**EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Customs Act 1901*

*Customs (Indian Rules of Origin) Regulations 2022*

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 2 April 2022, the Hon Dan Tehan MP, then Minister for Trade, Tourism and Investment, and his counterpart from the Republic of India (India), Minister Piyush Goyal, signed the India-Australia Economic Cooperation and Trade Agreement (the Agreement).

The Agreement delivers outcomes for trade in goods and services and sets out related customs procedures and rules of origin for claiming preferential rates of customs duty. These rules determine whether goods imported into Australia from India are originating goods (referred to as ‘Indian originating goods’) and are thereby eligible for preferential rates of customs duty.

The *Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (the Customs Implementation Act) amends the Customs Act to, among other things, insert new Division 1JA 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 4GA into Part VI of the Customs Act to implement obligations relating to record keeping and verification.

The purpose of the *Customs (Indian Rules of Origin) Regulations 2022* (the Regulations) is to prescribe matters relating to the new rules for Indian originating goods that are required or permitted to be prescribed under the new Division 1JA of Part VIII of the Customs Act. The Regulations prescribe the rules used to determine whether goods are Indian originating goods, including the methods used to determine the qualifying value content of goods (a calculation used in determining whether a good made from originating and non-originating materials is an Indian originating good) for the purposes of the Agreement, to be eligible for preferential tariff treatment.

The Regulations also prescribe the valuation rules for different kinds of goods and set out the classes of records that must be retained under Division 4GA of Part VI of the Customs Act by Australian exporters and producers of Australian 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. The Agreement will be the foundation for the development of a further Comprehensive Economic Cooperation Agreement (CECA).

The public consultation and stakeholder engagement process for the Agreement was informed by that for the earlier CECA negotiations in May 2011. Before negotiations on CECA were suspended, DFAT received 51 formal submissions (including three from the Australian Chamber of Commerce and Industry). Since the re-launch of CECA negotiations on 1 October 2021, DFAT received a further 21 formal submissions from organisations and individuals. Public submissions from these entities are available on the DFAT website.

The Australian negotiating team held numerous direct stakeholder consultations since the re-launch of the CECA negotiations in October 2021, which informed the negotiations when these refocused on concluding the Agreement. These have included industry and worker representatives, such as peak bodies and trade unions, as well as businesses, individuals, and other entities. Stakeholders were invited to provide written submissions on the commercial, economic, regional, and other impacts that could be expected to arise from the Agreement.

The Australian negotiating team also contacted key industry stakeholders after the December 2021 and February 2022 negotiating round in India, and up to conclusion of the Agreement in March 2022. These direct consultations played an important role in ensuring the right outcomes for Australians to diversify trade and drive an export-led recovery. Once the Agreement’s negotiations were launched, DFAT also provided updates through established consultative groups such as the Ministerial Advisory Council on FTA negotiations (on 29 October 2021 and 17 March 2022), and the DFAT Peak Bodies Consultations meetings.

The Regulations are a legislative instrument for the purposes of the *Legislation 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. Some of the amendments in the Regulations are made in reliance of section 4 of the *Acts Interpretation Act 1901.*

**ATTACHMENT A**

**Details of the *Customs (Indian Rules of Origin) Regulations 2022***

**Part 1—Preliminary**

**Section 1 – Name**

This section provides that the title of the instrument is the *Customs (Indian Rules of Origin) Regulations 2022* (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 (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (the Customs Implementation Act) commences. Schedule 1 to the Customs Implementation Act commences on the later of the day after the Act receives the Royal Assent, and the day the India-Australia Economic Cooperation and Trade 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:

1. set out in Annex 1A of the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994; and
2. 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 2022, 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 153ZML(1) of the Customs Act:

* *Agreement*;
* *Australian originating goods*;
* *certificate of origin*;
* *Harmonized System*;
* *non-originating materials*;
* *originating materials*;
* *production*;
* *territory of Australia*; and
* *territory of India*.

