

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT No. 210, 2015

Issued by the Authority of the Minister for Immigration and Border Protection

Customs Act 1901

Customs (International Obligations) Amendment (China-Australia Free Trade Agreement) Regulation 2015

Subsection 270(1) of the *Customs Act 1901* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or as may be necessary or convenient to be prescribed.

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

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

The purpose of the amending Regulation is to amend the *Customs (International Obligations) Regulation 2015* to prescribe new refund circumstances in respect of goods imported into Australia from China, in order to fulfil Australia's obligations under the China-Australia Free Trade Agreement (the Agreement).

The Agreement was signed on 17 June 2015 and both governments are working towards entry into force in late 2015.

The *Customs Amendment (China-Australia Free Trade Agreement Implementation) Act 2015* (the ChAFTA Act) amends the Act to fulfil Australia's obligations under Chapter 3 of the Agreement, which deals with rules of origin. These rules determine whether goods imported into Australia from the territory of China are Chinese originating goods and are thereby eligible for preferential rates of customs duty. Chinese originating goods are goods from the territory of China that satisfy the new rules of origin which are contained in new Division 1L of Part VIII of the Act, inserted by the ChAFTA Act.

The Agreement allows for refunds of customs duty to be paid in the following two circumstances:

- (a) in respect of Chinese originating goods that are imported into Australia and the full rate of customs duty is paid on the goods where no duty, or a lesser amount of duty, should have been paid; and

- (b) in respect of goods imported from the territory of China that would be Chinese originating goods except that an importer did not provide a valid Certificate of Origin, Declaration of Origin, or a copy of one, at the time the goods were imported. Under the Agreement, an importer would be able to obtain a refund of duty in relation to such goods if the importer holds a Certificate of Origin, Declaration of Origin, or a copy of one, at the time the refund is sought.

The amending Regulation introduces two new refund circumstances that will apply in the above circumstances.

“Certificate of Origin” and “Declaration of Origin are defined in new subsection 153ZOB(1) of the Act. These documents must be in force and must comply with certain requirements of the Agreement.

The amending Regulation commences on the commencement of Schedule 1 to the ChAFTA Act, which will be the later of the day on which the ChAFTA Act receives the Royal Assent or the day the Agreement enters into force for Australia.

Broad consultation was conducted in relation to the Agreement. Consequently, the consultation process undertaken for the Agreement also encompassed all matters set out in the Regulation. Government Departments conducted extensive public and targeted stakeholder consultations during the negotiations of the Agreement. Details of these consultations were set out in the consultation attachment to the National Interest Analysis of the Agreement. The Joint Standing Committee on Treaties also conducted an enquiry on the Agreement. The enquiry included written submissions and a public hearing that resulted in a report recommending binding treaty action be taken.

OPC61529 - A

Statement of Compatibility with Human Rights

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

Customs (International Obligations) Amendment (China-Australia Free Trade Agreement) Regulation 2015

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The *Customs Amendment (China-Australia Free Trade Agreement Implementation) Act 2015* (the ChAFTA Act) amends the *Customs Act 1901* to fulfil Australia's obligations under Chapter 3 of the China-Australia Free Trade Agreement (the Agreement), which deals with rules of origin. These rules determine whether goods imported into Australia from China are Chinese originating goods and are thereby eligible for preferential rates of customs duty. These rules are contained in new Division 1L of Part VIII of the Act (new Division 1L).

The purpose of the regulation is to amend the *Customs (International Obligations) Regulation 2015* to prescribe new refund circumstances in respect of goods imported into Australia from China to fulfil obligations under the Agreement.

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 legislative instrument does not raise any human rights issues.

Minister for Immigration and Border Protection

ATTACHMENT

DETAILS OF THE *CUSTOMS (INTERNATIONAL OBLIGATIONS) AMENDMENT (CHINA-AUSTRALIA FREE TRADE AGREEMENT) REGULATION 2015*

Section 1 - Name of regulation

This section provides that the title of the Regulation is the *Customs (International Obligations) Amendment (China-Australia Free Trade Agreement) Regulation 2015*.

