

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Home Affairs and Parliamentary Secretary to the
Minister for Home Affairs

Customs Act 1901

Customs Amendment (Product Specific Rule Modernisation) Regulations 2018

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 *Customs Amendment (Product Specific Rule Modernisation) Act 2018* (the PSR Modernisation Act) amends the Customs Act to facilitate and streamline the way in which the product specific rules of origin (PSRs) of four of Australia's free trade agreements (FTAs) are given effect domestically. These four FTAs are the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), the Japan-Australia Economic Partnership Agreement (JAEPA), the China-Australia Free Trade Agreement (ChAFTA) and the Singapore-Australia Free Trade Agreement (SAFTA).

Currently, the PSRs for AANZFTA, JAEPA and ChAFTA are entirely implemented domestically in regulations made under the Customs Act. The relevant provisions for these three FTAs in the Customs Act will instead apply the PSRs for each FTA by direct reference to the PSR Annex in the respective FTA. This will obviate the need for the PSRs to be prescribed in regulations made under the Customs Act.

For SAFTA, the PSRs are applied by direct reference in the Customs Act rather than implementing them through regulations, except for the 'Chemical Chapter Origin Rules' contained in Section B of Annex 2 which are implemented domestically in regulations made under the Customs Act.

To ensure uniform domestic arrangements for FTAs, the amendments made by the PSR Modernisation Act also applied the 'Chemical Chapter Origin Rules' in the Customs Act by direct reference to the FTA treaty.

The *Customs Amendment (Product Specific Rule Modernisation) Regulations 2018* (the Regulations) are consequential to the amendments made to the Customs Act by the PSR Modernisation Act. The purpose of the Regulations is to repeal the relevant parts of each regulation that prescribe PSRs for AANZFTA, JAEPA and ChAFTA and to repeal the relevant part of the regulation that prescribes the 'Chemical Chapter Origin Rules' for SAFTA.

Government departments conducted extensive public and targeted stakeholder consultations during the negotiations of AANZFTA, JAEPA, ChAFTA and SAFTA including on matters

that were encompassed in the rules of origin regulations for each of those FTAs. Details of those consultations were set out in the consultation attachment to the National Interest Analysis of each FTA. The Joint Standing Committee on Treaties also conducted an inquiry on each FTA based on written submission and a public hearing.

The PSR Modernisation Act merely changed the manner in which the PSRs were implemented domestically, from prescription in regulations made under the Customs Act to direct reference to the relevant Annex of the FTA. The Regulations make consequential amendments to each regulation to repeal the part that prescribes PSRs, for AANZFTA, JAEPA and ChAFTA; and to repeal the relevant part of the regulation that prescribes the ‘Chemical Chapter Origin Rules’, for SAFTA.

Consultation was therefore not appropriate as the amendments made by the Regulations did not change the operation of the Customs Act or the rules of origin regulations.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence at the same time as PSR Modernisation Act, which is on a date to be fixed by Proclamation. The PSR Modernisation Act was proclaimed to commence on 14 December 2018.

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Authority for the measures

The following provisions of the *Customs Act 1901* (the Customs Act), which were inserted by the *Customs Amendment (Product Specific Rule Modernisation) Act 2018* (the PSR Modernisation Act), required the following matters to be prescribed:

Division 1G of the Customs Act – concerning ASEAN-Australia-New Zealand (AANZ) originating goods:

- 153ZKB(3) which provides that the value of AANZ originating goods for the purposes of Division 1G is to be worked out in accordance with the regulations, and that the regulations may prescribe different regional value content rules for different kinds of goods;
- 153ZKE(3) which provides that if there is a requirement 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;
- 153ZKE(6) which provides that if there is a requirements that applies that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
 - the regional value content of the goods is to be worked out in accordance with the Agreement; or
 - 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;
- 153ZKE(7) which provides that if:
 - there is a requirement 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 not imported solely for the purposes of artificially raising the regional value content of the goods; and
 - the accessories, spare parts, tools, instructional or other information materials are not invoiced separately from the goods; and
 - the quantities and values of the accessories, spare parts, tools, instructional or other information materials are customary for the goods;

the regulation must provide for the value of the accessories, spare parts, tools, instructional or other information materials to be taken in to account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools, instructional or other information materials are originating materials or non-originating materials);

- 153ZKH(2) which provides that if there is a requirement 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 provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material);

Division 1K of the Customs Act – concerning Japanese originating goods:

- 153ZNB(3) which provides that the value of Japanese originating goods for the purposes of Division 1K is to be worked out in accordance with the regulations, and that the regulations may prescribe different qualifying value content rules for different kinds of goods;
- 153ZNE(3) which provides that if there is a requirement 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;
- 153ZNE(6) which provides that if there is a requirement that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:
 - the qualifying value content of the goods is to be worked out in accordance with the Agreement; or
 - if the regulations prescribe how to work out the qualifying value content of the goods – the qualifying value content of the goods is to be worked out in accordance with the regulations;
- 153ZNE(7) which provides that if:
 - there is a requirement that the goods must have a qualifying 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 or tools; and
 - the accessories, spare parts or tools are not invoiced separately from the goods; and
 - the quantities and values of the accessories, spare parts or tools are customary for the goods; and
 - the accessories, spare parts or tools are non-originating materials;
 the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (e) to be taken into account for the purposes of working out the qualifying value content of the goods;
- 153ZNF(2) which provides that if:
 - a requirement that applies in relation to Japanese originating goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and
 - the packaging material or container is a non-originating material;
 the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods.

