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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CUSTOMS TARIFF AMENDMENT (JAPAN-AUSTRALIA ECONOMIC PARTNERSHIP
AGREEMENT IMPLEMENTATION) BILL 2014**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Immigration and Border Protection
the Honourable Scott Morrison MP)

CUSTOMS TARIFF AMENDMENT (JAPAN-AUSTRALIA ECONOMIC PARTNERSHIP AGREEMENT IMPLEMENTATION) BILL 2014

OUTLINE

The purpose of the Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 (the Tariff Bill) is to amend the *Customs Tariff Act 1995* (the Customs Tariff) to implement the Japan-Australia Economic Partnership Agreement (the Agreement) by:

- providing free rates of customs duty for goods that are Japanese originating goods in accordance with new Division 1K of Part VIII of the *Customs Act 1901* (the Customs Act). New Division 1K is proposed to be inserted in the Customs Act by the Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 (the Customs Bill);
- amending Schedule 4 to the Customs Tariff to maintain customs duty rates for certain Japanese originating goods in accordance with the applicable concessional item;
- phasing the preferential rates of customs duty for certain goods to Free by 2021; and
- inserting a new Schedule 11 in the Customs Tariff to accommodate the preferential and phasing rates of duty and to maintain excise-equivalent rates of duty on certain alcohol, tobacco and petroleum products. These rates are equivalent to the rates of excise duty payable on these goods when these products are locally manufactured.

Complementary amendments will also be made to the Customs Act by the Customs Bill to give effect to the Agreement.

FINANCIAL IMPACT STATEMENT

Underlying cash impact (\$millions)

2014-15	2015-16	2016-17	2017-18	Total
-110.0	-445.0	-495.0	-540.0	-1590.0

REGULATION IMPACT STATEMENT

A Regulation Impact Statement covering the tariff amendments is contained in the Explanatory Memorandum for the Customs Bill.

Statement of Compatibility with Human Rights

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

CUSTOMS TARIFF AMENDMENT (JAPAN-AUSTRALIA ECONOMIC PARTNERSHIP AGREEMENT IMPLEMENTATION) BILL 2014

This Bill 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 Bill

The Bill amends the Customs Tariff by:

- providing free rates of customs duty for goods that are Japanese originating goods in accordance with new Division 1K of Part VIII of the Customs Act;
- amending Schedule 4 to the Customs Tariff to maintain customs duty rates for certain Japanese originating goods in accordance with the applicable concessional item;
- phasing the preferential rates of customs duty for certain goods to Free by 2021;
- creating a new Schedule 11 in the Customs Tariff to accommodate the preferential, phasing and excise-equivalent rates of duty.

Human rights implications

This legislative instrument does not engage, impact on, or limit in any way, the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights at section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

This Bill is compatible with human rights.

MINISTER FOR IMMIGRATION AND BORDER PROTECTION,
THE HONOURABLE SCOTT MORRISON MP

CUSTOMS TARIFF AMENDMENT (JAPAN-AUSTRALIA ECONOMIC PARTNERSHIP AGREEMENT IMPLEMENTATION) BILL 2014

NOTES ON CLAUSES

Clause 1 – Short Title

1. This clause provides for the Tariff Bill, when enacted, to be cited as the *Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014*.

Clause 2 – Commencement

2. Subclause (1) provides that each provision of this Act specified in column 1 of the table in that subclause commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table. This subclause also provides that any other statement in column 2 of the table has effect according to its terms.
3. Item 1 of the table in this clause provides that sections 1 to 3 and anything in the Act not covered elsewhere in the table will commence on the day on which the Act receives the Royal Assent.
4. Item 2 of the table provides that Schedule 1 of the Tariff Bill will commence at the same time as Schedule 1 to the *Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014* commences that is, on the day that the Agreement comes into force for Australia.

Clause 3 – Schedules

5. This clause is the formal enabling provision for the Schedule to the Tariff Bill, providing that legislation specified in a Schedule is amended or repealed in accordance with the applicable items in the Schedule. In the Tariff Bill, the Customs Tariff is being amended.
6. Clause 3 also provides that any other items of the Schedule have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation.

