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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CUSTOMS TARIFF AMENDMENT (PERU-AUSTRALIA FREE TRADE AGREEMENT
IMPLEMENTATION) BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Minister for Home Affairs,
Senator the Hon Linda Reynolds CSC)

CUSTOMS TARIFF AMENDMENT (PERU-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION) BILL 2018

OUTLINE

The purpose of the Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018 (the Bill) is to amend the *Customs Tariff Act 1995* (the Customs Tariff Act) to implement the Peru-Australia Free Trade Agreement (PAFTA) by:

- providing preferential rates of customs duty, on entry into force of PAFTA, for all goods, excluding excise-equivalent goods, that are Peruvian originating goods determined in accordance with new Division 1EA of Part VIII of the *Customs Act 1901* (the Customs Act). New Division 1EA will be inserted by the Customs Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018 (the Customs Amendment Bill);
- inserting new Schedule 6A to provide for excise-equivalent rates of duty on certain alcohol, tobacco, fuel and petroleum products, and phasing rates for certain goods, in accordance with PAFTA; and
- amending certain concessional items in Schedule 4 to the Customs Tariff Act to maintain customs duty rates in line with the applicable concessional item and in accordance with PAFTA.

Complementary amendments will be made to the Customs Act by the Customs Amendment Bill to introduce new rules of origin for goods imported into Australia from Peru. The new rules will determine the eligible goods that would be subject to preferential treatment of customs duty in accordance with PAFTA.

FINANCIAL IMPACT STATEMENT

The 2018-19 Budget estimated that implementing PAFTA would have a negligible cost to revenue over the forward estimates.

Revenue (\$m)	2017-18	2018-19	2019-20	2020-21	2021-22
Department of Home Affairs	-

.. Not zero, but rounded to zero.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

A Statement of Compatibility with Human Rights has been completed in relation to the amendments in this Bill and assesses that the amendments are compatible with Australia's human rights obligations. A copy of the Statement of Compatibility with Human Rights is at [Attachment A](#).

REGULATION IMPACT STATEMENT

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

CUSTOMS TARIFF AMENDMENT (PERU-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION) BILL 2018

NOTES ON CLAUSES

Clause 1 Short title

1. This clause provides for the Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018 (the Bill), when enacted, to be cited as the *Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Act 2018*.

Clause 2 Commencement

2. This clause sets out, in a table, the date on which provisions of the Bill will commence.
3. Table item 1 provides for sections 1 to 3 and anything in the Bill not elsewhere covered by the table to commence on the day the Bill receives the Royal Assent.
4. Table item 2 provides for Schedule 1 of the Bill to commence at the same time as Schedule 1 to the *Customs Amendment (Peru-Australia Free Trade Agreement Implementation) Act 2018* (the Customs Amendment Bill). That is, the later of the day on which this Act receives the Royal Assent and the day on which the Peru-Australia Free Trade Agreement (PAFTA) done at Canberra on 12 February 2018, enters into force for Australia.
5. The date on which PAFTA enters into force will be announced by the Minister by a notifiable instrument, in accordance with the *Legislation Act 2003*.

Clause 3 Schedules

6. This clause enables the Schedule to the Bill, when enacted, to amend or repeal provisions of legislation specified in that Schedule in accordance with the applicable items. In the context of the Bill, the *Customs Tariff Act 1995* (the Customs Tariff Act) is being amended.

Schedule 1—Amendments

Customs Tariff Act 1995

Introductory Comments

7. On 12 February 2018, in Canberra, Australia, the Hon. Steven Ciobo MP, then Minister for Trade, Tourism and Investment, and his Peruvian counterpart Mr Eduardo Ferreyros signed PAFTA.
8. PAFTA, on entry into force, provides, in part, for new rules of origin to determine Peruvian originating goods and for preferential customs duty rates that apply to such goods. The rules to determine Peruvian originating goods will be inserted by the Customs Amendment Bill and will be in new Division 1EA of Part VIII of the *Customs Act 1901* (the Customs Act).

