**EXPLANATORY STATEMENT**

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

*Customs Act 1901*

*Customs (Hong Kong Rules of Origin) 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 as may be necessary or convenient to be prescribed for giving effect to the Act.

The Hon Simon Birmingham MP, Minister for Trade, Tourism and Investment, and the Hong Kong Secretary for Commerce and Economic Development, Edward Yau, signed the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA) on 26 March 2019 in Sydney. A-HKFTA sets out, among other things, 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 Hong Kong, China are Hong Kong originating goods and are thereby eligible for preferential rates of customs duty.

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

The purpose of the *Customs (Hong Kong Rules of Origin) Regulations 2019* (the Regulations) is to prescribe matters relating to the new rules that are required to be prescribed under new Division 1M.

The Regulations prescribe the rules used to determine whether a good is Hong Kong originating, including the methods used to determine the regional value content of goods (a calculation used in determining whether a good made from originating and non‑originating materials is a Hong Kong originating good) for the purposes of some of the product-specific rules requirements. The Regulations also prescribe the valuation rules for different kinds of goods.

Details of the amendments contained in the Regulations are at 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 A-HKFTA including on matters now encompassed in the Regulations. The consultations were conducted through in-person meetings with relevant stakeholders, requests for written submissions and specific outreach sessions. Consultations were also conducted with Australian businesses operating in Hong Kong. The state and territory governments endorsed the inclusion of regional‑level commitments and business stakeholders have welcomed the outcomes of the negotiations. Details of these consultations were set out in the consultation attachment to the National Interest Analysis of the

A-HKFTA.

The Joint Standing Committee on Treaties also conducted an inquiry on A-HKFTA based on written submissions and a public hearing. The Committee’s report recommended binding treaty action be taken.

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

The Regulations commence at the same time as Schedule 3 to the Implementation Act.

*OPC64139 - A*

**ATTACHMENT A**

**Details of the *Customs (Hong Kong Rules of Origin) Regulations 2019***

Section 1 – Name of Regulation

This section provided that the title of the Regulations is the *Customs (Hong Kong Rules of Origin) Regulations 2019* (the Regulations).

Section 2 – Commencement

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

Table item 1 provides for the whole instrument to commence at the same time as Schedule 3 to the *Customs Amendment (Growing Australian Export Opportunities Across the Asia‑Pacific) Act 2019* (the Implementation Act) commences.

Section 3 – Authority

This section sets out the authority under which the 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 Regulations:

‘Act’ means the Customs Act;

‘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;

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

‘Agreement’;

‘Area of Australia’;

‘Area of Hong Kong, China’;

‘Australian originating goods’;

‘declaration of origin’;

‘Harmonized System’;

‘non-originating materials’;

‘originating materials’; and

‘production’.

**Part 2 – Tariff change requirement**

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

Annex 3‑B to Chapter 3 of the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA), amongst other matters, sets out the product specific rules of origin and chemical chapter origin rules, and related requirements that may need to be satisfied in order for goods to be eligible for preferential tariff treatment. Regulations may be required to specify or provide for related requirements.

One of the requirements under Annex 3-B that may apply to goods is the change in tariff classification requirement. Where a requirement that applies in relation to 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 (subsection 153ZPE(3) refers).

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

1. it was produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from other non-originating materials; and
2. 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 3.8 of Chapter 3 of the A-HKFTA, 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 Hong Kong, China or Australia, or both. The components of these goods may be produced by yet another producer in that or the other Party or may have been imported by another importer. It is possible that one of more of the non-originating materials from which the final good is produced do not meet the change in tariff classification requirement in the product specific rule of origin Annex to the Agreement (thus failing to meet the requirements for a good to be a Hong Kong originating good produced from non-originating materials in subsection 153ZPE(1) of the Customs Act). This may mean that the final good is non‑originating.

However, regulation 2.1 allows the examination of each constituent component of each non‑originating material that has not met the change in tariff classification requirement in the product specific rule Annex, to determine whether components used in the production satisfies the change in tariff classification rule that applies to the final good. If each component was produced entirely in Hong Kong, China, or entirely in Hong Kong, China and Australia, and satisfies the change in tariff classification rule, then the non-originating material will be taken to have met the change in tariff classification requirement and the final good will be a Hong Kong originating good (subject to satisfying all other requirements of Division 1M of the Customs Act).

Example: The following diagram relates to the production of a final good, made from non‑originating materials, that occurred entirely in Hong Kong, China and Australia. The diagram and the accompanying text illustrate the application of regulation 2.1.

