

## **EXPLANATORY STATEMENT**

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

*Customs Tariff Act 1995*

*Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Regulations 2021*

The *Customs Tariff Act 1995* (the Tariff Act) gives effect to Australia's import trade classification system. It assigns rates of customs duty, both general and preferential, to imported goods and enables the collection of these duties.

Section 20A of the Tariff Act provides, in part, that the Governor-General may make regulations, prescribing matters, which by the Tariff Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Tariff Act.

On 15 November 2020, the Hon. Simon Birmingham, former Minister for Trade, Tourism and Investment, and his counterparts from Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam, China, Japan, New Zealand and Republic of Korea signed the Regional Comprehensive Economic Partnership Agreement (the Agreement). The Agreement sets out, amongst other things, comprehensive provisions for trade in goods and related customs procedures and rules of origin for claiming preferential rates of customs duty. These rules determine whether goods imported into Australia from another Party to the Agreement are originating goods (referred to as 'RCEP originating goods') and are thereby eligible for preferential rates of customs duty.

The *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* (the Customs Implementation Act) inserts new Division 1N into Part VIII of the Customs Act to implement the part of the Agreement dealing with rules of origin. In addition, the *Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* (the Tariff Implementation Act) complements the Customs Implementation Act and amends the Tariff Act to, amongst other matters, insert new Schedule 14, setting out the preferential rates of customs duty that apply to RCEP originating goods. For certain goods, the preferential rates of customs duty only apply to goods as prescribed in the regulations.

The purpose of the *Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Regulations 2021* (the Regulations) is to amend the *Customs Tariff Regulations 2004* (the Tariff Regulations) to prescribe goods as required in new Schedule 14 to the Tariff Act. The prescribed goods are listed in new Schedule 4 to the Tariff Regulations.

The Tariff Implementation Act also amends new Schedule 14 to the Tariff Act to incorporate the updated tariff classification codes of 2022 version of the Harmonized Commodity Description and Coding System (Harmonized System) that will be given effect in amendments to the Tariff

Act by the *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021*. That Act implements the outcomes of the World Customs Organization's sixth review of the Harmonized System, with effect from 1 January 2022. Schedule 2 to the Regulations amends new Schedule 4 to reflect changes in tariff classification codes of the 2022 version of the Harmonized System.

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.

The Department of Foreign Affairs and Trade (DFAT) led Australia's negotiations for the Agreement in consultation with other government agencies. Australia's negotiating positions for the Agreement were informed by the views and information provided by stakeholders through both formal and informal mechanisms.

DFAT undertook regular stakeholder engagement on the Agreement once negotiations commenced in 2012. DFAT, in conjunction with other government agencies, consulted widely with industry and other stakeholders in formulating their positions. In addition to a call for public submissions, negotiators regularly engage with representatives of the business sector, academia and civil society organisations to provide an opportunity to share their views and expectations of the negotiations. At each of the negotiating rounds Australia hosted, DFAT held dedicated stakeholder consultation events in the margins of the meeting on the following dates:

- Melbourne – 30 June 2019
- Perth – 27 April 2017
- Brisbane – 24 September 2013

After the commencement of negotiations, DFAT held biannual International Trade Negotiations Update Meetings which provided an avenue to update peak organisations (including civil society) on the status of the DFAT-led international trade negotiations and for peak organisations to ask questions about the government's trade agenda.

Details of these consultations were set out in the consultation attachment to the National Interest Analysis for the Agreement.

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

The Regulations commence in accordance with section 2 of the Regulations.

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**Details of the Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Regulations 2021**

**Section 1 Name**

This section provides that the title of the instrument is the *Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Regulations 2021* (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 sections 1 to 4 and anything in the Regulations not elsewhere covered by the table to commence on the day after the Regulations are registered.

Table item 2 provides for Schedule 1 to the Regulations to commence on the later of the start of the day after the Regulations are registered, and immediately after the commencement of Schedule 1 to the *Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* (the Tariff Implementation Act). Schedule 1 to the Tariff Implementation Act commences at the same time as Schedule 1 to the *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation Act 2021* (the Customs Implementation Act), which is the later of the day after the Customs Implementation Act receives the Royal Assent, and the day the Regional Comprehensive Economic Partnership Agreement (the Agreement) enters into force for Australia.

Table item 3 provides for Schedule 2 to the Regulations to commence on the later of: immediately after the commencement of the provisions covered by table item 2; and immediately after the commencement of Schedule 2 to the Tariff Implementation Act. Schedule 2 to the Tariff Implementation Act commences on the later of: immediately after the commencement of Schedule 1 to the Customs Implementation Act; and immediately after the commencement of *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* (which commences on 1 January 2022).

