EXPLANATORY STATEMENT

Select Legislative Instrument 2017 No.

Issued by the Assistant Minister for Immigration and Border Protection
Parliamentary Secretary to the Minister for Immigration and Border Protection

Customs Act 1901

Customs (Singaporean Rules of Origin) Regulations 2017

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, and exportation, of goods to and from Australia.

Subsection 270(1) of the Customs 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 for giving effect to the Act.

The Singapore-Australia Free Trade Agreement (the SAFTA), signed in 2003, is a central pillar of Australia's economic relationship with Singapore. An 'Agreement to Amend the Singapore-Australia Free Trade Agreement' (the Amending Agreement) was signed on 13 October 2016 by the Minister for Trade, Tourism and Investment, and his Singaporean counterpart, which amongst other things sets out a comprehensive update of provisions for trade in goods and services, and related customs procedures and rules of origin for claiming preferential rates of customs duty. These new rules determine whether goods imported into Australia from the territory of Singapore are Singaporean originating goods and are thereby eligible for preferential rates of customs duty.

The *Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017* (the SAFTA Act) amends the Customs Act to insert new Division 1BA into Part VIII of the Customs Act to implement the updated provisions dealing with trade in goods and rules of origin.

The purpose of the *Customs (Singaporean Rules of Origin) Regulations 2017* (the SRO Regulations) is to prescribe matters relating to the new rules that are required to be prescribed under new Division 1BA. The relevant authority provisions of new Division 1BA are set out in Attachment A.

In particular, the SRO Regulations primarily:

- prescribe the methods used to determine the regional value content (a calculation used in determining whether a good is a Singaporean originating good) of goods for the purposes of some of the product-specific requirements set out in the new Annex 2 to the SAFTA, as amended from time to time. New Annex 2 is incorporated into the Customs Act by reference in section 153XG in the new Division 1BA;
- prescribe the valuation rules for different kinds of goods in new Annex 2; and
- prescribe other matters that are required to be prescribed under new Division 1BA.

Details of the SRO Regulations are set out in Attachment B.

Separate *Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017* amend the *Customs (International Obligations) Regulations 2015* to make complementary amendments to give effect to Australia's updated obligations in relation to record keeping requirements, and to enable a refund of duties paid on Singaporean originating goods, or on goods that would have been Singaporean originating goods, in specified circumstances.

In accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, a Statement of Compatibility with Human Rights has been prepared and is at Attachment C.

Government departments conducted extensive public and targeted stakeholder consultations during the negotiations of the Amending Agreement. Consequently, the consultation process undertaken for the Amending Agreement also encompassed all matters set out in the SRO Regulations. Details of these consultations were set out in the consultation attachment to the National Interest Analysis of the Amending Agreement.

The Joint Standing Committee on Treaties also conducted an enquiry on the Amending Agreement. The enquiry included written submissions and a public hearing that resulted in a report recommending binding treaty action be taken.

The SRO Regulations commence on the commencement of Schedule 1 to the SAFTA Act, which will be the later of the day after the Act receives the Royal Assent or the day the Amending Agreement enters into force for Australia.

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ATTACHMENT A

Authority for the measures

The following provisions of the *Customs Act 1901* (the Customs Act), which are inserted by the *Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017*, require the following matters to be prescribed:

- subsection 153XD(3), which provides that the value of goods for the purposes of Division 1BA of Part VIII of the Customs Act is to be worked out in accordance with the regulations, and that the regulations may prescribe different valuation rules for different kinds of goods;
- paragraph 153XG(1)(c) which, for a requirement relating to goods produced from non-originating material, that either:
    - each requirement that is specified in the third column of the table in Annex 2 of the Singapore-Australia Free Trade Agreement (as amended from time to time) to apply in relation to the goods is satisfied; or
    - without limiting subparagraph 153XG(1)(c)(i), if the regulations specify one or more alternative requirements that apply in relation to the goods—those alternative requirements are satisfied;
- subsection 153XG(3), which provides that, if a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification;
- paragraph 153XG(6)(b), which provides that, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, and if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations;
- subsection 153XG(7), which provides that, if:
    - a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
    - the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
    - the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
    - the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

  then the regulations must require the value of 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 purposes of working out the regional value content of the goods;
- subsection 153XH(2), which provides that, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must require the value of the packaging material or container to be taken into account as originating

materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods; and

- section 153XK, which provides that the regulations may make provision for and in relation to determining whether goods are Singaporean originating goods under Division 1BA of the Customs Act.

