customs Act are satisfied in relation to goods and the goods must have a RVC of not less than a particular percentage worked out in a particular way:

- (a) the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account for the purposes of working out the RVC of the goods under Part 3 of the Regulation; and
- (b) if the accessories, spare parts, tools or instructional or other information materials are originating materials—for the purposes of sections 6 and 8 of the Regulation, those accessories, spare parts, tools or instructional or other information materials must be taken account as originating materials used in the production of the goods; and
- (c) if the accessories, spare parts, tools or instructional or other information materials are non-originating materials—for the purposes of sections 7 and 8 of the Regulation, those accessories, spare parts, tools or instructional or other information materials must be taken into account as non-originating materials used in the production of the goods.

Part 5 – Record keeping obligations

Part 5 of the Regulations would specify the records that must be kept for goods exported from Australia to a Party and where the goods are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff treatment in the Party.

Under new subsection 126AQB(1) of the Customs Act, the regulations may prescribe record keeping obligations that apply in relation to goods that:

- (a) are exported to a Party; and
- (b) are claimed to be originating good, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

Under new subsection 126AQB(2) of the Customs Act, regulations for the purposes of subsection 126AQB(1) may impose such obligations on an exporter or producer of goods.

Section 11 Exportation of goods to a Party—record keeping by exporter who is not the producer of the goods

For the purposes of subsection 126AQB(1) of the Customs Act, subsection 11(1) of the Regulations provides that an exporter of goods mentioned in subsection 126AB(1), who is not also the producer of the goods, must keep the following records:

- (a) records of the purchase of the goods by the exporter;
- (b) records of the purchase of the goods by the person to whom the goods are exported;
- (c) evidence that payment has been made for the goods;

- (d) evidence of the classification of the goods under the Harmonized System;
- (e) if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the exporter:
 - (i) records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
- (f) if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the exporter:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the accessories, spare parts, tools or instructional or other information materials;
- (g) if the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter:
 - (i) records of the purchase of the packaging material or container; and
 - (ii) evidence of the value of the packaging material or container;
- (h) if the goods are packaged for retail sale in packaging material or a container that was produced by the exporter:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the packaging material or container;
- (i) a copy of the Proof of Origin for the goods.

For the records referred to in subsection 11(1) of the Regulations, subsection 11(2) of the Regulations provides that the records must be kept for at least five years starting on the date the Proof of Origin for the goods is issued.

Subsection 11(3) of the Regulations sets out the manner in which a record is to be kept. The exporter may keep the records at any place (whether or not in Australia), and must ensure that:

- the records are kept in a form that would enable a determination of whether the goods are originating goods in accordance with Chapter 3 of the Agreement; and
- if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and
- if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

Section 12 Exportation of goods to a Party—record keeping by the producer of the goods

For the purposes of subsection 126AQB(1) of the Customs Act, subsection 12(1) of the Regulations provides that a producer of goods mentioned in subsection 126AQB(1), whether or not the producer is the exporter of the goods, must keep the following records:

- (a) records of the purchase of the goods;

- (b) if the producer is the exporter of the goods—evidence of the classification of the goods under the Harmonized System;
- (c) evidence that payment has been made for the goods;
- (d) evidence of the value of the goods;
- (e) records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System;
- (f) evidence of the value of those materials;
- (g) records of the production of the goods;
- (h) if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the producer:
 - (i) records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
- (i) if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the producer:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the accessories, spare parts, tools or instructional or other information materials;
- (j) if the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:
 - (i) records of the purchase of the packaging material or container; and
 - (ii) evidence of the value of the packaging material or container;
- (k) if the goods are packaged for retail sale in packaging material or a container that was produced by the producer:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the packaging material or container;
- (l) a copy of the Proof of Origin for the goods.

For the records referred to in subsection 12(1) of the Regulations, subsection 12(2) of the Regulations provides that the records must be kept for at least five years starting on the date the Proof of Origin for the goods is issued.

Subsection 12(3) of the Regulations sets out the manner in which a record is to be kept. The producer may keep the records at any place (whether or not in Australia), and must ensure that:

- the records are kept in a form that would enable a determination of whether the goods are originating goods in accordance with Chapter 3 of the Agreement; and
- if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and

- if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

Statement of Compatibility with Human Rights

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

Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021

This Disallowable Legislative Instrument 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 of the Disallowable Legislative Instrument

The Regional Comprehensive Economic Partnership Agreement (the Agreement) is a regional free trade agreement that will complement and build upon Australia's existing free trade agreements with 14 other Indo-Pacific countries. It is a modern and comprehensive free trade agreement delivering outcomes for Australian businesses in trade in goods, trade in services, investment, economic and technical cooperation, and new rules for electronic commerce, intellectual property, government procurement, competition, and small and medium sized enterprises.