SCHEDULE 1 – MAIN AMENDMENTS

Amendments to the *Customs Tariff Act 1995*

Introductory comments

7. On of the Agreement coming into force, the Tariff Bill will amend the Customs Tariff to provide free rates of customs duty for those Japanese originating goods that are set out in 'Annex 1 – Part 2: Elimination of Customs Duties' of the Agreement.
8. Under the Agreement, rates of customs duty for certain Japanese originating goods will phase to Free over a number of years, and certain alcohol, tobacco and petroleum products will continue to be subject to rates of customs duty that are equivalent to the rates of excise duty payable on such goods when locally manufactured.
9. Rates of customs duty applicable to certain Japanese originating goods that will phase to Free over a number of years, and alcohol, tobacco and petroleum products will be set out, as required, in a new Schedule 11 to the Customs Tariff. If a rate of duty is not specified in Schedule 11 or any other Schedules for Japanese originating goods, then the rate of duty of Free applies.
10. The rules for determining whether goods are Japanese originating goods will be set out in new Division 1K of the Customs Act. The Agreement is expected to come into force for Australia in 2015. Under the provisions of the Customs Bill, the Minister for Immigration and Border Protection is required to publish a notice in the *Gazette* advising when the Agreement comes into force for Australia.
11. Amendments will be made to the Customs Tariff to include references to the new Schedule 11, to Japanese originating goods, and to specify duty rates in Schedule 4 (Schedule of Concessional Rates) for Japanese originating goods. Sections 16 and 18 of the Customs Tariff will also be amended to provide rules for determining customs duty for Japanese originating goods.

Item 1 Subsection 3(1) (at the end of the definition of *rate column*)

12. Item 1 amends the definition of *rate column* in subsection 3(1) of the Customs Tariff to include a reference to the third column of the table in new Schedule 11. Schedule 11 of the Customs Tariff will be used to specify rates of duty, including phasing rates, for Japanese originating goods, as required.

Item 2 Subsection 9(1)

13. Item 2 adds a reference to Schedule 11.
14. This amendment allows rates of duty to be specified in the rate column in Schedule 11 of the Customs Tariff that will apply to Japanese originating goods.

Items 3 and 4 Subsection 11(1)(bf)

15. Items 3 and 4 add new paragraph (1)(bg) to section 11 to include a reference to a rate of duty set out in the third column of an item in the table in new Schedule 11 of the Customs Tariff that applies to the goods. Section 11 sets out the rules for determining when a phasing rate of duty takes effect.

Items 5 and 6 Subsection 11(1)(j)

16. Items 5 and 6 add new paragraph (1)(k) to section 11 to include a reference to a specified date set out in the third column of an item in the table in new Schedule 11 of the Customs Tariff that applies to Japanese originating goods.

Items 7 and 8 Subsection 11(2)(bf)

17. Items 7 and 8 add new paragraph (2)(bg) to section 11 to include a reference to a rate of duty set out in the third column of an item in the table in new Schedule 11 of the Customs Tariff that applies to Japanese originating goods.
18. The amendments provided by items 2 to 8 allow phasing rates of duty to be inserted in Schedule 11.

Item 9 After Section 13G

19. Item 9 amends the Customs Tariff by inserting a new section 13H. The new section provides that, for the purposes of the Customs Tariff, goods are Japanese originating goods if, and only if, they are Japanese originating goods under new Division 1K of Part VIII of the Customs Act. New Division 1K of Part VIII of the Customs Act sets out the rules for determining whether goods are Japanese originating goods. The purpose of new section 13H is to ensure that those rates will only apply to goods that satisfy the new rules set out in new Division 1K of Part VIII of the Customs Act.
20. Amendments to sections 14, 16 and 18 of the Customs Tariff (items 10 to 16 refer) insert new provisions to determine the rate of customs duty that applies to goods that are Japanese originating goods.

Item 10 Subsection 14(1)

21. Item 10 amends the Customs Tariff by inserting new subsection 14(1)(l). Section 14 of the Customs Tariff sets out the application of rates of duty in relation to countries and places. New subsection 14(1)(l) specifies that a rate of duty set out in the rate column in Schedule 4 applies in relation to Japan if “JP” is specified in relation to this rate.

Items 11 and 12 Subsection 16(1)(a)(viii)

22. Items 11 and 12 amend the Customs Tariff by inserting new subsection 16(1)(a)(ix). Section 16 of the Customs Tariff sets out how customs duty is calculated, including for goods that are the produce or manufacture of particular countries and classes of countries for preference purposes. Subsection 16(1)(a) provides that if the goods are not the produce or manufacture of a preference country or a country to which a free trade agreement applies, the duty must be worked out by reference to the general rate set out in the third column of the tariff classification in Schedule 3 under which the goods are classified.
23. New subsection 16(1)(a)(ix) ensures that the general rate of duty set out in Schedule 3 does not apply to Japanese originating goods.

Item 13 At the end of Subsection 16(1)

24. Item 13 inserts new subsection 16(1)(q) into the Customs Tariff. This subsection provides that a free rate of customs duty is payable on goods that are Japanese originating goods unless the goods are classified to a heading or subheading in Schedule 3 that is specified in column 2 of an item in the table in new Schedule 11. If the goods are so classified, the duty on those goods will be worked out by reference to the rate of duty set out in column 3 of the relevant item in Schedule 11.