Division 1L of the Customs Act – concerning Chinese originating goods:

- 153ZOB(3) which provides that the value of Chinese originating goods for the purposes of Division 1L is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.
- 153ZOE(3) which provides the regulations may also prescribe when a non-originating material used in the production of the Chinese originating goods is taken to satisfy the change in tariff classification.
- 153ZOE(5) which provides the regulations may prescribe that the Chinese originating goods are required to have a regional value content of at least a prescribed percentage.
- 153ZOE(6) which provides that if:
 - there is a requirement that the goods must have a minimum regional value content worked out in a particular way; and
 - the goods are imported into Australia with accessories, spare parts or tools; and
 - the accessories, spare parts or tools are classified and invoiced with the goods and are included in the price of the goods; and
 - the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and
 - the quantities and values of the accessories, spare parts or tools are customary for the goods; and
 - the accessories, spare parts or tools are non-originating materials;the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (f) to be taken in to account for the purposes of working out the regional value content of the goods.
- 153ZOF(2) which provides that if:
 - the goods must have a minimum regional value content worked out in a particular way; and
 - The packaging material or container is a non-originating material;The regulations must provide for the value of the packaging material or container to be taken in to account for the purposes of working out the regional value content of the goods.

Details of the *Customs Amendment (Product Specific Rule Modernisation) Regulations 2018*

Section 1 – Name

This section provides that the title of the instrument is the *Customs Amendment (Product Specific Rule Modernisation) Regulations 2018* (the PSR Modernisation Regulations).

Section 2 – Commencement

This section sets out, in a table, the date on which each of the provisions contained in the PSR Modernisation Regulations commences.

Table item 1 provides that the whole instrument commences at the same time as the *Customs Amendment (Product Specific Rule Modernisation) Act 2018* (the PSR Modernisation Act) commences. That Amendment Act commenced on a date fixed by Proclamation, 14 December 2018.

Section 3 – Authority

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

Section 4 – Schedules

This section provides for each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and for any other item in a Schedule to this instrument to have effect according to its own terms. The instruments that are amended are:

- the *Customs (Singaporean Rules of Origin) Regulations 2017* (the Singaporean ROO Regulations); and
- the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009* (the AANZ ROO Regulations); and
- the *Customs (Japanese Rules of Origin) Regulations 2014* (the Japanese ROO Regulations); and
- the *Customs (Chinese Rules of Origin) Regulation 2015* (the Chinese ROO Regulations).

Schedule 1 - Amendments

Part 1 – Singaporean originating goods

Background

Section B of Annex 2 to the Singapore – Australia Free Trade Agreement (SAFTA) contains Product Specific Rules called the Chemical Chapter Origin Rules that are used to determine if chemical goods imported from Singapore are Singaporean originating goods that are eligible for preferential customs duty treatment.

The *Customs Amendment (Product Specific Rule Modernisation) Act 2018* (the PSR Modernisation Act) amended Division 1BA of Part VIII of the Customs Act, which sets out the legislative framework for Singaporean originating goods. Under the *Customs Tariff Act 1995* (the Customs Tariff Act) preferential customs duty rates apply to Singaporean originating goods.

The Chemical Chapter Origin Rules are prescribed in the Singaporean ROO Regulations.

The amendments to the Customs Act made by Part 1 of Schedule 1 to the PSR Modernisation Act enabled the direct application of Section B of Annex 2 to the SAFTA and also removed the need to prescribe the Chemical Chapter Origin Rules in regulations.

The purpose of the amendments in Part 1 of the PSR Modernisation Regulations is to repeal the Chemical Chapter Origin Rules from the Singapore Regulations.

Item 5 – Section 4

This item repeals the definitions for the terms ‘chapter’, ‘heading’, ‘Singaporean originating goods’, and ‘subheading’. These terms are used in Parts 4 and 5 of the Singaporean ROO Regulations. The repeal of these definitions is consequential to the repeal of Parts 4 and 5, which are repealed as a consequence of the amendments made to the Customs Act by the PSR Modernisation Act, described below.

Item 10 – Parts 4 and 5

This item repeals Parts 4 and 5 of the Singaporean ROO Regulations. Part 4 provides the Chemical Chapter Origin Rules contained in Section B of Annex 2 to the SAFTA for the purposes of subparagraph 153XG(1)(c)(ii) of the Customs Act, according to which the alternative requirement that applies in relation to imported goods is that at least one of the rules in Parts 4 is satisfied for those goods to be determined to be Singapore originating goods. Part 4 sets out the following rules contained in Section B of Annex 2 of the SAFTA:

- Chemical reaction rule;
- Distillation rule;
- Direct blending rule;
- Diluent rule
- Purification rule
- Mixing and blending rule;
- Change in particle size rule;

- Standard materials rule; and
- Isomer separation rule.

Part 5 provides the Chemical Chapter Origin Rule referred to in Section B of Annex 2 as the ‘Diluent rule’, for the purposes of section 153XK of the Customs Act, in accordance with which it may be determined whether certain goods are Singaporean originating goods.

Prior to amendment by the PSR Modernisation Act, subparagraph 153XG(1)(c)(i) of the Customs Act provided that each requirement specified in the third column of the table in Annex 2 to the SAFTA must be satisfied for a good to be a Singaporean originating good. Subparagraph 153XG(1)(c)(ii) of the Customs Act provided that if the regulations specified one or more alternative requirements, those must be satisfied for a good to be a Singaporean originating good.