The Agreement was signed at a virtual signing ceremony on 15 November 2020. Australia signed in Canberra, and the other 14 states signed in their respective territories (China, Japan, New Zealand, the Republic of Korea, and the ten members of the Association of Southeast Asian Nations: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam).

The *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* (Customs Implementation Act) amends the *Customs Act 1901* (the Customs Act) to fulfil Australia's obligation under Chapter 3 of the Agreement, which details the Agreement's rules of origin.

These new rules determine whether goods imported into Australia from a Party to the Agreement are originating goods (referred to as RCEP originating goods) and are thereby eligible for preferential rates of customs duty. RCEP originating goods are goods from a Party to the Agreement that satisfy the rules of origin; the framework of which is contained in new Division 1N of Part VIII of the Customs Act.

Relevant provisions of the Customs Implementation Act that amend the Customs Act commence on the later of the day after the Customs Implementation Act receives the Royal Assent, and the day the Agreement enters into force for Australia.

The purpose of the *Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021* (the Regulations) is to prescribe matters for and relating to the new rules that are required to be prescribed under new Division 1N of Part VIII of the Customs Act.

In particular, the Regulations:

- set out the circumstance under which the tariff change requirement is taken to be satisfied;
- prescribe the method used to determine the regional value content (a calculation used in determining whether a good is a RCEP originating good) of goods for the purposes of some of the product-specific requirements set out in Annex 3A of the Agreement. Annex 3A is applied by reference in section 153ZQE of new Division 1N of Part VIII of the Customs Act;
- specify the valuation rules that may apply to the goods in Annex 3A;
- prescribe the classes of records that must be kept by Australia exporters and producers of RCEP originating goods, including a Proof of Origin.

The expression ‘Proof of Origin’ is defined in new subsection 153ZQB(1) of the Customs Act, which means a document that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of the Agreement. The information required to be provided as part of a Proof of Origin includes personal information.

The Regulations commence on the later of the day after the Regulations are registered, and the day on which Schedule 1 to the Customs Implementation Act commences. Schedule 1 to the Customs Implementation Act commences on the later of the day after that Act receives the Royal Assent, and the day the Agreement enters into force for Australia.

Human rights implications

The Regulations engage the right to not be subjected to arbitrary or unlawful interference with privacy in Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

To the extent the Regulations facilitate the collection and disclosure of personal information, by requiring certain information to be provided in a Proof of Origin Document, the Regulations engage the right to privacy under Article 17 of the ICCPR. Article 17(1) sets out:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Under Article 3.22 of Chapter 3 of the Agreement, a Proof of Origin document completed by the exporter or producer or an authorised representative of the exporter or producer shall support a claim that goods are eligible for preferential tariff treatment in accordance with the Agreement. The information that must be included in a ‘Proof of Origin’ document is detailed in Articles 3.16, 3.17, 3.18 and 3.22, and Annex 3B to Chapter 3 of the Agreement and includes personal information.

The Customs Amendment Act inserts new sections 126AQB, 126AQC and 126AQD into the Customs Act to enable regulations to prescribe record keeping obligations that apply in relation to goods claimed to be originating goods exported from Australia to a Party to the Agreement, in accordance with the Agreement.

The regulations prescribed for record keeping obligations are contained in Part 5 of the Regulations, which amongst other things require records and evidence of the purchase of material, value of material, production goods, and the Proof of Origin to be kept for at least five years starting on the date the Proof of Origin for the goods is issued. The records required to be kept accord with Article 3.27 of Chapter 3 of the Agreement.

Part 5 of the Regulations together with new sections 126AQB, 126AQC and 126AQD of the Customs Act, operate to allow a Party to the Agreement to verify the origin of goods exported to that Party from Australia that are claimed to be originating goods in accordance with the Agreement. This may include the collection and disclosure of personal information, including information set out in a 'Proof of Origin' document, for limited purposes. This information may be disclosed to a RCEP customs official (within the meaning of section 126AQA of the Customs Act) for the purpose of verifying a claim for a preferential tariff in a Party to the Agreement.

Through the amendments to the Customs Act made by the Customs Amendment Act, the collection and disclosure of personal information in relation to goods claiming to be originating goods will be permitted. Further, the collection and disclosure of personal information is authorised under Australian law. Neither the Customs Amendment Act nor the Regulations alters the existing protections.

The verification of the eligibility for preferential treatment is required under the Agreement and the measures in the Regulations are directed at the legitimate purpose of facilitating and supporting Australia's international obligations under the Agreement. This collection and disclosure of personal information will only be permitted for the limited purpose of verifying a claim made by a person for preferential tariff treatment making it a reasonable and proportionate response to a legitimate purpose. As such, the collection and disclosure of personal information in these circumstances will not constitute an unlawful or arbitrary interference with privacy.

Conclusion

The Regulations are compatible with human rights because to the extent that it may limit the right to privacy, the limitation is reasonable, necessary and proportionate in achieving a legitimate objective.

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