The Regulations incorporate the definition of Harmonized System that is inserted into the Customs Act by the Customs Implementation Act (see subsection 153ZML(1)), in accordance with subparagraph 14(1)(a)(i) of the *Legislation Act 2003*.

The Harmonized System is a structure for classifying goods based on internationally agreed descriptors for goods and related six-digit codes administered by the World Customs Organization (the WCO). This six-digit classification uniquely identifies all traded goods and commodities and is uniform across all countries that have adopted the Harmonized System. The WCO, reviews the system every five years to reflect changes in industry practice, technological developments and evolving international trade patterns.

The expression ‘Harmonised System’ is used in the record‑keeping obligations in sections 12 and 13 of the Regulations to require records be kept of the classification of goods or materials under the Harmonized System. This in turn implements the record keeping obligations under the Agreement.

The Agreement also uses the codes of the Harmonized System. The codes in the Agreement are from the version of the Harmonized System in place from 1 January 2017, commonly referred to as the 2017 version of the Harmonized System.

The 2017 version of the Harmonized System is available free of charge on webpages administered by the WCO.

**Part 2—Tariff change requirement**

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

Both Annex 4B and paragraph 2 to Article 4.3 of Chapter 4of the Agreement, amongst other matters, sets out the product specific rules of origin, 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 this paragraph that may apply to goods is the change in tariff classification requirement. A change in tariff classification requires that any non-originating materials that are incorporated into the final good undergo a specified change in classification in one or more of the Parties to the Agreement.

Where that requirement applies, 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 153ZMN(4) of the Customs Act refers).

For the purposes of subsection 153ZMN(4) of the Customs Act, section 5 of the Regulations provides 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:

1. it was produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from other non-originating materials; and
2. 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 applies 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 the territory of India and/or the territory of Australia. The components of these goods may be produced by yet another producer in either territory 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 paragraph 2 to Article 4.3 of Chapter 4 of the Agreement (thus failing to meet the requirements to be met for a good to be an Indian originating good produced from non-originating materials in subsection 153ZMN(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 4B 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 non-originating material in that component that was produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, 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 Indian originating good (subject to satisfying all other requirements of Division 1JA of the Customs Act).

**Part 3—Qualifying value content requirement**

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

1. the QVC of the goods is to be worked out in accordance with the Agreement; or
2. if the regulations prescribe how to work out the QVC of the goods—the QVC is to be worked out in accordance with the regulations.

For the purpose of subsection 153ZMN(6) of the Customs Act, Part 3 of the Regulations specifies different methods by which the QVC of goods can be calculated. These methods are the build-down method (section 7 of the Regulations) and the build-up method (section 8 of the Regulations). These methods are specified in Article 4.6 of Chapter 4 of the Agreement.

If it is a requirement in paragraph 2 of Article 4.3 of Chapter 4 of the Agreement that relevant goods are required to meet a QVC of not less than a particular percentage worked out in a particular way, then the QVC shall be calculated using either the method in section 7 or the method in section 8 of the Regulations.

**Section 6 Prescribed qualifying value content requirements**

Under subsection 153ZMN(3) of the Customs Act, goods will satisfy the requirements under that subsection if:

1. all non-originating materials used in the production of the goods have undergone a change in tariff classification at the tariff subheading level; and
2. the goods satisfy the qualifying value content requirements prescribed by regulations made for the purposes of this paragraph; and
3. the final production process of the manufacture of the goods is performed in the territory of India.

For the purposes of paragraph 153ZMN(3)(b) of the Customs Act, section 6 of the Regulations provides that the prescribed QVC requirements for goods is that the goods satisfy either or both the following:

1. the requirement that the QVC of the goods under the build-down method, worked out under Part 3 of the Regulations, is not less than 45%;
2. the requirement that the QVC of the goods under the build-up method, worked out under Part 3 of the Regulations, is not less than 35%.

**Section 7 Build-down method**

For the purposes of paragraph 153ZMN(6)(b) of the Customs Act, section 7 of the Regulations prescribes the ‘build-down method’ under which the QVC of goods is calculated.

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

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 the Regulations, of the non-originating materials used in the production of the goods.