In this example, it is assumed that non-originating materials 1, 3 and 5 satisfy the change in tariff classification requirements that applies to the final good. It is also assumed that non‑originating materials 2 and 4 do not satisfy the requirement.

Final Goods

Non‑originating

material 1

Non‑originating

material 2

Non‑originating

material 4

Non‑originating

material 3

Non‑originating

material 5

The final good is produced from non‑originating materials 1 and 2 that were produced entirely in Hong Kong, China and Australia.

Non-originating materials 1 and 2 must satisfy the change in tariff classification requirement for the final good that is specified in the product specific rule Annex.

The transformation of material 1 satisfies the relevant change in tariff classification requirement.

However, the transformation of material 2 into the final good is not sufficient to satisfy the change in tariff classification requirement for the final good that is specified in the product specific rule Annex. In accordance with subsection 153ZPE(3), paragraphs 2.1(a) and (b) allow that if the non‑originating materials from which material 2 was produced (materials 3 and 4) each satisfy the change in tariff requirement in the product specific rule Annex, then material 2 will be taken to satisfy that requirement. With regard to materials 3 and 4, it is not the transformation into material 2 that is being examined, rather it is the transformation into the final good that will determine whether the relevant change in tariff requirement in the product specific rule Annex has been satisfied.

The transformation of non-originating material 3 into the final good satisfies the relevant change in tariff classification requirement. However, the transformation of non-originating material 4 into the final good does not satisfy the relevant change in tariff classification. In accordance with paragraph 2.1(b), the change in tariff classification rule can be applied to non‑originating material 5, which is used to produce material 4. Consistent with the above, it is the transformation of material 5 into the final good that will be examined. In this example the transformation of material 5 into the final good satisfies the relevant change in tariff classification requirement.

As a result of the application of the change in tariff classification requirement to the non‑originating materials used at each step in the production of the final good, material 2 is taken to satisfy the change in tariff classification requirement that applies to the final good.

In conclusion:

* material 1 has met the change in tariff classification requirement in the product specific rule Annex that applies to the final good, and
* material 2 is taken to satisfy the change in tariff classification rule in the product specific rule Annex by operation of regulation 2.1, through the satisfaction of the change in tariff classification requirement by materials 3 and 5.

The final good is thus produced from non-originating materials that have met the tariff classification change rule, and meets the requirement at paragraph 153ZPE(1)(c). If the final good also meets the remaining requirements under subsection 153ZPE(1) and any others in Division 1M of the Customs Act that apply, it is a Hong Kong originating good.

**Part 3 – Regional value content requirement**

Sections 6 – Regional value content requirement

Subsection 153ZPE(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) worked out in a particular way:

1. the RVC of the goods is to be worked out in accordance with A-HKFTA; or
2. 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 153ZPE(6), section 6 of the Regulations prescribes the ‘Build-down method’ under which the RVC of goods is calculated.

Therefore, if it is a requirement in column 4 of the table in Annex 3-B that relevant goods are required to meet a RVC of not less than a particular percentage using a particular method, then the method in section 6 would need to be applied.

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

RVC = Customs value – Value of non-originating materials   x   100

Customs value

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 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.

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. The customs value of each can of coffee is $1 (including the costs of international shipment – calculated as set out under Part 4 – 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:

RVC = $1 (Customs value) – $0.48 (Value of the non-originating material)   x   100

$1 (Customs value)

Therefore, the RVC for the canned coffee is 52 per cent (since the build down method has established that 48 per cent of the good originates from outside the FTA region).

**Part 4 – Determination of value**

Section 7 – Value of goods that are non-originating materials

Subsection 153ZPB(2) of the Customs Act provides that the value of goods for the purposes of the new Division 1M 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 153ZPB(2) and section 153ZPE, section 7 of the Regulations sets out how the value of originating materials and 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:

1. for non-originating materials imported into the Area of Hong Kong, China 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;
2. for non-originating materials acquired in the Area of Hong Kong, China:
3. the price paid or payable for the materials by the producer of the goods; or
4. the value of those materials worked out under paragraph (a) on the assumption that those materials had been imported into the Area of Hong Kong, China by the producer of the goods; or
5. the earliest ascertainable price paid or payable for the materials in the Area of Hong Kong, China.

For non-originating materials, paragraph 7(1)(a) provides that the costs incurred in the international shipment of the material must be included when working out their value.