The PSR Modernisation Act repealed paragraph 153XG(1)(c) and substituted a new paragraph providing simply that the requirements applicable to goods in Annex 2 must be satisfied for a good to be a Singaporean originating good. The effect of this amendment is that the Chemical Chapter Origin Rules contained in Section B to Annex 2 of the SAFTA apply directly to chemical goods imported into Australia from Singapore. Because of this, there is no requirement and no authority for these rules to be prescribed by the Singapore Regulations, and the current prescription of them in Parts 4 and 5 is redundant. Parts 4 and 5 are repealed.

Part 2 – ASEAN – Australia – New Zealand originating goods

Background

Annex 2 to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) sets out the Product Specific Rules of origin (PSRs) used to determine if goods produced in a Party to the AANZFTA are ASEAN-Australia-New Zealand originating goods (AANZ originating goods), eligible for preferential customs duty treatment.

Division 1G of Part VIII of the Customs Act sets out the legislative framework relating to AANZ originating goods. Under the Customs Tariff Act, preferential rates of customs duty apply to AANZ originating goods.

The PSRs are prescribed in the AANZ ROO Regulations.

The amendments made to the Customs Act by Part 2 of Schedule 1 to the PSR Modernisation Act enabled the direct application of Annex 2 to the AANZFTA to goods imported into Australia from a Party to the AANZFTA and removed the need for the PSRs to be prescribed in regulations.

The purpose of the amendments in Part 2 of the PSR Modernisation Regulations is to repeal the PSRs from the AANZ ROO Regulations. In addition, technical amendments more closely align the AANZFTA Regulations with the provisions of the AANZFTA and reflect modern drafting practices.

Item 15 – Regulation 1.3

Regulation 1.3 provided definitions for certain terms used in the AANZ ROO Regulations. This item would repeal regulation 1.3 and substitute two new provisions.

New Regulation 1.3 provides that the AANZ ROO Regulations are made under the Customs Act.

New Regulation 1.4 provides the definitions for certain terms used in the AANZ ROO Regulations. The definitions for the terms ‘AANZ originating goods’ and ‘Harmonized System’ have been removed. The repeal of these definitions would be consequential to the amendment of Parts 2, 3 and 4, and the repeal of Part 5 and Schedule 1, which would be amended and repealed as a consequence of the amendments made to the Customs Act by the PSR Modernisation Act, described below.

Two new definitions for terms currently used in the AANZ ROO Regulations are inserted into the definitions provided by Regulation 1.4. These are:

- ‘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; and
- ‘producer’ means a person who engages in the production of goods.

These terms were previously lacking formal definition.

In addition, this item would make minor changes to the way in which references to relevant provisions in the Customs Act are made for the definitions, for consistency with current drafting practice.

Item 20 – Parts 2 to 5

This item repeals Parts 2, 3, 4 and 5.

Repeal of Part 2

Repealed Part 2 is substituted with a new Part 2. Current Part 2 provides the production requirement for the purposes of paragraph 153ZKE(1)(b) of the Customs Act. Paragraph 153ZKE(1)(b) provided that each requirement specified in the regulation to apply in relation to goods is satisfied. The PSR Modernisation Act repealed section 153ZKE and substituted paragraph 153ZKE(1)(b) with a requirement at paragraph 153ZKE(1)(c) that goods must satisfy the requirements applicable to the goods in Annex 2 of the AANZFTA. The amendment was consequential to the application of Annex 2 by direct reference in the Customs Act.

As a result of the application of Annex 2 in the Customs Act, the requirement provided in Part 2 is no longer required as the requirement is provided at paragraph 4 of the Headnote to the Annex.

Repeal and substitution of Part 3

Part 2 – Tariff change requirement, would substitute current Part 3 – Regional value content requirement. Subsection 153ZKE(2) of the Customs Act provided that regulations may specify that each non-originating material used or consumed in the production of goods is required to satisfy a specified change in tariff classification.

Subsection 153ZKE(3) of the Customs Act provided that the regulations may also specify when a non-originating material used or consumed in the production of goods is taken to satisfy the change in tariff classification.

The PSR Modernisation Act amended both subsections, repealing subsection 153ZKE(2) and amending subsection 153ZKE(3) to combine both heads of regulation making power in subsection 153ZKE(3). The operation of the subsection has not been changed.

As a consequence, Part 2 would set out the tariff change requirement for the purposes of subsection 153ZKE(3) of the Customs Act.

Part 2 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 one or more Parties 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 2.1(b) gives effect to the cumulative rules of origin provisions contained in paragraph 4(1)(b) and Article 6 of Chapter 3 of the AANZFTA, and applies where the non-originating materials that are used to produce the final good do not satisfy the change in tariff classification.

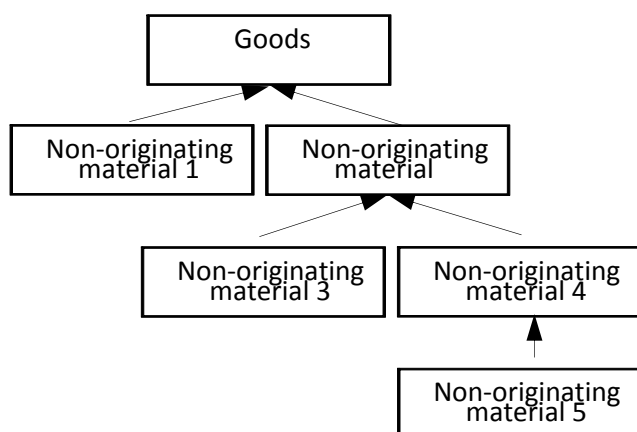
The operation of Part 2 has not been changed by the amendments made by the PSR Regulation.