Section 2 - Commencement

This section provides that the Regulation commences on the commencement of Schedule 1 to the *Customs Amendment (China-Australia Free Trade Agreement Implementation) Act 2015*.

Section 3 - Authority

This section provides that the authority the proposed Regulation is made under is the *Customs Act 1901*.

SCHEDULE 1 - AMENDMENTS

Item [1] – Insertion of new definition in Section 4

In Section 4 (after paragraph (c) of the definition of *Certificate of Origin*) a new paragraph is inserted:

- (ca) in relation to Chinese originating goods—has the meaning given by subsection 153ZOB(1) of the Act; or

This insertion amends the Regulation to identify Chinese originating goods as goods that will require a Certificate of Origin.

Item [2] – Insertion of new category of originating goods in Section 4

In Section 4 the following will be inserted:

Chinese originating goods has the meaning given by subsection 153ZOB(1) of the Act.

This amendment is for the purposes of the new refund circumstances for Chinese originating goods or goods that would be Chinese originating goods.

Item [3] – Repeal and substitution of new definition in Section 4

Item [3] in Section 4 the definition of *Declaration of Origin* will be repealed and substituted as follows:

Declaration of Origin:

- (a) in relation to Chinese originating goods—has the meaning given by subsection 153ZOB(1) of the Act; or
- (b) in relation to Malaysian originating goods—has the meaning given by subsection 153ZLB(1) of the Act.

This insertion amends the Regulation to identify Chinese originating goods as goods that will require a Declaration of Origin.

Item [4] – Insertion of new table items in Part 5, Division 1, section 23

Item [4] inserts new table items 13 and 14 in Part 5, Division 1, section 23 after table 12 to reference Chinese originating goods.

Table item 13 adds the row, columns and text:

13	Chinese originating goods	Duty has been paid on the goods.
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Table item 14 adds the row, columns and text:

14	Goods that would have been Chinese originating goods if, at the time the goods were imported, the importer held: (a) a Certificate of Origin, or a Declaration of Origin, for the goods; or (b) a copy of a document mentioned in paragraph (a)	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin, or a Declaration of Origin for the goods, or a copy of either of those documents, at the time of making the application for the refund.
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The new table items above set out the criteria for the new customs duty refund circumstances in relation to Chinese originating goods.

Item [5] – Insertion of new references in Part 5, Division 1, section 24

Item [5] amends Part 5, Division 1, section 24 “Whether goods are originating goods – refund not payable in certain circumstances”, to insert a new paragraph after paragraph (f) as follows “(g) the goods mentioned in item 13 or 14 of the table in section 23 are Chinese originating goods”.

This amendment means a refund of duty cannot be paid in respect of Chinese originating goods where duty has been paid through manifest error of fact or patent misconception of the law. However, a refund of duty could be paid under this

circumstance in respect of Chinese originating goods if it does not relate to the factors that determine whether the goods are Chinese originating goods.

The purpose of new paragraph is to restrict refunds of duty in relation to Chinese originating goods to the extent that the refund relates to any of the factors that determine whether goods are Chinese originating goods to new items 13 and 14 in the table in section 23 only.

Items [6] and [7] and [8]

Items [6] and [7] amends Part 5, Division 1, section 31 “Calculation of refund, rebate or remission of duty”, to insert new references to “duty payable” in paragraphs 9a) and (b) as follows:

- (a) to add a reference to table 13 of the table in section 23 in paragraph (a);
and
- (b) to add a reference to table 14 of the table in section 23 in paragraph (b).

This amendment adds references the new table items to be inserted as Item [4] above.

Item [8] inserts new reference to “Chinese originating goods” by inserting a new paragraph (g) which refers to “Chinese originating goods” in the definition of “relevant originating goods”.

These amendments specify the method of calculating the amount of refund payable on Chinese originating goods or goods that would be Chinese originating goods. There are two methods depending on the circumstance.

The amount of a refund, rebate or remission of duty that may be paid under item 13 is the difference between the amount of duty paid on the goods and the amount of duty payable on the goods as Chinese originating goods.

The amount of a refund, rebate or remission of duty that may be made under item 14 is the difference between the amount of duty paid on the goods and the amount of duty payable on the goods if they had been Chinese originating goods at the time of their importation.