Paragraph 7(1)(a) 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 the GATT. 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 Regulations commence. This means that should the relevant provisions of the GATT be updated, amendment to the 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>

Subsection 7(3) sets out additional amounts (including freight, insurance, duties, etc.), that may be deducted when working out the value of non-originating materials.

Section 8 – Value of accessories, spare parts, tools or instructional or other information materials

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

1. a requirement that applies in relation to the goods is that the goods must have a RVC worked out in a particular way; and
2. the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
3. the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods;
4. the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
5. the accessories, spare parts, tools or instructional or other information materials are non-originating goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the RVC of the goods.

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

1. 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 RVC of the goods under section 6 of the Regulations; and
2. for the purposes of sections 6 and 7 of the Regulations, 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 9 – Value of packaging materials and containers

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

Subsection 153ZPF(1) provides that, if:

1. goods are packaged for retail sale in packaging material or a container; and
2. 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 C of new Division 1M of the Customs Act.

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

Section 9 of the Regulations provides that, if paragraphs 153ZPF(1)(a) and (b) are satisfied in relation to goods and the goods must have a RVC worked out in a particular way:

1. 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 RVC of the goods under section 6 of the Regulations; and
2. for the purposes of sections 6 and 7 of the Regulations, that packaging material or container is taken to be a non‑originating material used in the production of the goods.

**Part 5 – Record keeping obligations**

Under new section 126APB(1) of the Customs Act, the regulations may prescribe record keeping obligations that apply in relation to goods that:

1. are exported to the Area of Hong Kong, China; and
2. are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the Area of Hong Kong, China.

Part 5 of the Regulations specifies the records that must be kept for goods exported to Hong Kong, China and are claimed to be originating goods for the purpose of obtaining a preferential tariff treatment in accordance with A-HKFTA.

Section 10 – Exportation of goods to Hong Kong, China—record keeping by exporter who is not the producer of the goods

For the purposes of subsection 126APB(1) of the Customs Act, subsection 10(1) of the Regulations provides that an exporter of goods mentioned in that subsection, who is not also the producer of the goods, must keep the following records:

1. records of the purchase of the goods by the exporter;
2. records of the purchase of the goods by the person to whom the goods are exported;
3. evidence that payment has been made for the goods;
4. evidence of the classification of the goods under the Harmonized System;
5. if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the exporter:
6. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
7. evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
8. if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the exporter:
9. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
10. evidence of the value of the materials so purchased; and
11. records of the production of the accessories, spare parts, tools or instructional or other information materials;
12. if the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter:
13. records of the purchase of the packaging material or container; and
14. evidence of the value of the packaging material or container;
15. if the goods are packaged for retail sale in packaging material or a container that was produced by the exporter:
16. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
17. evidence of the value of the materials; and
18. records of the production of the packaging material or container;
19. a copy of the declaration of origin for the goods.

For the records referred to in subsection 10(1) of the Regulations, subsection 10(2) provides that the records must be kept for at least five years starting on the day the goods are exported.

Subsection 10(3) of the Regulations sets out the manner in which a record is to be kept. A record may be kept in any place, whether or not in Australia, and the exporter must ensure that the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and

1. if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and
2. if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

Section 11 – Exportation of goods to Hong Kong, China—record keeping by producer of the goods

For the purposes of subsection 126APB(1) of the Customs Act, section 11(1) of the Regulations has the effect that a producer of goods mentioned in that subsection, whether or not the producer is the exporter of the goods, must keep the following records:

1. records of the purchase of the goods;
2. if the producer is the exporter of the goods—evidence of the classification of the goods under the Harmonized System;
3. evidence that payment has been made for the goods;
4. evidence of the value of the goods;
5. records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System;
6. evidence of the value of those materials;
7. records of the production of the goods;
8. if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the producer:
9. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
10. evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
11. if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the producer:
12. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
13. evidence of the value of the materials so purchased; and
14. records of the production of the accessories, spare parts, tools or instructional or other information materials;
15. if the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:
16. records of the purchase of the packaging material or container; and
17. evidence of the value of the packaging material or container;
18. if the goods are packaged for retail sale in packaging material or a container that was produced by the producer:
19. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
20. evidence of the value of the materials; and
21. records of the production of the packaging material or container;
22. a copy of the declaration of origin for the goods.

For the records referred to in subsection 11(1) of the Regulations, subsection 11(2) has the effect that the records must be kept for at least five years starting on the day the goods are exported.