ATTACHMENT B

Details of the *Customs (Singaporean Rules of Origin) Regulations 2017*

Section 1 – Name of Regulation

This section provides that the title of the Regulations is the *Customs (Singaporean Rules of Origin) Regulations 2017* (the SRO Regulations).

Section 2 – Commencement

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

Table item 1 provides for the whole instrument to commence at the same time as Schedule 1 to the *Customs Amendment (Singapore Australia Free Trade Agreement Amendment Implementation) Act 2017* (the SAFTA Act) commences.

Section 3 – Authority

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

Section 4 – Definitions

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

(a) 'Act' means the Customs Act);
(b) 'Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994' means the Agreement of that name set out in Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994;
(c) 'chapter' means the first 2 digits in a tariff classification number under the Harmonized System;
(d) 'heading' means the first 4 digits in a tariff classification number under the Harmonized System; and
(e) 'subheading' means the first 6 digits in a tariff classification number under the Harmonized System;

The following words and expressions have the meanings given by section 153XD of the Customs Act:

(f) 'Agreement';
(g) 'Harmonized System';
(h) 'non-originating materials';
(i) 'originating materials';
(j) 'production';
(k) 'Singaporean originating goods';
(l) 'territory of Australia'; and
(m) 'territory of Singapore'.

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

For the purposes of subsection 153XG(3), section 5 of the SRO Regulations provides for a non-originating material used in the production of goods that does not satisfy a particular change in tariff classification to be taken to satisfy the change in tariff classification if:

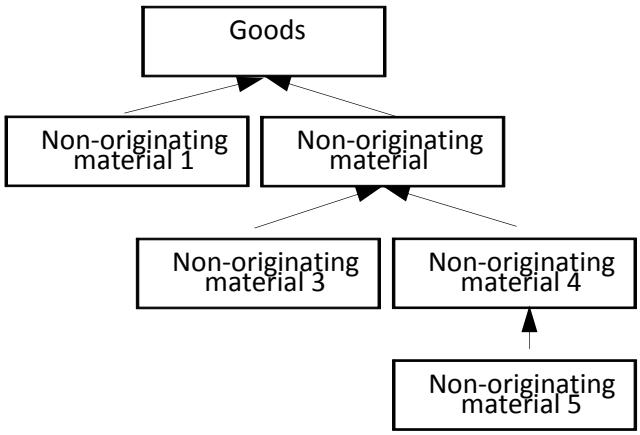
(a) it was produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, from other non-originating materials; and
(b) each of those other non-originating materials satisfies the change in tariff classification, including by one or more applications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

Paragraph 5(b) gives effect to the accumulation provisions contained in Article 9 of new Chapter 3 of the Singapore-Australia Free Trade Agreement (SAFTA), and 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 Singapore by another producer. The components of these goods may be produced by yet another producer in Singapore or may have been imported into Singapore by another importer. It is possible that the change in tariff classification rule will not be satisfied at each step in the production process from the imported component to the final good, which may mean that the final good is non-originating.

In such circumstances, it will be necessary to examine each step in the production process of each non-originating material that occurs in Singapore or in Australia in order to determine whether each step satisfies the change in tariff classification rule for the final good. If each material satisfies the change in tariff classification rule, then the material will be an originating material and the final good will be an originating good (subject to satisfying all other requirements of new Division 1BA of the Customs Act). This is how paragraph 5(b) of the SRO Regulations operate.

Example: The following diagram relates to the production of particular goods made from non-originating materials that occurred entirely in Singapore. The diagram and the accompanying text illustrate the application of paragraph 5(b).



The goods are produced from non-originating materials 1 and 2;

First application of paragraph 5(b)

Non-originating materials 1 and 2 must satisfy the change in tariff classification.
Under paragraph 5(2)(a), the transformation of non-originating material 1 into the final goods satisfies the relevant change in tariff classification. Under paragraph 5(2)(b), the transformation of non-originating material 2 into the goods does not satisfy the relevant change in tariff classification, but it has been produced by non-originating materials 3 and 4.

Second application of paragraph 5(b)

Non-originating materials 3 and 4 must satisfy the change in tariff classification.
Under paragraph 5(2)(a), the transformation of non-originating material 3 into non-originating material 2 satisfies the relevant change in tariff classification. Under paragraph 5(2)(b), the transformation of non-originating material 4 into non-originating material 2 does not satisfy the relevant change in tariff classification, but it has been produced by non-originating material 5.