Operation of Part 2

In practice, in producing a final good, a producer may use goods that are produced in an ASEAN-Australia-New Zealand Party by another producer. The components of these goods may be produced by yet another producer in that or another Party or may have been imported 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 a Party 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 AANZ originating good (subject to satisfying all other requirements of Division 1G of the Customs Act).

Example: The following diagram relates to the production of particular goods made from non-originating materials that occurred entirely in an AANZ Party. The diagram and the accompanying text illustrate the application of paragraph 2.1(b).



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

First application of paragraph 2.1(b)

Non-originating materials 1 and 2 must satisfy the change in tariff classification. Under paragraph 2.1(a), the transformation of non-originating material 1 satisfies the relevant change in tariff classification requirement. However, under paragraph 2.1(b), the transformation of non-originating material 2 does not satisfy the relevant change in tariff classification requirement, but it has been produced by non-originating materials 3 and 4.

Second application of paragraph 2.1(b)

Non-originating materials 3 and 4 must satisfy the change in tariff classification. Under paragraph 2.1(a), non-originating material 3 satisfies the relevant change in tariff classification requirement. Under paragraph 2.1(b), non-originating material 4 does not satisfy the relevant change in tariff classification, but it has been produced by non-originating material 5.

Third application of paragraph 2.1(b)

For non-originating material 4 to be originating, non-originating material 5 must satisfy the change in tariff classification. Under paragraph 2.1(a), the transformation of non-originating material 5 (into non-originating material 4) satisfies the relevant change in tariff classification requirement.

Final result

The result of the three applications of paragraph 2.1(b) is that goods produced from non-originating materials 1 and 2 are originating goods. This is because the three applications of paragraph 2.1(b) would result in all materials (being non-originating materials 1 to 5) satisfying the change in tariff classification requirement and therefore transformed into originating materials.

Repeal and substitution of Part 4

This item would repeal Part 4 – Regional value content requirements, and substitute it with Part 3 - Regional value content requirements. Subsection 153ZKE(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 Agreement (AANZFTA); 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 153ZKE(6), regulations 3.1 and 3.2 prescribe the ‘Direct method’ and the ‘Indirect 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 regulations 3.1 or 3.2, as appropriate, would need to be applied. The operation of this Part is not be changed by the PSR Modernisation Regulations.

This section makes several technical amendments to subregulations 3.1 and 3.2, as follows:

- repeal of the term ‘adjusted value’ and substitution with ‘customs value’, where ‘adjusted value’ was previously defined to mean the customs value of the good;
- repeal of the term ‘value of originating materials’ and substitution with ‘AANZFTA originating material cost’, to mirror the definition provided in to Article 5 of Chapter 3 to the AANZFTA;
- amendment of the definition of ‘overhead cost’ and ‘labour costs’ to mirror those provided in Article 5 of Chapter 3 to the AANZFTA

Operation of Regulation 3.1 – Direct method

Subregulation 3.1(1) provides that the direct method is the formula:

$$\text{RVC} = \frac{\text{AANZFTA material cost} + \text{Labour cost} + \text{overhead cost} + \text{profit} + \text{other costs}}{\text{customs value}} \times 100$$

where:

‘AANZFTA material cost’ means the value, worked out under Part 4, of originating materials used in the production of the goods;

‘customs value’ means the customs value of the goods worked out under Division 2 of Part VIII of the Act;

‘labour cost’ includes wages, remuneration and other employee benefits.

‘other costs’ means the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges.

‘overhead cost’ means the total overhead expense.

Subregulation 3.1(2) would provide that RVC must be expressed as a percentage.

By way of an example using the direct method to calculate the RVC for wooden cabinets classified to 9403.60.00 that are made from AANZ originating timbers and non-AANZ originating screws and furnishing (e.g. handles, hinges). Each piece of furniture is sold to the Australian importer for \$180 (including international shipment costs); the AANZFTA material costs are \$40 and each of the labour, overhead cost and other costs are \$20; the profit is \$35. Using the direct method, the RVC is calculated as follows:

$$\text{RVC} = \frac{\$40 + \$20 + \$20 + \$20 + \$35}{\$180 \text{ (customs value)}} \times 100$$

Therefore, the RVC for the wooden cabinets is 75%.

Operation of Regulation 3.2 – Indirect method

Subregulation 3.1(1) provides that the direct 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 4 of the PSR Modernisation Regulations, of the non-originating materials used in the production of the goods.

Subregulation 3.1(2) would provide that RVC must 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 AANZ originating and non-AANZ imported ingredients and packaged in a steel can. The customs value of each can of coffee is \$1 (including the costs of international shipment – calculated as set out under Part 5 – Determination of Value) 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% (since the build down method has established that 48% of the value of the good originates from outside the FTA region).

Repeal of Part 5

This item repeals Part 5- Determination of value, and substitutes it with Part 4 – Determination of value. Technical amendments are made to Part 4 so that it more closely aligns with Article 5 of Chapter 3 of the AANZFTA. The operation would not be changed by these amendments.

Regulation 4.1 – Value of goods that are originating materials or non-originating materials

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

For the purposes of subsection 153ZKB(3) and section 153ZKE, regulation 4 sets out how the value of originating materials or non-originating materials used in the production of goods is worked out.