Subsection 11(3) of the Regulations sets out the manner in which a record is to be kept. A record may be kept in any place, whether or not in Australia, and the producer must ensure that the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and

1. the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and
2. if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and
3. if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

***Customs (Hong Kong Rules of Origin) Regulations 2019***

The *Customs (Hong Kong Rules of Origin) Regulations 2019* 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 of Disallowable Legislative Instrument**

The Hon Simon Birmingham MP, Minister for Trade, Tourism and Investment, and the Hong Kong Secretary for Commerce and Economic Development, Edward Yau signed the Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA) on 26 March 2019 in Sydney. A-HKFTA sets out, amongst other things, comprehensive provisions for trade in goods and services, related customs procedures and rules of origin for claiming preferential rates of customs duty.

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

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

Relevant provisions of Schedule 3 to the Implementation Act that amend the Customs Act commence on the later of the day after the Implementation Act receives the Royal Assent and the day A‑HKFTA enters into force for Australia.

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

In particular, the Instrument:

* prescribes the method used to determine the regional value content (a calculation used in determining whether a good is a Hong Kong originating good) of goods for the purposes of some of the product-specific requirements set out in Annex 3‑B to A‑HKFTA. Annex 3-B is applied by reference in section 153ZPE of new Division 1M;
* specifies the valuation rules that may apply to the goods in Annex 3-B; and
* prescribes other matters that are required to be prescribed under new Division 1M, including the particulars of records to be kept in accordance with the Customs Act.

The Instrument commences at the same time as Schedule 3 to the Implementation Act, which is the later of the day after that Act receives the Royal Assent, and the day A‑HKFTA enters into force for Australia.

**Human rights implications**

This Disallowable Legislative Instrument engages 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 the Instrument facilitate the collection and disclosure of personal information, it engages 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.*

Under Article 3.16 of Chapter 3 of A‑HKFTA, a Declaration of Origin document completed by the exporter, producer or importer or an authorised representative of the exporter, producer or importer shall support a claim that goods are eligible for preferential tariff treatment in accordance with A‑HKFTA. The key information that must be included in a ‘Declaration of Origin’ document is detailed in Article 3.16, and Annex 3‑A to Chapter 3 of A‑HKFTA and includes personal information.

The Implementation Act inserts new section 126APB into the Customs Act to enable regulations to prescribe the information required to be kept in accordance with the record keeping obligations that apply in relation to Australian originating goods exported from Australia to Hong Kong, China, in accordance with A‑HKFTA.

The record keeping obligations are prescribed in Part 5 of the Instrument, which amongst other things require records and evidence of the purchase of material, value of material, production goods, and the Declaration of Origin to be kept for at least five years starting on the date the goods were exported from Australia. The records required to be kept accord with Article 3.22 of Chapter 3 of A‑HKFTA. In particular, Part 5, subsection 10 requires the details about the purchase of the goods by the exporter and the person to whom the goods are exported, which may include the personal information of the exporter and person to whom the goods are exported.

Part 5 of the Instrument together with new sections 126APA, 126APB, 126APC and 126APD of the Customs Act, operate to allow Hong Kong, China to verify the origin of goods exported to Hong Kong, China from Australia that are claimed to be Australian originating goods. This may include the collection and disclosure of personal information, including information set out in a ‘Declaration of Origin’ document, for limited purposes. This information may be disclosed to a customs official of Hong Kong, China for the purpose of verifying a claim for a preferential tariff in the territory of Hong Kong, China.

Through the amendments to the Customs Act made by the Implementation Act, the collection and disclosure of personal information in relation to goods claiming to be originating goods will be permitted. Further, the collection and disclosure of personal information is authorised under the *Privacy Act 1988* and, where applicable, the *Australian Border Force Act 2015*. Neither the Implementation Act nor this Instrument alters the existing protections.

The verification of the eligibility for preferential treatment is required under A‑HKFTA and the measures in the Instrument are directed at the legitimate purpose of facilitating and supporting Australia’s international obligations under A‑HKFTA. 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. The collection and disclosure of personal information in these circumstances will not constitute an unlawful or arbitrary interference with privacy.

**Conclusion**

This Disallowable Legislative Instrument is compatible with human rights because to the extent that it limits the right to privacy, the limitation is reasonable, necessary and proportionate and does not constitute an unlawful or arbitrary interference with the right to privacy.

**The Hon Jason Wood MP**

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