The following is an example using the build-down method to calculate the QVC 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 of the Regulations – Determination of Value) and the value of the non-originating materials (including packaging) is $3.50. Using the build‑down, the QVC is calculated as follows:

Therefore, the QVC for the canned coffee is 45 per cent (since the build-down method has established that 45 per cent of the good originates from outside the area of the Parties).

**Section 8 Build-up method**

Subsection 8(1) of the Regulations provides that the QVC of goods under the build-up method is worked out using the formula:

where:

***customs value*** means the customs value of the goods worked out under Division 2 of Part VIII of the Customs Act.

***value of originating materials***means the value, worked out under Part 4 of these Regulations, of the originating materials used in the production of the goods.

Subsection 8(2) of the Regulations provides that QVC must be expressed as a percentage.

The following is an example using the build-up method to calculate the QVC for canned coffee where the value of originating materials for each can of coffee is $4.50. The customs value of each can of coffee is $10.00. Using the build‑up, the QVC is calculated as follows:

Therefore, the QVC for the canned coffee is 45 per cent (since the build-up method has established that 45 per cent of the good originates from within the area of the Parties).

**Part 4—Determination of value**

For the purposes of new Division 1JA of Part VIII of the Customs Act, new subsection 153ZML(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 1JA of Part VIII of the Customs Act.

Part 4 of the Regulations contains section 9 (Value of goods that are originating materials or non-originating materials), section 10 (Value of accessories, spare parts, tools or instructional or other information materials) and section 11 (Value of packing material and container).

**Section 9 Value of goods that are originating materials or non-originating materials**

For the purposes of subsection 153ZML(2) of the Customs Act, section 9 of the Regulations explains how to work out the value of originating materials or non-originating materials used in the production of goods (subsection 9(1) of the Regulations refers).

Subsection 9(2) of the Regulations provides that the value of the materials is as follows:

1. for materials imported into the territory of India by the producer of the goods:
2. the price paid or payable for the materials at the time of importation; or
3. if the value of the materials cannot be determined under subparagraph (i)—the value of the materials is worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
4. for materials acquired in the territory of India—one of the following chosen by the importer of the goods:
5. the price paid or payable for the materials by the producer of the goods;
6. the value of those materials worked out under paragraph (a) of this subsection, on the assumption that those materials had been imported into the territory of India by the producer of the goods;
7. the earliest ascertainable price paid or payable for the materials in the territory of India;
8. for materials that are produced by the producer of the goods—all the costs incurred in the production of the materials, including general expenses.

Paragraph 9(2)(a) of the Regulations incorporates 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 153ZML(5) of the Customs Act provides that, despite subsection 14(2) of the Legislation Act, regulations made for the purposes of Division 1JA 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 is 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 are also 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 9(2)(a) of the Regulations, in working out the value of particular materials, subsection 9(3) of the Regulations requires that the costs of insurance and freight incurred in delivering the materials to the port of importation in India must be included.

For the purposes of working out the value of particular originating materials under subsection 9(2) of the Regulations, subsection 9(4) of the Regulations allows that the following may be included, to the extent that they have not been taken into account under that subsection:

1. the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;
2. duties, taxes and customs brokerage fees on the materials that:
3. have been paid in either or both of the territory of India and the territory of Australia; and
4. have not been waived or refunded; and
5. are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

1. the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by-products.

In addition, for the purposes of working out the value of particular non-originating materials under subsection 9(2) of the Regulations, subsection 9(5) of the Regulations allows that the following amounts to be deducted:

1. the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;
2. duties, taxes and customs brokerage fees on the materials that:
3. have been paid in either or both of the territory of India and the territory of Australia; and
4. have not been waived or refunded; and
5. are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

1. the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by products.

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

Subsection 153ZMN(7) of the Customs Act deals with the value of accessories, spare parts, tools or instructional or other information materials.