Item 14 At the end of Subsection 18(1)

25. Section 18 of the Customs Tariff sets out how customs duty is calculated in those circumstances where a concessional rate of customs duty under an item in Schedule 4 of the Customs Tariff is provided for certain goods. In particular, subsection 18(1) provides that a concessional rate of customs duty can be used only where the rate of customs duty is less than that which would otherwise be payable under Schedules 3, 5, 6, 7, 8, 9, 10 or 11.
26. Item 14 amends subsection 18(1) to add a new paragraph (1)(h). This amendment provides that a concessional item in Schedule 4 only applies to goods if the duty is lower than the duty payable under Schedule 11. This provision is consistent with the same provision for other schedules of the Customs Tariff, for example Schedule 7, Chilean originating goods.

Items 15 and 16 Subsection 18(2)(a)(viii)

27. Items 15 and 16 amend the Customs Tariff by inserting a new subsection 18(2)(a)(ix). Schedule 4 of the Customs Tariff lists 57 items where a concessional rate of customs duty is provided for particular goods. Section 18 of the Customs Tariff sets out how customs duty is calculated for such goods, in particular for goods that are the produce or manufacture of particular countries and classes of countries for preference purposes. Subsection 18(2)(a) provides that if the goods are not the produce or manufacture of a preference country or a country to which a free trade agreement applies, the duty must be worked out by reference to the general rate set out in the third column of an item in Schedule 4 that applies to the goods.
28. New subsection 18(2)(a)(ix) ensures that the general rate of duty set out in Schedule 4 does not apply to Japanese originating goods.

Item 17 At the end of Subsection 18(2)

29. Item 17 inserts new subsection 18(2)(q) into the Customs Tariff to set out how customs duty is calculated for goods that are Japanese originating goods and that are subject to a concessional item in Schedule 4. This paragraph provides that if the goods are Japanese originating goods and “JP” is specified in the third column of an item in Schedule 4, the amount of duty is calculated by reference to that rate of duty. If there is no such rate, the rate is Free.

Item 18 Subsection 19AA(b)

30. Section 19 of the Customs Tariff provides for the automatic indexation of certain excise-equivalent rates of duty in line with movements in the Consumer Price Index (CPI), in February and August of each year. The goods to which automatic indexation applies are certain alcohol products.
31. For this purpose, section 19AA contains a table of customs tariff subheadings for those alcohol products.
32. Item 18 amends subsection 19AA(b) of the Customs Tariff by adding a reference to Schedule 11 to enable the indexation provisions to apply to the rates of excise-equivalent customs duty for those alcohol products that are Japanese originating goods.

Item 19 Subsection 19AC(b)

33. Section 19AB of the Customs Tariff provides for the automatic indexation of certain excise-equivalent rates of duty in line with movements in the full-time adult average weekly ordinary time earnings (AWOTE) for tobacco products, in March and September of each year.
34. For this purpose, section 19AC contains a table of customs tariff subheadings for tobacco products.

35. Item 19 amends subsection 19AC(b) of the Customs Tariff by adding a reference to Schedule 11 to enable the indexation provisions to apply to the rates of excise-equivalent customs duty for those tobacco products that are Japanese originating goods.

Items 20 to 27 Schedule 4

36. Schedule 4 of the Customs Tariff lists 57 items where a concessional rate of customs duty is provided for particular goods. In most cases, the concessional rate of customs duty for such goods is Free. However, in some circumstances, instead of a Free rate of duty, the items provide a lower rate of customs duty than the general rate that is otherwise payable.
37. The Agreement only provides for duty concessions for goods in Schedule 3 of the Customs Tariff. As subsection 18(2)(q) of the Customs Tariff provides that the rate of customs duty for Japanese originating goods subject to a concessional item in Schedule 4 is Free, unless a rate for Japan is specified, it is necessary to specify rates of customs duty for Japanese originating goods for those concessional items where the rate of duty is not Free.
38. Items 20, 21, 22, 23, 24, 25, 26 and 27 amend the existing rates of customs duty for relevant Schedule 4 items by adding or inserting the appropriate duty rate for Japanese originating goods.
39. Item 20 amends item 17A (Goods exported and returned unaltered to Australia on which duties or taxes are owing) and inserts “/JP” in the third column of item 17A, so the amount of duty is calculated by reference to that rate of duty.
40. Item 21 inserts a reference to new Schedule 11 in the description of goods for concessional item 20 (Goods exported for repair or renovation).
41. Item 22 amends item 20 and inserts “/JP” in the third column of item 20, so the amount of duty is calculated by reference to that rate of duty.
42. Item 23 amends item 22 (Containers used to import goods, being containers that will be exported without being put to any other use) and inserts “/JP” in the third column of item 22, so the amount of duty is calculated by reference to that rate of duty.
43. Item 24 amends item 37 (Used or second-hand passenger motor vehicles) and inserts “JP: 5%” in the third column of item 37, so the amount of duty is calculated by reference to that rate of duty.
44. Item 25 amends item 45 (Split consignment goods) and inserts “/JP” in the third column of item 45, so the amount of duty is calculated by reference to that rate of duty.
45. Item 26 amends item 50 (Tariff concession order goods) and inserts “/JP” in the third column of item 50, so the amount of duty is calculated by reference to that rate of duty.