9. This Bill contains amendments to provide for customs duty rates for Peruvian originating goods in accordance with PAFTA. For goods classified to the tariff subheadings listed in new Schedule 6A inserted by the Bill the customs duty rate would accord with Article 2.4 of Chapter 2 of PAFTA. For goods classified to tariff subheadings not listed in new Schedule 6A, a preferential customs duty rate of 'Free' will apply in accordance with Annex 2-B to Chapter 2 of PAFTA.

Item 1 Subsection 3(1) (after paragraph (d) of the definition of *rate column*)

10. This item amends the definition of 'rate column' in subsection 3(1) of the Customs Tariff Act to include a reference to the third column of the table in new Schedule 6A. New Schedule 6A will set out the rates of customs duties for Peruvian originating goods classified to tariff subheadings listed in that Schedule.

Item 2 Subsection 9(1)

11. This item amends subsection 9(1) of the Customs Tariff Act to insert a reference to new Schedule 6A.
12. This amendment allows *ad valorem* rates of custom duty that apply to Peruvian originating goods to be specified in the "rate column" in new Schedule 6A of the Customs Tariff Act.

Items 3 to 5

13. Section 11 of the Customs Tariff Act sets out the rules for determining when a phasing rate of customs duty takes effect. The amendments made by items 3 to 5 provide for phasing rates of customs duty for Peruvian originating goods.
14. Item 3 inserts new paragraph 11(1)(bba) into the Customs Tariff Act to include a reference to a rate of customs duty set out in the third column of an item in the table in new Schedule 6A of the Customs Tariff Act that applies to the goods.
15. Item 4 inserts new paragraph 11(1)(fa) into the Customs Tariff Act to include a reference to the third column of an item in the table in new Schedule 6A that applies to Peruvian originating goods.
16. Item 5 inserts new paragraph 11(2)(bba) into the Customs Tariff Act to include a reference to a rate of customs duty set out in the third column of an item in the table in new Schedule 6A of the Customs Tariff Act that applies to Peruvian originating goods.

Item 6 After section 13C

17. This item inserts new section 13CA into the Customs Tariff Act which sets out when goods are Peruvian originating goods for the purposes of the Customs Tariff Act. Goods are Peruvian originating goods if, and only if they are Peruvian originating goods under new Division 1EA of Part VIII of the Customs Act. New Division 1EA, inserted by the Customs Amendment Bill, sets out the new rules of origin for determining whether goods are Peruvian originating goods.

Item 7 After subparagraph 16(1)(a)(iv)

18. This item inserts new paragraph 16(1)(a)(iva) into the Customs Tariff Act.
19. Section 16 of the Customs Tariff Act sets out how customs duty is calculated, including for goods that are originating goods of particular countries for preference purposes. Paragraph 16(1)(a) specifies that, where goods are not the produce or manufacture of a Preference Country, or are not originating goods under a Free Trade Agreement (FTA), 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 to the Customs Tariff Act, under which the goods are classified.
20. The purpose of new subparagraph 16(1)(a)(iva) is to ensure that the general rate of customs duty set out in Schedule 3 does not apply to Peruvian originating goods.

Item 8 After paragraph 16(1)(l)

21. This item inserts new paragraph 16(1)(la) into the Customs Tariff Act.
22. New paragraph 16(1)(la) provides that where Peruvian originating goods are classified to a tariff subheading in Schedule 3 that is specified in column 2 of an item in the table in new Schedule 6A, the rate of customs duty on the goods is to be calculated by reference to the rate of duty set out in column 3 of the relevant item in Schedule 6A.
23. However, where Peruvian originating goods are not classified to a tariff subheading listed in new Schedule 6A, new paragraph 16(1)(la) provides for such goods to be subject to a preferential customs duty rate of 'Free' in accordance with Article 2.4.2 of PAFTA and Article 3A of Annex 2-B to Chapter 2 of PAFTA.

