

## **EXPLANATORY STATEMENT**

Issued by the Assistant Minister for Customs, Community Safety and Multicultural Affairs  
and Parliamentary Secretary to the Minister for Home Affairs

### *Customs Act 1901*

#### *Customs (International Obligations) Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2019*

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 which are necessary or convenient to be prescribed for giving effect to the Act.

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

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

The Peru-Australia Free Trade Agreement (PAFTA) was signed on 12 February 2018, in Canberra, by the Hon Steven Ciobo MP, then Minister for Trade, Tourism and Investment, and his Peruvian counterpart Mr Eduardo Ferreyros signed, which amongst other things sets out comprehensive provisions for trade in goods and services, and related customs procedures and rules of origin for claiming preferential rates of customs duty. These rules determine whether goods imported into Australia from the territory of Peru are Peruvian originating goods and are thereby eligible for preferential rates of customs duty.

The purpose of the *Customs (International Obligations) Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2019* (the Regulations) is to amend the *Customs (International Obligations) Regulation 2015* (the principal Regulations) to allow a refund of any excess duties paid on Peruvian originating goods, or on goods that would have been Peruvian originating goods, in specified circumstances.

The *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019* inserts new Division 1EA into Part VIII of the Customs Act to implement the provisions dealing with trade in goods and rules of origin.

Details of the Regulations are set out in Attachment A. A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment B.

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

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

Details of the Regulations are set out in Attachment A. A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is at Attachment B.

Sections 1 to 4 of the Regulations and anything in the Regulations that is not covered by the table commence on the day after the registration of the Regulations on the Federal Register of Legislation. Schedule 1 to the Regulations commences at the same time as Schedule 1 to the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019*.

**Details of the *Customs (International Obligations) Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2018***

**Section 1 – Name of Regulation**

This section provides that the title of the Regulation is the *Customs (International Obligations) Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2019* (the Regulations).

**Section 2 – Commencement**

This section sets out the date on which each of the provisions contained in the Regulations commences.

Table item 1 provides for sections 1 to 4 and anything in the Regulations that is not covered by the table to commence on the day after the registration of the Regulations on the Federal Register of Legislation.

Table item 2 provides for Schedule 1 to the Regulations to commence at the same time as Schedule 1 to the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019*

**Section 3 – Authority**

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

**Section 4 – Schedules**

This section is the formal enabling provision for the Schedule to the Regulations, and provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Main amendments

#### *Customs (International Obligations) Regulation 2015*

##### Item 1 – Section 4 (after paragraph (f) of the definition of *Certificate of Origin*)

This item amends the definition of ‘Certificate of Origin under section 4 of the Customs (International Obligations) Regulation 2015 (the International Obligations Regulation) such that in Division 1 of Part 3 of that Regulation, Certificate of Origin includes the meaning given by subsection 153ZIM(1) of new Division 1EA of Part VIII of the *Customs Act 1901* (the Customs Act), inserted by the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019*.

Certificate of Origin is defined in subsection 153ZIM(1) of the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019* as a certificate that is in force and that complies with the requirements of Article 3.17 of Chapter 3 of PAFTA.

This amendment is relevant to the amendments introduced by item 3 below.

##### Item 2 – Section 4

This item amends section 4 of the International Obligations Regulation to insert a definition of ‘Peruvian originating goods’, which has the same meaning as given by subsection 153ZIM(1) of new Division 1EA.

Under subsection 153ZIM(1) of the Customs Act, ‘Peruvian originating goods’ means goods that, under that Division, are Peruvian originating goods. These include goods that are:

- wholly obtained or produced entirely in Peru or in Peru and Australia;
- produced in Peru, or in Peru and Australia, from originating materials; or
- are produced in Peru, or in Peru and Australia, from non-originating materials only or from non-originating materials and originating materials, and satisfy the requirements in section 153ZIP of new Division 1EA.