46. Item 27 amends item 53 (Polyglycol brake fluids that are exempt from the Product Stewardship Oil Levy) and inserts “JP: 5%” in the third column of item 53, so the amount of duty is calculated by reference to that rate of duty.

Item 28 At the end of the Act

Schedule 11 – Japanese originating goods

47. Item 28 inserts new Schedule 11 into the Customs Tariff.
48. ‘Annex 1-Part 2: Elimination of Customs Duties’ of the Agreement provides that rates of customs duty for certain Japanese originating goods are to be reduced to Free over a maximum period of 8 years. Items 136 to 718 in Schedule 11 of the Customs Tariff impose phasing rates of customs duty on Japanese originating goods as specified in the Agreement. Column 3 of the table in Schedule 11 sets out, opposite the relevant headings and subheadings of Schedule 3, the timing of those phasing rates and also the rates of customs duty that will apply to Japanese originating goods at each step of that phasing.
49. Article 1.2 of ‘General Definitions’ in Chapter 1 of the Agreement provides that customs duty does not include duties that are equivalent to an internal tax imposed on the same goods when domestically produced. Such goods are alcohol, tobacco and petroleum products that are subject to customs duties at a rate that is equivalent to the excise duty imposed under the Schedule to the *Excise Tariff Act 1921* (the Excise Tariff), on those goods when domestically produced.
50. Section 16 of the Customs Tariff, as amended, provides that the rates of customs duty for Japanese originating goods are Free unless a rate of duty is specified for those goods in Schedule 11. Therefore, it is necessary to specify the relevant headings and subheadings for the above alcohol, tobacco and petroleum products in Schedule 11 and the appropriate rate of customs duty.
51. Items 1 to 135 of Schedule 11 impose customs duty on the alcohol, tobacco and petroleum products that are Japanese originating goods, at a rate that is equivalent to the excise duty imposed under the Excise Tariff, on the same goods when domestically produced.

Items 29 to 33 User’s Guide

52. These items omit and substitute text in the User’s Guide to the Customs Tariff, as required, to insert references to new Schedule 11.

Item 34 Application provision

53. This item provides that the amendments made by items 1 to 17 and 20 to 28 set out in Schedule 1 of the Tariff Bill will apply to goods imported into Australia on or after the commencement of item 34. (Items 18 and 19 relate to the indexation provisions in

sections 19AA and 19AC of the Customs Tariff and are not covered by the application provision – comments under items 18 and 19 refer).

54. The commencement provisions of the Tariff Bill provide that item 34 will commence at the same time as Schedule 1 to the Customs Bill; that is on the day that the Agreement comes into force for Australia.
55. Item 34 also applies to goods that were imported before that day but for which the time for working out the rate of import duty on those goods had not occurred before that day. For example, if the Agreement comes into force on 15 January 2015, item 34 provides that amendments to the Customs Tariff shall apply to goods that were imported and warehoused before 15 January 2015 but not entered for home consumption until on or after 15 January 2015.

Item 35 Transitional provision - indexation

56. As noted, (refer comments under item 18), section 19 and 19AA of the Customs Tariff provides that customs rates of duty, for certain alcohol products, are adjusted automatically, twice yearly, in line with movements in the CPI. These adjustments occur in February and August of each year. As noted under item 19, section 19AB and 19AC of the Customs Tariff provides that customs rates of duty, for certain tobacco products, are adjusted automatically, twice yearly, in line with movements in the AWOTE. The adjustments occur in March and September of each year.
57. The Tariff Bill has been drafted using rates of duty that include the CPI and AWOTE increase that occurred on 1 August 2014 and 1 September 2014, following the release of the June 2014 CPI figures and May 2014 AWOTE figures. Should the Agreement not enter into force for Australia before 1 March 2015, these rates of duty may be superseded by increased duty rates, as a consequence of the February and/or March 2015 indexation. Without item 35, further legislative amendment would be required to include the post -1 March 2015 duty rates in Schedule 11.
58. Item 35 is a transitional provision that provides for the circumstance if the February 2015 CPI or/and the March 2015 AWOTE increase occurs before the commencement of the Agreement; any increase in the duty rates as a consequence of the CPI or AWOTE increase will apply automatically to the rates of duty in the relevant items in Schedule 11.
59. Item 35 is in accordance with the terms of the Agreement and will serve to avoid the requirement for further legislative amendments if the CPI increases on 1 February 2015 and/or the AWOTE increases on 1 March 2015.