**Section 3 Authority**

This section sets out the authority under which the Regulations are to be made, which is the *Customs Tariff Act 1995* (the Tariff Act).

**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 Regulations is amended or repealed as

set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.

The *Customs Tariff Regulations 2004* (the Tariff Regulations) is amended by the Regulations.

## **Schedule 1—Main amendments**

### ***Customs Tariff Regulations 2004***

#### **Item 1 Regulation 3**

This item amends regulation 3 of the Tariff Regulations to define *Schedule 14 item*, which means an item in the table in new Schedule 14 to the Tariff Act.

This amendment is for the purpose of the amendments made by items 2 and 3 of the Regulations to identify goods that are prescribed for items 263, 264, 341, 397, 450, 486 to 491, 848, 1075, 1497 to 1501, 1542 to 1548, 1550 to 1558, 1560 to 1566, and 1568 to 1576 under new Schedule 14 to the Tariff Act.

#### **Item 2 After regulation 5A**

This item inserts new regulation 5B into the Tariff Regulations, which provides that, for each Schedule 14 item mentioned in column 2 of an item in Schedule 4 to the Tariff Regulations, the goods mentioned in column 3 of the item in Schedule 4 to the Tariff Regulations are prescribed. New Schedule 4 to the Tariff Regulations is inserted by item 3 of the Regulations.

The effect of this amendment is that goods mentioned in column 3 of Schedule 4 to the Tariff Regulations are prescribed for table items 263, 264, 341, 397, 450, 486 to 491, 848, 1075, 1497 to 1501, 1542 to 1548, 1550 to 1558, 1560 to 1566, and 1568 to 1576 under new Schedule 14 to the Tariff Act and thereby be subject to the phasing rates of customs duty specified under those table items in Schedule 14 to the Tariff Act.

#### **Item 3 At the end of the instrument**

This item inserts new Schedule 4 - (Regional Comprehensive Economic Partnership (RCEP) originating goods) into the Tariff Regulations.

New Schedule 4 sets out each item in the table in Schedule 14 to the Tariff Act that applies to prescribed goods only, and prescribes the goods for each of those items.

For example, for item 263 of new Schedule 14 to the Tariff Act for goods classified to subheading 3808.59.90, the following goods are prescribed:

- (a) goods containing one or more of the substances specified in Subheading Note 1 to Chapter 38 of the Act, other than goods containing alachlor (ISO), aldicarb (ISO), azinphos-methyl (ISO), endosulfan (ISO), penta- and octabromodiphenyl ethers,

- perfluorooctane sulphonic acid and its salts, perfluorooctane sulphonamides or perfluorooctane sulphonyl fluoride;
- (b) goods that are herbicides, anti-sprouting products, plant-growth regulators or insecticides (other than camphor, fly-papers and mosquito spirals and coils) containing alachlor (ISO), aldicarb (ISO), azinphos methyl (ISO), endosulfan (ISO), penta- and octabromodiphenyl ethers, perfluorooctane sulphonic acid and its salts, perfluorooctane sulphonamides or perfluorooctane sulphonyl fluoride

This means that only these goods will be subject to the phasing rates of duty set out in item 263 of Schedule 14 to the Tariff Act. All other goods classified to subheading 3808.59.90 will be subject to a 'Free' rate of customs duty from entry into force of the Agreement.

## **Schedule 2—Contingent amendments**

### ***Customs Tariff Regulations 2004***

#### **Items 1 to 15**

The *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* will implement the outcomes of the World Customs Organization's sixth review of the Harmonized Commodity Description and Coding System (the Harmonized System).

The Harmonized System is a framework of codes and descriptions used to identify all tradeable goods. At the international level, the Harmonized System comprises 97 chapters with associated two-digit codes, which are then each divided into headings (four-digit codes) and subheadings (five- and six-digit codes). These are supplemented by domestic subheadings (seven- and eight-digit codes), that only apply to goods imported into Australia. The tariff classification codes used to classify goods in new Schedule 4, inserted into the Tariff Regulations, are the codes of the 2017 version of the Harmonized System.

Items 1 to 15 of Schedule 2 to the Regulations amend new Schedule 4, inserted by item 3 of the Regulations, to update the tariff classification codes from the 2017 version of the Harmonized System to the codes of the 2022 version of the Harmonized System.

The purpose of these amendments is to ensure that the preferential rates of customs duty continue to apply to the RCEP originating goods in accordance with the Agreement and at the rate as intended by that Agreement.