Subsection 153ZMN(7) provides that, if:

1. a requirement that applies in relation to the goods is that the goods must have a QVC of not less than a particular percentage worked out in a particular way; and
2. the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
3. the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and
4. the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the following:

1. 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 QVC of the goods;
2. 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 paragraphs 153ZMN(7)(e) and(f), section 10 of the Regulations provides that, if paragraphs 153ZMN(7)(a), (b), (c) and (d) of the Customs Act are satisfied in relation to goods:

1. 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 qualifying value content of the goods under Part 3 of the Regulations; and
2. if the accessories, spare parts, tools or instructional or other information materials are originating materials—for the purposes of sections 8 and 9 of the Regulations, those accessories, spare parts, tools or instructional or other information materials must be taken into account as originating materials used in the production of the goods; and
3. if the accessories, spare parts, tools or instructional or other information materials are non‑originating materials—for the purposes of sections 7 and 9 of the Regulations, 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.

**Section 11 Value of packaging material and container**

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

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

1. goods are packaged for retail sale in packaging material or a container; and
2. 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 Division 1JA of the Customs Act.

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

1. the value of the packaging material or container to be taken into account for the purposes of working out the QVC of the goods;
2. 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 153ZMP(2) of the Customs Act, section 11 of the Regulations provides that if paragraphs 153ZMP(1)(a) and (b) of the Customs Act are satisfied in relation to goods and the goods must have a QVC of not less than a particular percentage worked out in a particular way:

1. 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 qualifying value content of the goods under Part 3 of the Regulations; and
2. if that packaging material or container is an originating material—for the purposes of sections 8 and 9 of the Regulations, that packaging material or container must be taken into account as an originating material used in the production of the goods; and
3. if that packaging material or container is a non‑originating material—for the purposes of sections 7 and 9 of the Regulations, that packaging material or container must be taken into account as a non‑originating material used in the production of the goods.

**Part 5—Record keeping obligations**

Part 5 of the Regulations specifies the records that must be kept for goods exported from Australia to India and where the goods are claimed to be originating goods, in accordance with Chapter 4 of the Agreement, for the purpose of obtaining preferential tariff treatment in India.

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

1. are exported to the territory of India; and
2. are claimed to be Australian originating goods, in accordance with Chapter 4 of the Agreement, for the purpose of obtaining a preferential tariff in the territory of India.

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

**Section 12 Exportation of goods to India—record keeping by exporter who is not the producer of the goods**

For the purposes of subsection 126AMF(1) of the Customs Act, subsection 12(1) of the Regulations provides that an exporter of goods mentioned in subsection 126AMF(1), who is not also the producer of the goods, must keep the following records:

1. records of the purchase of the goods by the exporter;
2. records of the purchase of the goods by the person to whom the goods are exported;
3. evidence that payment has been made for the goods;
4. evidence of the classification of the goods under the Harmonized System;
5. if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the exporter:
   1. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
   2. evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
6. if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the exporter:
   1. 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
   2. evidence of the value of the materials so purchased; and
   3. records of the production of the accessories, spare parts, tools or instructional or other information materials;
7. if the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter:
   1. records of the purchase of the packaging material or container; and
   2. evidence of the value of the packaging material or container;
8. if the goods are packaged for retail sale in packaging material or a container that was produced by the exporter:
   1. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
   2. evidence of the value of the materials so purchased; and
   3. records of the production of the packaging material or container;
9. a copy of the certificate of origin for the goods.

For the records referred to in section 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 certificate 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 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 Australian originating goods; 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 13 Exportation of goods to India—record keeping by the producer of the goods**

For the purposes of subsection 126AMF(1) of the Customs Act, subsection 13(1) of the Regulations provide that a producer of goods mentioned in subsection 126AMF(1), whether or not the producer is the exporter of the goods, must keep the following records:

1. records of the purchase of the goods;
2. if the producer is the exporter of the goods—evidence of the classification of the goods under the Harmonized System;
3. evidence that payment has been made for the goods;
4. evidence of the value of the goods;
5. 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;
6. evidence of the value of those materials;
7. records of the production of the goods;
8. if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the producer:
   1. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
   2. evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
9. if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the producer:
10. 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
11. evidence of the value of the materials so purchased; and
12. records of the production of the accessories, spare parts, tools or instructional or other information materials;
13. if the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:
14. records of the purchase of the packaging material or container; and
15. evidence of the value of the packaging material or container;
16. if the goods are packaged for retail sale in packaging material or a container that was produced by the producer:
    1. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
    2. evidence of the value of the materials so purchased; and
    3. records of the production of the packaging material or container;
17. a copy of the certificate of origin for the goods.