Item 9 After subsection 16(2)

24. This item inserts new subsections 16(2AA) and 16(2AB) in the Customs Tariff Act.
25. New subsection 16(2AA) provides that a reference to year 2, 3 or 4 in new Schedule 6A for Peruvian originating goods, is a reference to the first, second or third calendar year, respectively, after this subsection commences (that is, when PAFTA first enters into force for Australia). This accords with Article 6 of Annex 2-B to Chapter 2 of PAFTA and is relevant to when phasing rates for certain Peruvian originating goods come into effect. For example:

Peruvian originating goods		
Column 1	Column 2	Column 3
Item	Heading or subheading in Schedule 3	Rate
135	3808.52.90 (prescribed goods only)	3.7% From 1 January of year 2: 2.5% From 1 January of year 3: 1.2% From 1 January of year 4: Free

26. If PAFTA enters into force after 1 January 2019, the rate of duty will be 3.7 per cent from entry into force and will decrease to 2.5 per cent on 1 January 2020 (as 2020 would be the

second calendar year after entry into force) and will reduce further to 1.2 per cent on 1 January 2021 and become 'Free' on 1 January 2022 (as 2022 will be the fourth calendar year after entry into force).

27. New subsection 16(2AB) provides that if column 2 of an item in the table in new Schedule 6A includes the words "(prescribed goods only)", subparagraph (1)(la)(i) will not apply to those goods unless the goods are also prescribed for the purposes of that item. A note after new subsection 16(2AB) explains that the effect of new subsection 16(2AB) is that where the goods are not prescribed for the purposes of that item of the table, the rate of duty in respect of the goods is 'Free'.

Items 10 to 12

28. Schedule 4 of the Customs Tariff Act lists items where a concessional rate of customs duty is provided for particular goods and section 18 sets out how concessional rates of customs duty are calculated. In particular, subsection 18(1) provides for a concessional rate of customs duty to apply only where the rate is less than that which would otherwise apply under Schedules 3, 4A, 5, 6, 7, 8, 9, 10, 11 or 12.
29. Item 10 inserts new paragraph 18(1)(ca) into the Customs Tariff Act. This paragraph will specify that a concessional item in Schedule 4 only applies to goods if the duty is lower than the duty payable under new Schedule 6A. This provision is consistent with the similar provision for other Schedules to the Customs Tariff Act for other FTAs.
30. Paragraph 18(2)(a) provides that, if the goods are not the produce or manufacture of a preference country, or a country to which a FTA 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.
31. Item 11 inserts new subparagraph 18(2)(a)(iva), into the Customs Tariff Act which provides that the general rate of customs duty set out in Schedule 4 will not apply to Peruvian originating goods.
32. Item 12 inserts new paragraph 18(2)(la) into the Customs Tariff Act to set out how customs duty is calculated for goods that are Peruvian originating goods and that are subject to a concessional item in Schedule 4 of that Act. This new paragraph provides that, if the goods are Peruvian originating goods and 'PE' (the country code for Peru) is specified in the third column of an item in Schedule 4, the amount of duty is calculated by reference to that customs duty rate. If there is no such rate specified, the rate of customs duty is 'Free'.

Item 13 Paragraph 19AAC(1)(b)

33. Section 19 of the Customs Tariff Act provides for the automatic indexation of certain excise-equivalent customs duty rates 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 and fuel products.
34. For this purpose, section 19AAC of the Customs Tariff Act includes a table that specifies the fuel products subject to biannual indexation under section 19 of the Customs Tariff Act.
35. This item amends paragraph 19AAC(1)(b) of the Customs Tariff Act to insert a reference to new Schedule 6A so that indexation under section 19 applies to the rates of excise-equivalent customs duty for those fuel products that are Peruvian originating goods.

Item 14 Paragraph 19AA(b)

36. Section 19AA of the Customs Tariff Act includes a table, which sets out the alcohol products subject to biannual indexation for the purposes of section 19 of the Customs Tariff Act.
37. This item amends paragraph 19AA(b) of the Customs Tariff Act to insert a reference to new Schedule 6A so that the indexation provisions in section 19 of the Customs Tariff Act apply to the rates of excise-equivalent customs duty for those alcohol products that are Peruvian originating goods.

Item 15 Paragraph 19AC(b)

38. Section 19AB of the Customs Tariff Act 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), in March and September of each year. The goods to which this automatic indexation applies are tobacco products.
39. For this purpose, section 19AC of the Customs Tariff Act contains a table that sets out the tobacco products subject to biannual indexation under section 19AB of the Customs Tariff Act.
40. This item amends paragraph 19AC(b) of the Customs Tariff Act to insert a reference to new Schedule 6A so that the indexation provisions in section 19AB apply to the rates of excise-equivalent customs duty for those tobacco products that are Peruvian originating goods.