This amendment is relevant to the amendments introduced by items 3 and 7 below, which enable the refund of duties relating to, and the calculation of the amount of the refund for, Peruvian originating goods.

### Item 3 – Section 23 (after table item 2)

This item amends the table in section 23 of the International Obligations Regulation to insert two new table items to enable a refund of duty for the following goods in the following circumstances:

- (a) (table item 2A) Peruvian originating goods, where duty has been paid on the goods;
- (b) (table item 2B) Goods that would have been Peruvian originating goods originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods in circumstances where both of the following apply:
  - i. duty has been paid on the goods;
  - ii. the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund.

Article 3.25 of Chapter 3 of the Peru-Australia Free Trade Agreement (PAFTA) contains the obligation to permit importers to apply for a refund of customs duty paid where the importer did not make a claim for preferential tariff treatment at the time of importation, provided the goods concerned would have qualified for preferential tariff treatment when they were imported into the territory of Australia.

### Item 4 – After paragraph 24(a)

Section 24 of the International Obligations Regulation provides that a refund is not payable under table item 6 of the table in clause 1 of Schedule 6 to the *Customs Regulation 2015* (the Customs Regulation) to the extent that an application for a refund relates to one or more of the factors mentioned in this section.

This item amends section 24 of the International Obligations Regulation to also include a reference to new table items 2A and 2B of the table in section 23 of that Regulation.

Table item 6 of the table in clause 1 of Schedule 6 to the Customs Regulation provides that refunds of duty are payable where duty has been paid because of manifest error of fact or patent misconception of the law. A refund of duty could be paid under paragraph item 6 in respect of goods mentioned in table items 2A and 2B of the table in section 23 if it does not relate to the factors that determine whether the goods are Peruvian originating goods.

The purpose of new paragraph 24(ab) is to restrict refunds of duty in relation to Peruvian originating goods to the extent that the refund relates to any of the factors that determine whether goods are Peruvian originating goods under table items 2A and 2B only.

### Items 5, 6 and 7

These items amend the definitions of ‘duty payable’ and ‘relevant originating goods’ in subsection 31(2) of the International Obligations Regulation.

Items 5 and 6 insert a reference to the new table items 2A and 2B respectively into the definition of ‘duty payable’ under subsection 31(2).

Item 7 inserts new subparagraph 31(2)(ab), for Peruvian originating goods, into the definition of ‘relevant originating goods’.

The purpose of these amendments is to enable the refund of duty paid on Peruvian originating goods to be calculated in accordance with section 31 of the International Obligations Regulation, and subsequently made by a Collector.

**Statement of Compatibility with Human Rights**

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

***Customs (International Obligations) Amendment  
(Peru-Australia Free Trade Agreement Implementation) Regulations 2019***

The *Customs (International Obligations) Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2019* (the Amendment Regulations) 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 of the Amendment Regulations**

On 12 February 2018, in Canberra, Australia, the Hon. Steven Ciobo MP, then Minister for Trade, Tourism and Investment, and his Peruvian counterpart Mr Eduardo Ferreyros signed the Peru-Australia Free Trade Agreement (PAFTA). PAFTA is a comprehensive and wide-ranging agreement that provides Peru and Australia with more liberal access to each other's goods, services and investments markets.

As a result, the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019* (the Customs Amendment Act) amends the *Customs Act 1901* (the Customs Act) to fulfil Australia's obligations under Chapter 3 of PAFTA which details the agreement's rules of origin.

These new rules determine whether goods imported into Australia from Peru are Peruvian originating goods and are thereby eligible for preferential rates of customs duty. Peruvian originating goods are goods from the territory of Peru that satisfy the Rules of Origin; the framework of which is contained in new Division 1EA of Part VIII of the Customs Act.