Third application of paragraph 5(b)

Non-originating material 5 must satisfy the change in tariff classification.
Under paragraph 5(2)(a), the transformation of non-originating material 5 into non-originating material 2 via non-originating material 4 satisfies the relevant change in tariff classification.

Final result

The result of the three applications of paragraph 5(b) is that the change in tariff classification rule for non-originating material 2 is met because it was ultimately transformed from non-originating material 5. Therefore, the goods are originating.

Sections 6 and 7

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

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

For the purpose of subsection 153XG(6), sections 6 and 7 of the SRO Regulations prescribe the 'Build-down method' and the 'Build-up method' respectively under which the RVC of goods is calculated.

Therefore, if it is a requirement in column 3 of the table in new Annex 2 that relevant goods are required to meet a RVC of not less than a particular percentage using a particular method, then the method in sections 6 or 7, as appropriate, would need to be applied.

Section 6 – Build-down method

Subsection 6(1) provides that the build-down method is the formula:

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

where:

'customs value' means the customs value of the goods worked out under Division 2 of Part VIII of the Customs Act; and

'value of non-originating materials' means the value, worked out under Part 6 of the SRO Regulations, of the non-originating materials used in the production of the goods.

Subsection 6(2) provides that RVC is to be expressed as a percentage.

By way of an example using the build-down method to calculate the RVC for canned coffee that is made from originating and imported ingredients and packaged in a steel can. Each can of coffee is on-sold by the importer to retailers for $1 and the value of the non-originating materials (including packaging) is $0.48. Using the relevant method, the RVC is calculated as follows:

$$\text{RVC} = \frac{\$1 \text{ (customs value)} - \$0.48 \text{ (value of the non-originating material)}}{\$1 \text{ (customs value)}} \times 100$$

Therefore, the RVC for the canned coffee is 52%.

Section 7 – Build-up method

Subsection 7(1) provides that the build-up method is the formula:

$$\text{RVC} = \frac{\text{Value of originating materials}}{\text{Customs value}} \times 100$$

where:

'customs value' means the customs value of the goods worked out under Division 2 of Part VIII of the Customs Act; and

'value of originating materials' means the value, worked out under Part 6 of the SRO Regulations, of the originating materials used in the production of the goods.

Subsection 7(2) provides that RVC is to be expressed as a percentage.

By way of an example using the build-up method to calculate the RVC for wooden cabinets that are made from originating timbers. Each piece of furniture is sold for $100 and the value of the originating materials used to produce the furniture is $43. Using the relevant method, the RVC is calculated as follows:

RVC = $43 (value of the originating material) x 100
$100 (customs value))

Therefore, the RVC for the wooden cabinets is 43%.

Section 8 – Requirements for goods that are oils, chemicals, plastics or rubber

As per the notes for section 5 of the SRO Regulations above, subparagraph 153XG(1)(c)(ii) of the Customs Act necessitates alternative requirements to be satisfied in addition to those requirements set out in the table in new Annex 2 if such requirements are prescribed.

Subsection 8(1) provides that for the purposes of subparagraph 153XG(1)(c)(ii) of the Customs Act, an alternative requirement that applies in relation to goods is that at least one of subsections (2), (5), (7), (9), (10), (11), (12) and (14) is satisfied in relation to the goods.

The rules in each of these subsections are as follows:

Chemical reaction rule

Subsection 8(2) will be satisfied in relation to the goods if the goods are classified to any of Chapters 27 to 40 of the Harmonized System and are the product of a chemical reaction. Subsections 8(3) and 8(4) set out what is and what is not a chemical reaction referred to in section 8(2).

Distillation rule

Subsection 8(5) will be satisfied in relation to the goods if the goods are classified to heading 27.10 of the Harmonized System and the goods were produced using atmospheric distillation or vacuum distillation. Subsection 8(6) defines atmospheric distillation and vacuum distillation for the purposes of subsection 8(5).

Direct blending rule

Subsection 8(7) will be satisfied in relation to the goods if the goods are classified to heading 27.10 of the Harmonized System and the goods were produced using direct blending. Subsection 8(8) defines direct blending for the purposes of subsection 8(7).