Item 16 Paragraph 19ACA(1)(b)

41. Section 19ACA of the Customs Tariff Act provides for a list of tobacco products that are not covered by section 19AC of the Customs Tariff Act, specifically tobacco products where the amount of customs duty is determined by the weight of the product or the weight of the tobacco content in the product.

42. For goods classified to a subheading listed in section 19ACA, the rate of customs duty is amended biannually on the same day as the tobacco products listed in section 19AC. The applicable rate is determined with reference to the indexed rate associated with tariff subheading 2402.20.20 adjusted by the relevant annual weight conversion factor provided for in subsection 19ACA(2).
43. This item amends paragraph 19ACA(1)(b) of the Customs Tariff Act to insert a reference to new Schedule 6A so that the indexation provisions in section 19AB of that Act apply to the rates of excise-equivalent customs duty for those tobacco products that are Peruvian originating goods.

Items 17 and 19 to 24 Schedule 4 (table items 17A, 20, 22, 37, 45, 50 and 53, column headed “Rate of duty”)

44. Schedule 4 to the Customs Tariff Act lists items where a concessional rate of customs duty is provided for certain goods. In most cases, the concessional rate of customs duty for such goods is the rate of ‘Free’. However, in some instances, instead of the customs duty rate of ‘Free’, the items provide for a lower rate than the general rate of customs duty that is otherwise payable.
45. New subparagraph 18(2)(la) provides that the rate of customs duty for Peruvian originating goods subject to a concessional item in Schedule 4 is ‘Free’, unless a rate for ‘PE’ is specified. It is therefore necessary to specify rates of customs duty for Peruvian originating goods for those concessional items in Schedule 4 where the rate of duty is not ‘Free’.
46. These items amend existing table items 17A, 20, 22, 37, 45, 50 and 53 of Schedule 4 of the Customs Tariff Act to insert the country code “PE”, for Peru, in the third column headed “Rate of duty”, so that Peruvian originating goods classified in accordance with these table items are subject to specific rates of customs duty, as set out in the table.

Item 18 Schedule 4 (table item 20, column headed “Description of goods”, paragraph (d))

47. This item inserts a reference to new Schedule 6A in the ‘description of goods’ column for concessional item 20 (Goods exported for repair or renovation), to ensure the correct rate of duty applies to Peruvian originating goods that come under this item.

Item 25 After Schedule 6

48. This item inserts new Schedule 6A into the Customs Tariff Act to provide for excise-equivalent rates of duty on certain alcohol, tobacco, fuel and petroleum products and for phasing rates of customs duty in accordance with PAFTA.

49. Section 16 of the Customs Tariff Act, as amended by items 7 and 8 of Schedule 1 to the Bill, provides that the customs duty rate for Peruvian originating goods is 'Free' unless a customs duty rate is specified for those goods in new Schedule 6A.
50. Article 2.4 of Chapter 2 of PAFTA provides in part that, unless otherwise provided in PAFTA, neither Party shall increase any existing customs duty, or adopt any new customs duty, on an originating good and each Party shall progressively eliminate its customs duties on originating goods in accordance with each Party's Schedule to Annex 2-B. Annex 2-B to Chapter 2 of PAFTA sets out the tariff commitments under PAFTA in relation to the reduction of tariffs in stages.
51. Table items 1, 2, 124 to 126, 135 to 137 and 146 to 399 in new Schedule 6A operate to reduce the ad valorem component of customs duty on Peruvian originating goods in accordance with the staging categories specified in Annex 2-B to Chapter 2 of PAFTA. By 1 January of the fourth calendar year after PAFTA enters into force, the ad valorem component of the customs duties on all Peruvian originating goods in these table items will be eliminated.
52. Article 1.3 of Chapter 1 of PAFTA provides in part 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 certain alcohol, tobacco and fuel 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 Act), on those goods when domestically produced.
53. Table items 3 to 123, 127 to 134 and 138 to 145 in new Schedule 6A operate to impose customs duty on certain alcohol, tobacco and fuel products that are Peruvian originating goods, at a rate that is equivalent to the excise duty imposed under the Excise Tariff Act, on the same goods when domestically produced.