Subregulation 4.1(2) provides that the value of the materials is as follows:

- a) for originating materials acquired or produced by the producer of the goods—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
- b) for non-originating materials imported into a Party by the producer of the goods—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
- c) for non-originating materials acquired by the producer of the goods—the earliest ascertained price paid for the materials by that producer.

For non-originating materials, subsection 4.2(3) sets out additional amounts (including freight, insurance, duties, etc.), that must be included when working out their value.

The PSR Modernisation Regulations incorporate the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the GATT), in order that certain calculations and definitions of value may be made according to the relevant provisions in GATT, rather than be replicated in the AANZ ROO Regulations.

The GATT is not a disallowable legislative instrument and as such, in accordance with paragraph 14(1)(b) of the *Legislation Act 2003* is applied, adopted or incorporated as in force or existing at the time when the PSR Modernisation Regulations commenced. This means that should the relevant provisions of the GATT be updated, amendment to the AANZ ROO regulations will be necessary to ensure that the updates are incorporated.

The GATT is available to be viewed for free on the World Trade Organization website <https://www.wto.org/index.htm>

Regulation 4.2 – Value of accessories, spare parts, tools or instructional or other information materials

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

- 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 not imported solely for the purposes of artificially raising the regional value content of the goods; and
- the accessories, spare parts, tools, instructional or other information materials are not invoiced separately from the goods; and
- the quantities and values of the accessories, spare parts, tools, instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools, instructional or other information materials to be taken in to account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools, instructional or other information materials are originating materials or non-originating materials).

For the purpose of subsection 153ZKE(7), regulation 4.2 provides that, if the above paragraphs of subsection 153ZKE(7) are satisfied in relation to the goods:

- a) 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 regional value content of the goods under Part 3; and
- b) if the accessories, spare parts, tools or instructional or other information materials are originating materials—for the purposes of regulations 3.1 and 4.1, those accessories, spare parts, tools or instructional or other information materials are taken to be originating materials used in the production of the goods; and
- c) if the accessories, spare parts, tools or instructional or other information materials are non-originating materials—for the purposes of regulations 3.2 and 4.1, those accessories, spare parts, tools or instructional or other information materials are taken to be non-originating materials used in the production of the goods.

Section 4.3 – Value of packaging materials and containers

Section 153ZKH of the Customs Act deals with packaging materials and containers in which goods are packaged for retail sale.

Subsection 153ZKH(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 Division 1G of the Customs Act.

However, under subsection 153ZKH(2), if a requirement that applies in relation to the goods is that the goods must have a RVC worked out in a particular way, the regulations must provide for the value of the packaging material or container in which the good is packaged for retail sale, is to be taken into account for the purposes of working out the RVC of the goods (whether the packaging material or container is an originating material or non-originating material).

Regulation 4.3 provides that, if paragraphs 153ZKH(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 in which the goods are packaged for retail sale must be taken into account for the purposes of working out the regional value content of the goods under Part 3; and
- b) if that packaging material or container in which the good is packaged for retail sale, is an originating material—for the purposes of regulations 3.1 and 4.1, that packaging material or container is taken to be an originating material used in the production of the goods; and
- c) if that packaging material or container in which the good is packaged for retail sale, is a non-originating material—for the purposes of regulations 3.2 and 4.1, that packaging material or container is taken to be an originating material used in the production of the goods.

Item 25 – Schedule 1

This item repeals Schedule 1 to the AANZ ROO Regulations. Schedule 1 provides the PSRs. Amendments made to Division 1G of the Customs Act by the PSR Modernisation Act apply Annex 2 (containing the PSRs) in the Customs Act by direct reference. As a result, there is no requirement for the PSRs to be prescribed in regulations. Further, references in Division 1K that were to requirements contained in the regulations, which in turn prescribed the requirements contained in the AANZFTA, have been amended and now refer directly to requirements in the Agreement (AANZFTA). These amendments made by the PSR Modernisation Act rendered Schedule 1 obsolete and the PSR Modernisation Regulations therefore repeal it.

Part 3 – Japanese originating goods

Background

Annex 2 to the Japan-Australia Economic Partnership Agreement (JAEPa) sets out the Product Specific Rules of origin (PSRs) used to determine if goods produced in Japan, or in Japan and Australia, from non-originating materials, are originating goods (Japanese originating goods), eligible for preferential customs duty treatment.

Division 1K of Part VIII of the Customs Act sets out the legislative framework relating to Japanese originating goods. Under the Customs Tariff Act, preferential rates of customs duty apply to Japanese originating goods.

The PSRs are prescribed in the Japanese ROO Regulations.

The amendments made to the Customs Act by Part 2 of Schedule 1 to the PSR Modernisation Act enabled the direct application of Annex 2 to the JAEPa to goods imported into Australia from Japan and removed the need for the PSRs to be prescribed in regulations.

The purpose of the amendments in Part 2 of the PSR Modernisation Regulations is to repeal the PSRs from the Japanese ROO Regulations. In addition, technical amendments more closely align the Japanese ROO Regulations with the provisions of the JAEPa and reflect modern drafting practices.

Item 30 - Section 4

Section 4 provided definitions for certain terms used in the Japanese ROO Regulations. This item would repeal the definitions for the following terms:

- ‘Area of Australia or Japan’;
- ‘chapter’;
- ‘heading’;
- ‘Japanese originating goods’; and
- ‘subheading’.

The repeal of these definitions is consequential to the amendment of Parts 2, 3 and 4 and the repeal of Schedule 1, which are amended and repealed as a consequence of the amendments made to the Customs Act by the PSR Modernisation Act, described below.