Purification rule

Subsection 8(9) will be satisfied in relation to the goods if the goods are classified to any of Chapters 28 to 35 or to Chapter 38 of the Harmonized System and purification of the goods has resulted in the elimination of at least 80% of the content of existing impurities.

Mixtures and blends rule

Subsection 8(10) will be satisfied in relation to the goods if the goods are classified to Chapter 30 or 31, heading 33.02, subheading 3502.20 or heading 35.06, 35.07 or 37.07 of the Harmonized System and the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications has resulted in the production of the goods which have physical or chemical characteristics which are both:

(i) relevant to the purposes or uses of the goods; and
(ii) different from the input materials.

Change in particle size rule

Subsection 8(11) will be satisfied in relation to the goods (the final goods) if the final goods are classified to Chapter 30 or 31, subheading 3204.17 or heading 33.04 of the Harmonized System and the deliberate and controlled modification in particle size of goods occurs, (including micronizing by dissolving a polymer and subsequent precipitation), other than by merely crushing or pressing, resulting in the final goods with both:

(i) a defined particle size, defined particle size distribution or defined surface area that is relevant to the purposes of the final goods; and
(ii) different physical or chemical characteristics from the input materials.

Standard materials or solutions rule

Subsection 8(12) will be satisfied in relation to the goods if the goods are classified to any of Chapters 28 to 38 of the Harmonized System (other than headings 35.01 to 35.05 and subheading 3824.60) and the goods are standard materials or solutions. Subsection 8(13) defines standard materials or solutions for the purposes of subsection 8(12).

Isomer separation rule

Subsection 8(14) will be satisfied in relation to the goods if the goods are classified to any of Chapters 28 to 38 of the Harmonized System and the goods were produced from the isolation or separation of isomers from mixtures of isomers.

<u>Section 9 – Goods classified to heading 27.09 of the Harmonized System</u>

This section concerns the rule of origin that applies to goods classified to heading 27.09 of the Harmonized System. This heading applies to crude petroleum oils and crude oils.

For the purposes of section 153XK of the Customs Act, subsection 9(1) provides that, in determining whether goods classified to heading 27.09 of the Harmonized System are Singaporean originating goods, the origin of diluent referred to in subsection 9(2) is disregarded, provided that the diluent constitutes no more than 40% by volume of the goods.

Subsection 9(2) provides that the diluent is diluent of heading 27.09 or 27.10 of the Harmonized System that is used to facilitate the transportation between the territory of Singapore and the territory of Australia of:

(a) crude petroleum oils of heading 27.09 of the Harmonized System; or
(b) crude oils of heading 27.09 of the Harmonized System obtained from bituminous minerals.

Similar to the rules set out in section 8 above, this rule applies to goods classified to heading 27.09 in addition to any other rules that may also apply to those goods.

Sections 10, 11 and 12

Section 10

Subsection 153XD(3) of the Customs Act provides that the value of goods for the purposes of the new Division 1BA is to be worked out in accordance with the regulations, and the regulations may prescribe different valuation rules for different kinds of goods.

For the purposes of subsection 153XD(3) and section 153XG, section 10 of the new Regulations sets out how the value of originating materials and non-originating materials used in the production of goods is worked out (subsection 10(1) refers).

Subsection 10(2) provides that the value of the materials is as follows:

(a) for materials imported into Singapore by the producer of the goods—the value of the materials worked out under a law of Singapore that implements the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
(b) for materials acquired in the territory of Singapore:
    i. the price paid or payable for the materials by the producer of the goods; or
    ii. the value of those materials worked out under paragraph 10(2)(a) on the assumption that those materials had been imported into Singapore by the producer of the goods; or
    iii. the earliest ascertainable price paid or payable for the materials in the territory of Singapore;
(c) for materials that are produced by the producer of the goods—the sum of:
    i. all the costs incurred in the production of the materials, including general expenses; and
    ii. an amount that is the equivalent of the amount of profit that the producer would make for the materials in the normal course of trade or of the amount of profit that is usually reflected in the sale of goods of the same class or kind as the materials.

For originating materials, subsection 10(3) sets out additional amounts (including freight, insurance, duties, etc.), that may be included when working out their value.

For non-originating materials, subsection 10(4) sets out additional amounts (including freight, insurance, duties, etc.), that are to be disregarded when working out their value.

Section 11

Subsection 153XG(7) of the Customs Act provides that, if:

(a) a requirement that applies in relation to the goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way; and
(b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
(c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
(d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the regulations must require the value of 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 purposes of working out the RVC of the goods.