Items 26 and 27 User's Guide

54. The User's Guide is located in the preamble of the Customs Tariff Act and provides a general overview of the operation and organisation of the Customs Tariff Act.
55. Items 26 and 27 amend the text of the User's Guide as required, to insert references to new Schedule 6A for Peruvian originating goods so that users can identify provisions relating to Peruvian originating goods.

Item 28 Application provision

56. This item provides that the amendments made by items 1 to 12 and 17 to 25 of Schedule 1 to the Bill apply in relation to:
- (a) goods imported into Australia on or after the commencement of Schedule 1 of the Bill; and
 - (b) goods imported into Australia before the commencement of Schedule 1, where the time for working out the rate of import duty on the goods had not occurred before the commencement of this Schedule.

57. The amendments contained in Schedule 1 to the Bill will commence at the same time as Schedule 1 to the Customs Amendment Bill.

Item 29 Transitional provisions—indexation

58. This item sets out transitional provisions for alcohol, fuel and tobacco duty rates subject to indexation under section 19 and section 19AB of the Customs Tariff Act.

59. As noted above, sections 19 and 19AA of the Customs Tariff provide 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.

60. The Bill has been drafted using rates of customs duty that include those indexed as part of the CPI and AWOTE increases that occurred on 1 August 2018 and 1 September 2018 respectively, following the release of the June 2018 CPI and May 2018 AWOTE figure. Should PAFTA not enter into force for Australia before 1 March 2019, these rates of duty may be superseded by increased duty rates, as a consequence of the February or/and March 2019 indexations. Without item 29, further legislative amendment would be required to include the post 1 March 2019 customs duty rates in Schedule 6A.

61. Item 29 is a transitional provision that provides for the circumstance if the February 2019 CPI or/and the March 2019 AWOTE increase occurs before the commencement of PAFTA; 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 6A.

62. Item 29 is in accordance with the terms of PAFTA and will serve to avoid the requirement for further legislative amendments if the CPI increases on 1 February 2019 or/and the AWOTE increases on 1 March 2019.

Statement of Compatibility with Human Rights

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

Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018

The Customs Tariff Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018 (the 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

On 12 February 2018, in Canberra, Australia, the Hon. Steven Ciobo MP, then Minister for Trade, Tourism and Investment, and his Peruvian counterpart Mr Eduardo Ferreyros signed the Peru-Australia Free Trade Agreement (PAFTA).

PAFTA is a comprehensive free trade agreement that will open new trade and investment opportunities for Australia in Peru.

To give effect to the rules of origin requirements under PAFTA, the Customs Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018 (the Customs Amendment Bill), will amend the *Customs Act 1901* (the Customs Act) to implement the new rules and related matters.

The purpose of this Bill is to amend the *Customs Tariff Act 1995* (Customs Tariff Act) to:

- provide preferential rates of customs duty, on entry into force of PAFTA, for all goods, excluding excise-equivalent goods, that are Peruvian originating goods determined in accordance with new Division 1EA of Part VIII of the Customs Act 1901 (the Customs Act). New Division 1EA will be inserted by the Customs Amendment (Peru-Australia Free Trade Agreement Implementation) Bill 2018 (the Customs Amendment Bill), when enacted into the Customs Act;
- insert new Schedule 6A to provide for excise-equivalent rates of duty on certain alcohol, tobacco, fuel and petroleum products, and phasing rates for certain goods, in accordance with PAFTA; and
- amend certain concessional items in Schedule 4 to the Customs Tariff Act to maintain customs duty rates in line with the applicable concessional item and in accordance with PAFTA.

The amendments contained in the Bill, when enacted, will commence at the same time as Schedule 1 to the Customs Amendment Bill. That is, the later of the day on which this Act receives the Royal Assent and the day on which PAFTA, signed in Canberra on 12 February 2018, enters into force for Australia.

Human rights implications

The Bill does not engage any of the applicable rights or freedoms.

Conclusion

The Bill is compatible with human rights as it does not raise any human rights issues.

**ASSISTANT MINISTER FOR HOME AFFAIRS
SENATOR THE HON LINDA REYNOLDS CSC**