For example, for table item 263 of new Schedule 4 (inserted by item 3 of the Regulations) for goods classified to subheading 3808.59.90, as part of the changes in the 2022 version of the Harmonized System, carbofuran (ISO) and trichlorfon (ISO) are added to Subheading Note 1 to Chapter 38, resulting in goods containing these substances transferring from subheading 3808.91.90, 3808.92.00 and 3808.93.00 to subheading 3808.59.90.

Additionally, penta- and octabromodiphenyl ethers are removed from Subheading Note 1 to Chapter 38, resulting in goods containing these substances transferring from subheading 3808.50.90 to subheading 3808.91.90, 3808.92.00 and 3808.93.00.

The amendments made by items 1 to 6 of the Regulations amend table item 1 of Schedule 4 to align the goods that are prescribed for updated subheading 3808.50.90 and as such, have the effect of retaining the correct preferential rate of customs duty, including the correct phasing rates, applicable to the goods, in accordance with the Agreement.

**Statement of Compatibility with Human Rights**

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

**Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Regulations 2021**

This Disallowable Legislative Instrument is compatible with the 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 Disallowable Legislative Instrument**

The Regional Comprehensive Economic Partnership Agreement (the Agreement) is a regional free trade agreement that will complement and build upon Australia's existing free trade agreements with 14 other Indo-Pacific countries. It is a modern and comprehensive free trade agreement delivering outcomes for Australian businesses in trade in goods, trade in services, investment, economic and technical cooperation, and new rules for electronic commerce, intellectual property, government procurement, competition, and small and medium sized enterprises.

The Agreement was signed at a virtual signing ceremony on 15 November 2020. Australia signed in Canberra, and the other 14 states signed in their respective territories (China, Japan, New Zealand, the Republic of Korea, and the ten members of the Association of Southeast Asian Nations: Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam).

The *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* (the Customs Implementation Act) amends the *Customs Act 1901* (the Customs Act) to fulfil Australia's obligation under Chapter 3 of the Agreement, which details the Agreement's rules of origin.

These new rules determine whether goods imported into Australia from a Party to the Agreement are originating goods (referred to as RCEP originating goods) and are thereby eligible for preferential rates of customs duty. RCEP originating goods are goods from a Party to the Agreement that satisfy the Rules of Origin; the framework of which is contained in new Division 1N of Part VIII of the Customs Act.

The associated *Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* (the Tariff Implementation Act) amends the *Customs Tariff Act 1995* (the Tariff Act) to implement Australia's obligations under the Agreement by:

- providing a 'Free' rate of customs duty for goods that are RCEP originating goods (other than goods listed in new Schedule 14), with effect from entry into force of the Agreement for Australia;

- inserting a new Schedule 14 to: (i) specify the phasing rates of customs duty for certain RCEP originating goods that will incrementally reduce to ‘Free’ by, at the latest, the 19th calendar year after the Agreement enters into force for Australia; (ii) maintain rates of customs duty on certain alcohol, tobacco and petroleum products equivalent to the rates of excise duty payable on the same good when locally manufactured; and (iii) maintain rates of customs duty on certain goods consistent with the negotiated outcomes of the Agreement; and
- amending Schedule 4 to maintain customs duty rates for certain RCEP originating goods in accordance with the applicable concessional items.

The purpose of the *Customs Tariff Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Regulations 2021* (the Regulations) is to amend the *Customs Tariff Regulations 2004* (the Tariff Regulations) to prescribe goods as required in new Schedule 14 to the Tariff Act. The prescribed goods are listed in new Schedule 4 to the Tariff Regulations.

The Tariff Implementation Act also amends new Schedule 14 to the Tariff Act to incorporate the updated tariff classification codes of 2022 version of the Harmonized Commodity Description and Coding System (Harmonized System) that will be given effect in amendments to the Tariff Act by the *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021*. That Act implements the outcomes of the World Customs Organization’s sixth review of the Harmonized System, with effect from 1 January 2022. Schedule 2 to the Regulations amends new Schedule 4 to reflect changes in tariff classification codes of the 2022 version of the Harmonized System.

The Regulations commence in accordance with section 2 of the Regulations. Table item 1 provides for sections 1 to 4 and anything in the Regulations not elsewhere covered by the table to commence on the day after the Regulations are registered.

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### **Human rights implications**

The Regulations are technical in nature and do not engage any of the applicable rights or freedoms.



## **Conclusion**

The Regulations are compatible with human rights as it does not raise any human rights issues.

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