Item 35 – Parts 2 to 4

This item repeals and substitutes Parts 2, 3 and 4.

Repeal and substitution of Part 2

Repealed Part 2 is substituted with a new Part 2. Subsection 153ZNE(2) of the Customs Act provided that regulations may specify that each non-originating material in the production of goods is required to satisfy a specified change in tariff classification.

Subsection 153ZNE(3) of the Customs Act provided that the regulations may also prescribe when a non-originating material used in the production of goods is taken to satisfy the change in tariff classification.

The PSR Modernisation Act amended both subsections, repealing subsection 153ZNE(2) and amending subsection 153ZNE(3) to combine both heads of regulation making power in subsection 153ZNE(3). The operation of the subsection has not been changed.

As a consequence, new Part 2, in section 5, sets out the tariff change requirement for the purposes of subsection 153ZNE(3) of the Customs Act.

Section 5 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:

- (c) it was produced entirely in Japan, or entirely in Japan and Australia, from other non-originating materials; and
- (d) 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 cumulative rules of origin provisions contained in paragraph 3.2(c) and Article 3.4 of Chapter 3 of the JAEPA, and applies where the non-originating materials that are used to produce the final good do not satisfy the change in tariff classification.

The operation of Part 2 has not been changed by the amendments made by the PSR Regulation.

Repeal and substitution of Part 3

Part 3 would substitute current Part 3 – Regional value content requirements, to be renamed ‘Qualifying value content’ so that it is consistent with Article 3.5 of Chapter 3 to the JAEPA.

Subsection 153ZNE(6) of the Customs Act provides that, 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 way:

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

For the purpose of subsection 153ZNE(6), section 6.1 prescribes the method by which the QVC of goods is calculated.

Therefore, if it is a requirement in column 3 of the table in Annex 2 that relevant goods are required to meet a QVC of not less than a particular percentage, then the method in section 6.1 would need to be applied. The operation of this Part is not changed by the PSR Modernisation Regulations.

This section makes several technical amendments to section 6.1, as follows:

- repeal of the term ‘value’ and substitution with ‘customs value’, where ‘value’ was previously defined to mean the customs value of the good;
- amendment of the term ‘value of originating materials’ to mean the value, worked out under Part 4, of the non-originating materials used in the production of the goods. This amendment removes reference to ‘materials of undetermined origin’, which term is not recognised in the Division 1K of the Customs Act. Under the legislative framework of Division 1K materials of undetermined origin would be treated as non-originating materials.

Operation of Subsection 6.1

Subsection 6(1) provides that the QVC of goods is worked out using the formula:

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

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

Subsection 6(2) would provide that QVC must be expressed as a percentage.

This method is known as the build down method, as described above. The operation of section 6 is not changed by the technical amendments.

Repeal and substitution of Part 4

New Part 4 substitutes current Part 4 – Determination of value. Technical amendments are made to Part 4 so that it more closely aligns with Chapter 3 of the JAEPA. The operation is be changed by these amendments.

Section 7 – Value of goods that are originating materials

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

For the purposes of subsection 153ZNB(3) and section 153ZNE, section 7, sets out how the value of non-originating materials used in the production of goods is worked out.

Subsection 7(1) provides that the value of the materials is as follows:

- a) for non-originating materials imported into Japan—the value of the non-originating materials worked out under a law of Japan that implements the Agreement on

Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
or

- b) for non-originating materials acquired in Japan—the first ascertainable price paid for the non-originating materials in Japan.

For non-originating materials imported into Japan, subsection 7(2) sets out additional costs (including freight, packing and insurance, etc.), that must be included when working out their value.

For non-originating materials acquired in Japan, subsection 7(3) sets out costs (including freight, packing and insurance, etc.) which may be deducted when working out their value.

As noted above at item 20, the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 is incorporated as in force or existing at the time when these Regulations commence.

Section 8 – Value of accessories, spare parts or tools

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

- a requirement that applies in relation to goods is that the goods must have a qualifying 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 or tools; and
 - the accessories, spare parts or tools are not invoiced separately from the goods; and
 - the quantities and values of the accessories, spare parts or tools are customary for the goods; and
 - the accessories, spare parts or tools are non-originating materials;
- the regulations must provide for the value of the accessories, spare parts or tools that are non-originating materials to be taken in to account for the purposes of working out the qualifying value content of the goods.

For the purpose of subsection 153ZNE(7), new section 8 provides that, if the above paragraphs of subsection 1N3ZKE(7) are satisfied in relation to the goods:

- a) the value of the accessories, spare parts or tools must be taken into account for the purposes of working out the qualifying value content of the goods under section 6; and
- b) for the purposes of sections 6 and 7, those accessories, spare parts or tools are taken to be non-originating materials used in the production of the goods.

Section 9 – Value of packaging material and container

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

Subsection 153ZNF(1) provides that, if:

- (e) goods are packaged for retail sale in packaging material or a container; and
- (f) 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 Division 1K of the Customs Act.

However, under subsection 153ZNF(2), 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, and the packaging material or container is a non-originating material, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the QVC of the goods.

New section 9 provides that, if paragraphs 153ZNF(2)(a) and (b) are satisfied in relation to goods:

- a) 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 section 6; and
- b) for the purposes of sections 6 and 7, that packaging material or container is taken to be non-originating material used in the production of the goods.