For the purpose of subsection 153XG(7), section 11 of the SRO Regulation provides that, if the above paragraphs of subsection 153XG(7) are satisfied:

(a) the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account as originating materials or non-originating materials, as the case may be, when working out the RVC of the goods; and
(b) for the purposes of subsection 153XD(3), the value of the accessories, spare parts, tools or instructional or other information materials must be worked out under section 10 as if the accessories, spare parts, tools or instructional or other information materials were materials used in the production of the goods.

Section 12

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

Subsection 153XH(1) provides that, if:

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

then the packaging material or container is to be disregarded for the purposes of Subdivision D of new Division 1BA of the Customs Act.

However, if a requirement that applies in relation to the goods is that the goods must have a RVC of not less than a particular percentage worked out in a particular way, subsection 153XH(2) provides that the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the RVC of the goods.

Section 12 of the SRO Regulations provides that, if paragraphs 153XH(1)(a) and (b) are satisfied in relation to goods and the goods must have a RVC of not less than a particular percentage worked out in a particular way:

(a) the value of the packaging material or container for the goods must be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the RVC of the goods; and
(b) for the purposes of subsection 153XD(3) of the Customs Act, the value of the packaging material or container must be worked out under section 10 as if the packaging material or container were materials used in the production of the goods.

ATTACHMENT C

Statement of Compatibility with Human Rights

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

Customs (Singaporean Rules of Origin) Regulations 2017

The *Customs (Singaporean Rules of Origin) Regulations 2017* (the Legislative Instrument) is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Singapore-Australia Free Trade Agreement (the SAFTA), signed in 2003, is a central pillar of Australia's economic relationship with Singapore. An 'Agreement to Amend the Singapore-Australia Free Trade Agreement' (the Amending Agreement) was signed on 13 October 2016 by the Minister for Trade, Tourism and Investment, and his Singaporean counterpart, which amongst other things sets out a comprehensive update of provisions for trade in goods and services, and related customs procedures and rules of origin for claiming preferential rates of customs duty.

As a result, the *Customs Act 1901* (the Customs Act) is amended by the *Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017* (the SAFTA Act) to fulfil Australia's updated obligations under new Chapter 3 of the amended SAFTA, which deals with new rules of origin (the new rules).

These new rules determine whether goods imported into Australia from the territory of Singapore are Singaporean originating goods and are thereby eligible for preferential rates of customs duty. Singaporean originating goods are goods from the territory of Singapore that satisfy the new rules; the framework of which is contained in new Division 1BA.

Relevant provisions of the SAFTA Act that amend the Customs Act are expressed to commence on the later of the day after the Act receives the Royal Assent or the day the Amending Agreement enters into force for Australia.

The purpose of the Legislative Instrument is to prescribe matters for and relating to the new rules that is required to be prescribed under new Division 1BA.

In particular, the Legislative Instrument primarily:

- prescribes the method used to determine the regional value content (a calculation used in determining whether a good is a Singaporean originating good) of goods for the purposes of some of the product-specific requirements set out in the new Annex 2 to the SAFTA, as amended from time to time. New Annex 2 is incorporated by reference in section 153XG of the new Division 1BA;
- specifies the valuation rules that may apply to the goods in new Annex 2; and
- prescribes other matters that are required to be prescribed under new Division 1BA.

Separate *Customs (International Obligations) Amendment (Singapore Australia Free Trade Agreement Amendment Implementation) Regulations 2017* amend the *Customs (International Obligations) Regulations 2015* to make complementary amendments to give effect to Australia's updated obligations, and to enable a refund of duties paid on Singaporean originating goods, or on goods that would have been Singaporean originating goods, in specified circumstances.

Human rights implications

The human rights implications of amendments necessary to the Customs Act to give effect to the Amending Agreement have been assessed and are set out in the Statement of Compatibility with Human Rights contained in the Explanatory Memorandum for the SAFTA Act.

The amendments contained in the Legislative Instrument do not change the scope of the amendments set out in the SAFTA Act, but rather prescribe for matters as permitted by that Act.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights implications in addition to those addressed by the Statement of Compatibility with Human Rights that is contained in the Explanatory Memorandum for the SAFTA Act.

The Hon Alex Hawke MP, Assistant Minister for Immigration and Border Protection
Parliamentary Secretary to the Minister for Immigration and Border Protection