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

Article 3.25 of Chapter 3 of PAFTA sets out provisions that apply where an importer may apply for preferential tariff treatment in relation to goods but does not make such a claim at the time of importation. A refund of any excess duties paid in relation to the goods is payable in this circumstance provided the goods would have qualified for preferential tariff treatment when it was imported into the territory of the Party, and the importer:

- makes a claim for preferential tariff treatment;
- provides a statement that the good was originating at the time of importation;
- provides a copy of the certificate of origin; and
- provides such other documentation relating to the importation of the good as the importing Party may require,

no later than one year after the date of importation or a longer period if specified in the importing Party's law.

The purpose of the *Customs (International Obligations) Amendment (Peru-Australia Free Trade Agreement Implementation) Regulations 2019* (the Amendment Regulations) is to amend the *Customs (International Obligations) Regulation 2015* to prescribe two new refund circumstances in respect of goods imported into Australia from Peru, in order to fulfil the above-mentioned obligation, as follows:

- for Peruvian originating goods, the refund circumstance applies when customs duty has been paid on such goods; and
- for goods that would have been Peruvian originating goods if at the time the goods were imported, the importer held a certificate of origin or a copy of a that document for the goods, the refund circumstance applies when customs duty has been paid on such goods and the importer holds a certificate of origin or a copy of document for the goods at the time of making the application for the refund.

The expression ‘certificate of origin’ is defined in new subsection 153ZIM(1) of the Customs Act, which means a certificate that is in force and that complies with the requirements of Article 3.17 of Chapter 3 of PAFTA.

The Amendment Regulations commences in accordance with section 2 of the Amendment Regulations. That is, sections 1 to 4 of the Amendment Regulations commence on the day after the Amendment Regulations are registered on the Federal Register of Legislation. Schedule 1 to the Amendment Regulations commence at the same time as Schedule 1 to the Customs Amendment Act, which is the later of the day after that Act receives the Royal Assent, and the day PAFTA enters into force for Australia.

### **Human rights implications**

The Regulations engage the right to not be subjected to arbitrary or unlawful interference with privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

To the extent that the Regulation will require an importer to hold a copy of the certificate of origin when applying for a refund of customs duty paid where the importer did not make a claim for preferential tariff treatment at the time of importation, provided the goods concerned would have qualified for preferential tariff treatment when they were imported into the territory of Australia, the Regulation may limit the right to privacy under Article 17 of the ICCPR. Article 17(1) sets out:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

The Regulation amends the definition of ‘Certificate of Origin’ under section 4 of the *Customs (International Obligations) Regulations 2015* such that it includes the meaning given by subsection 153ZIM(1) of the new Division 1EA of Part VII of the *Customs Act 1901* inserted by the *Customs Amendment (Peru-Australia Free Trade Agreement Implementation) Act 2018*. This definition means a certificate that is in force and that complies with the requirements of Article 3.17 of Chapter 3 of PAFTA.

Under Article 3.17 of Chapter 3 of PAFTA, a certificate of origin document completed by the exporter or producer or an authorised representative of the exporter or producer shall support



a claim by importers that goods are eligible for preferential tariff treatment in accordance with PAFTA. The key information that must be included in a ‘certificate of origin’ document is detailed in Article 3.17, and Annex 3-A to Chapter 3 of PAFTA and includes personal information.

The verification of the eligibility for preferential treatment is required under PAFTA and the measures in the Regulation are directed at the legitimate purpose of facilitating and supporting Australia’s international obligations under PAFTA. This collection and disclosure of personal information will only be permitted for the limited purpose of verifying a claim made by a person for preferential tariff treatment making it a reasonable and proportionate response to a legitimate purpose. As such, the collection and disclosure of personal information in these circumstances will not constitute an unlawful or arbitrary interference with privacy.

## **Conclusion**

The Amendment Regulations are compatible with human rights because to the extent that it may engage the right to privacy, it will not constitute an unlawful or arbitrary interference with privacy.

**The Hon Jason Wood MP**  
**Assistant Minister for Customs, Community Safety and Multicultural Affairs and**  
**Parliamentary Secretary to the Minister for Home Affairs**