Item 40 – Schedule 1

The PSR Modernisation Regulations would repeal Schedule 1 which prescribes the PSRs. Amendments made to Division 1K of the Customs Act by the PSR Modernisation Act apply Annex 2 (containing the PSRs) in the Customs Act by direct reference. As a result, there is no requirement for the PSRs to be prescribed in regulations. Further, references in Division 1K that were to requirements contained in the regulations, which in turn prescribed the requirements contained in the JAEPA, have been amended and now refer directly to requirements in the Agreement (JAEPA). These amendments made by the PSR Modernisation Act rendered Schedule 1 obsolete and the PSR Modernisation Regulations therefore repeal it.

Part 4 – Chinese originating goods

Background

Annex II to the China-Australia Free Trade Agreement (ChAFTA) sets out the Product Specific Rules of origin (PSRs) used to determine if goods produced in the territory of one or both China or Australia are Chinese originating goods, eligible for preferential customs duty treatment.

Division 1L of Part VIII of the Customs Act sets out the legislative framework for relating to Chinese originating goods. Under the Customs Tariff Act, preferential rates of customs duty apply to Chinese originating goods.

The PSRs are prescribed in the Chinese ROO Regulations.

The amendments made to the Customs Act by Part 3 of Schedule 1 to the PSR Modernisation Act enabled the direct application of Annex II to the ChAFTA to Chinese originating goods imported into Australia from China and removed the need for the PSRs to be prescribed in regulations.

The purpose of the amendments in Part 3 of the PSR Modernisation Regulations is to repeal the PSRs from the Chinese ROO Regulations. In addition, technical amendments more closely align the Chinese ROO Regulations with the provisions of the ChAFTA and reflect modern drafting practices.

Item 45 – Section 4

Section 4 provided definitions for certain terms used in the Chinese ROO Regulations. This item would repeal the definitions for the following terms:

- ‘chapter’;
- ‘Chinese originating goods’;
- ‘heading’;
- ‘regional rubber content’;
- ‘subheading’; and
- ‘total rubber content’.

The repeal of these definitions is consequential to the amendment of Parts 2, 3, 4, 5 and 6, and the repeal of Schedule 1, which are amended and repealed as a consequence of the amendments made to the Customs Act by the PSR Modernisation Act, described below.

Item 50 – Parts 2 to 6

This item repeals and substitutes Parts 2, 3, 4, 5 and 6.

Repeal and substitution of Part 2

Subsection 153ZOE(2) of the Customs Act provided that regulations may specify that each non-originating material used or consumed in the production of goods is required to satisfy a specified change in tariff classification.

Subsection 153ZOE(3) of the Customs Act provided that the regulations may also specify when a non-originating material used in the production of goods is taken to satisfy the change in tariff classification.

The PSR Modernisation Act amended both subsections, repealing subsection 153ZOE(2) and amending subsection 153ZOE(3) to combine both heads of regulation making power in subsection 153ZOE(3). The operation of the subsection has not been changed.

As a consequence, new Part 2 sets out the tariff change requirement for the purposes of subsection 153ZOE(3) of the Customs Act.

New section 5 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 China, or entirely in the territory of China 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.

The operation of Part 2 has not been changed by the amendments made by the PSR Modernisation Regulations.

Repeal and substitution of Part 3

Part 3 would substitute current Part 3 – Regional value content requirement, to be renamed ‘Regional value content’.

Subsection 153ZOE(5) 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) worked out in a particular way:

- (a) the RVC of the goods is to be worked out in accordance with the Agreement (ChAFTA); 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 153ZOE(5), section 6.1 prescribes the method by which the RVC of goods is calculated.

Therefore, if it is a requirement in column 3 of the table in Annex II that relevant goods are required to meet a RVC of not less than a particular percentage, then the method in section 6.1 would need to be applied. The operation of this Part is not changed by the PSR Modernisation Regulations.

Item 50 would also make a technical amendment to the term ‘value of non-originating materials’ provided in section 6.1, to mean the value, worked out under Part 4, rather than Part 6, of the non-originating materials used in the production of the goods. This amendment is consequential to the repeal of Parts 4 and 5, which require the changed reference in this term.

Subsection 6(1) provides that the RVC of goods is worked out using 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 4 of the PSR Modernisation Regulations, of the non-originating materials used in the production of the goods.

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

This method is known as the build down method, as previously described. The operation of section 6 has not been changed by the technical amendments.

Repeal of Part 4

Item 50 would repeal Part 4 – Requirements for goods that are oils, chemicals, plastics or rubber. These requirements were prescribed for the purposes of amended paragraph 153ZOE(1)(c) of the Customs Act which provided that in order for goods to be determined to be Chinese originating goods each requirement that was prescribed by the regulations to apply in relation to the goods must be satisfied. The requirements prescribed in Part 4 are the Chemical Chapter Origin Rules contained in Section B of Annex II.

The amendments made to the Customs Act by Part 3 of Schedule 1 to the PSR Modernisation Act enabled the direct application of Annex II to the ChAFTA in the Customs Act, in particular through substituting the reference to a requirement in the regulations in paragraph 153ZOE(1)(c) with a reference to a requirement in Annex II. As a result, the prescription of the Chemical Chapter Origin Rules in the Chinese ROO Regulations is no longer necessary, and Part 4 of the Chinese ROO Regulations is redundant.

Repeal of Part 5

Item 50 repeals Part 4 – Other rules of origin requirements. Section 8 prescribed the requirements mentioned in column 3 of an item in the table in Part 2 of Schedule 1 to the Chinese Regulation, in addition to any requirement covered by sections 5, 6 or 7, as requirements in the regulations that must be satisfied for the purposes of paragraph 153ZOE(1)(c).