For the records referred to in subsection 13(1) of the Regulations, subsection 13(2) of the Regulations provides that the records must be kept for at least five years starting on the date the certificate of origin for the goods is issued.

Subsection 13(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 Australian originating goods; and
* if the records are not in English—the records are kept in a pace 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 (Indian Rules of Origin) Regulations 2022**

ThisDisallowable 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**

On 2 April 2022, the Hon Dan Tehan MP, then Minister for Trade, Tourism and Investment, and his counterpart from the Republic of India (India), Minister Piyush Goyal, signed the India-Australia Economic Cooperation and Trade Agreement (the Agreement).

The Agreement delivers outcomes for trade in goods and services and sets out related customs procedures and rules of origin for claiming preferential rates of customs duty.

The *Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (Customs Implementation Act) amends the *Customs Act 1901* (the Customs Act) to fulfil Australia’s obligation under Chapter 4 of the Agreement, which details the Agreement’s rules of origin.

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

The purpose of the *Customs (Indian Rules of Origin) Regulations 2022* (the Regulations) is to prescribe matters for and relating to the new rules that are required to be prescribed under new Division 1JA 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 qualifying value content (a calculation used in determining whether a good is an Indian originating good) of goods for the purposes of some of the product-specific requirements set out in Article 4.3 and Annex 4B of the Agreement. Annex 4B are applied by reference in section 153ZMN of new Division 1JA of Part VIII of the Customs Act;
* specify the valuation rules that may apply to the goods in Article 4.3 and Annex 4B;
* prescribe the classes of records that must be kept by Australian exporters and producers of Australian originating goods, including a Certificate of Origin.

The expression ‘Certificate of Origin’ is inserted into new subsection 153ZML(1) of the Customs Act by the Customs Implementation Act. It means a certificate that is in force and that complies with the requirements of Article 4.15 of Chapter 4 of the Agreement. The information required to be provided as part of a Certificate of Origin includes personal information. The Regulations bring Indian originating goods within the scope of the preferential customs duty scheme in the Customs Act.

The Regulations commence on the later of the day after the instrument is 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 Certificate 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 4.20 of Chapter 4 of the Agreement, a Certificate of Origin document provided by 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 Certificate of Origin document is detailed in Articles 4.15, 4.16, 4.17 and 4.23, and Annex 4A to Chapter 4 of the Agreement and includes personal information.

The Customs Implementation Act inserts new sections 126AMF, 126AMG and 126AMH into the Customs Act to enable regulations to prescribe record keeping obligations that apply in relation to goods claimed to be Australian originating goods exported from Australia to India, 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 Certificate of Origin to be kept for at least five years starting on the date the Certificate of Origin for the goods is issued. The Regulations implement the record keeping requirements of Article 4.21 of Chapter 4..

Part 5 of the Regulations together with new sections 126AMF, 126AMG and 126AMH of the Customs Act, operate to allow Indian customs authorities to verify the origin of goods exported from Australia that are claimed to be Australian originating goods. As the Certificate of Origin includes personal information, this engages the right to privacy. Information contained in the Certificate of Origin may be disclosed to an Indian customs official (within the meaning of section 126AME of the Customs Act) for the purpose of verifying a claim for a preferential tariff.

The limitation on the right to privacy is not arbitrary and is pursuant to law. Amendments to the Customs Act made by the Customs Implementation Act permit the collection and disclosure of personal information in relation to goods claiming to be originating goods. Neither the Customs Implementation 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.

**The Hon Clare O’Neil MP, Minister for Home Affairs**