As described above, the amendments made to the Customs Act by Part 3 of Schedule 1 to the PSR Modernisation Act rendered the prescription of requirements in the regulations redundant. In addition, the amendments described below repeals Schedule 1 to the Chinese ROO Regulations and this amendment would be consequential.

Repeal and substitution of Part 6

This item would repeal Part 6 – Determination of value, and substitute it with Part 4 – Determination of value.

Technical amendments are made to Part 4 so that it more closely aligns with Chapter 3 of the ChAFTA. The operation is not changed by these amendments.

Section 7 – Value of goods that are originating materials

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

For the purposes of subsection 153ZOB(3) and section 153ZOE, section 7 sets out how the value of non-originating materials used in the production of goods is worked out.

Subsection 7(1) would provide that the value of the materials is as follows:

- a) for non-originating materials imported into the territory of China—the value of the non-originating materials worked out under a law of China that implements the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994; or
- b) for non-originating materials acquired in territory of China—the value of those materials worked out under paragraph (a) on the assumption that those materials had been imported into the territory of China.

For non-originating materials imported into the territory of China, subsection 7(2) sets out additional costs (including freight, costs incurred in transport and insurance related to freight), that must be included when working out their value.

For non-originating materials acquired in the territory of China, subsection 7(3) sets out costs (including freight, packing, costs incurred in transport and insurance related to freight) which may be deducted when working out their value.

As noted above at item 20, the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 is incorporated as in force or existing at the time when these Regulations commence.

Section 8 – Value of accessories, spare parts or tools

Subsection 153ZOE(6) of the Customs Act provides that, if:

- there is a requirement that applies in relation to goods is that the goods must have a minimum requirement of regional value content worked out in a particular way; and
- the goods are imported into Australia with accessories, spare parts or tools; and
- the accessories, spare parts or tools are classified and invoiced with the goods and are included in the price of the goods; and
- the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and
- the quantities and values of the accessories, spare parts or tools are customary for the goods; and
- the accessories, spare parts or tools are non-originating materials;

the regulations must provide for the value of the accessories, spare parts or tools that are non-originating materials to be taken into account for the purposes of working out the regional value content of the goods.

For the purpose of subsection 153ZOE(5), new section 8 provides that, if the above paragraphs of subsection 153ZOE(6) are satisfied in relation to the goods:

- c) the value of the accessories, spare parts or tools must be taken into account for the purposes of working out the regional value content of the goods under section 6; and
- d) for the purposes of sections 6 and 7, those accessories, spare parts or tools are taken to be non-originating materials used in the production of the goods.

Section 9 – Value of packaging material and container

Section 153ZOF of the Customs Act deals with packaging materials and containers in which goods are packaged for retail sale.

Subsection 153ZOF(1) provides that, if:

- (g) goods are packaged for retail sale in packaging material or a container; and
 - (h) 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 Division 1L of the Customs Act.

However, under subsection 153ZOF(2), if a requirement that applies in relation to the goods is that the goods must have a minimum requirement of RVC worked out in a particular way, and the packaging material or container is a non-originating material, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the RVC of the goods.

New section 9 provides that, if paragraphs 153ZOF(2)(a) and (b) are satisfied in relation to goods:

- c) 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 section 6; and
- d) for the purposes of sections 6 and 7, that packaging material or container is taken to be non-originating material used in the production of the goods.

Item 55 – Schedule 1

The PSR Modernisation Regulations repeal Schedule 1, which prescribes the PSRs. Amendments made to Division 1L of the Customs Act by the PSR Modernisation Act apply Annex II (containing the PSRs) in the Customs Act by direct reference. As a result, there is no requirement for the PSRs to be prescribed in regulations. Further, references in Division 1L that were to requirements contained in the regulations, which in turn prescribed the requirements contained in the ChAFTA, have been amended and now refer directly to requirements in the Agreement (ChAFTA). These amendments made by the PSR Modernisation Act have rendered Schedule 1 obsolete and the PSR Modernisation Regulations therefore repeal it.

Statement of Compatibility with Human Rights

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

Customs Amendment (Product Specific Rule Modernisation) Regulations 2018

The *Customs Amendment (Product Specific Rule Modernisation) Regulations 2018* are 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 Customs Amendment (Product Specific Rule Modernisation) Regulations 2018 (the PSR Modernisation Regulations) are consequential to the amendments made to the Customs Act by the Customs Amendment (Product Specific Rule Modernisation) Act 2018 (PSR Modernisation Act).

The purpose of the PSR Modernisation Regulations is to repeal provisions within four existing Rules of Origin Regulations that prescribe Product Specific Rules for four of Australia's Free Trade Agreements (FTAs):

- the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area;
- the Singapore-Australia Free Trade Agreement;
- the Japan-Australia Economic Partnership Agreement; and
- the China-Australia Free Trade Agreement.

The Rules of Origin Regulations that will be amended by these Regulations are:

- the *Customs (Singaporean Rules of Origin) Regulations 2017*;
- the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*;
- the *Customs (Japanese Rules of Origin) Regulations 2014*; and
- the *Customs (Chinese Rules of Origin) Regulation 2015*.

In addition, amendments consequential to the repeal of those Schedules are also made.

Human rights implications

The amendments made by the PSR Modernisation Regulations are technical in nature and will not affect the operation of any of the FTAs that are the subject of the Bill, or the operation of any domestic legislation.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights implications.

**Senator the Hon. Linda Reynolds CSC
Assistant Minister for Home Affairs and
Parliamentary Secretary to the Minister for Home Affairs**