

EXPLANATORY STATEMENT

Issued by the Minister for Home Affairs

Customs Tariff Act 1995

Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Regulations 2022

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 2 April 2022, the Hon Dan Tehan MP, then Minister for Trade, Tourism and Investment, and his counterpart from the Republic of India (India), Minister Piyush Goyal, signed the India-Australia Economic Cooperation and Trade Agreement (the Agreement). The signing of the Agreement was agreed to at the Federal Executive Council meeting of 31 March 2022.

The Agreement delivers outcomes for trade in goods and services and sets out related customs procedures and rules of origin for claiming preferential rates of customs duty. These rules determine whether goods imported into Australia from India are originating goods (referred to as 'Indian originating goods') and are thereby eligible for preferential rates of customs duty.

The *Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (the Tariff Implementation Act) amends the Tariff Act to, among other things, insert new Schedule 10A into the Tariff Act to implement the rates of duty under the Agreement that are payable for Indian originating goods, other than where those goods have a Free rate of duty.

The purpose of the *Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Regulations 2022* (the Regulations) is to amend the *Customs Tariff Regulations 2004* (the Tariff Regulations) to prescribe goods under items 258 to 260 in new Schedule 10A to the Tariff Act that, under the Agreement, will have a rate of duty other than Free. The prescribed goods are listed in new Schedule 3A to the Tariff Regulations.

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.

The Agreement will be the foundation for the development of a further Comprehensive Economic Cooperation Agreement between Australia and India (CECA).

The public consultation and stakeholder engagement process for the Agreement was informed by that for the earlier CECA negotiations in May 2011. Before negotiations on CECA were suspended, DFAT received 51 formal submissions (including three from the Australian Chamber of Commerce and Industry). Since the re-launch of CECA negotiations on 1 October 2021, DFAT received a further 21 formal submissions from organisations and individuals. Public submissions from these entities are available on the DFAT website and are set out in detail in Attachment 1 to the National Interest Analysis.

The Australian negotiating team held numerous direct stakeholder consultations since the re-launch of the CECA negotiations in October 2021, which informed the negotiations when these refocused on concluding the Agreement. The stakeholders consulted included industry and worker representatives, such as peak bodies and trade unions, as well as businesses, individuals, and other entities. Stakeholders were invited to provide written submissions on the commercial, economic, regional, and other impacts that could be expected to arise from the Agreement.

The Australian negotiating team also contacted key industry stakeholders after the December 2021 and February 2022 negotiating round in India, and during the following almost continuous negotiations up to conclusion of the Agreement in March 2022. These direct consultations played an important role in nuancing Australia's negotiating positions and ensuring the right outcomes for Australians to diversify trade and drive an export-led recovery. Once the Agreement's negotiations were launched, DFAT also provided updates through established consultative groups such as the Ministerial Advisory Council on FTA negotiations (on 29 October 2021 and 17 March 2022), and the DFAT Peak Bodies Consultations meetings.

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

The Regulations commence on the later of the day after the Regulations are registered, and the day on which Schedule 1 to the Customs Implementation Act commences. Schedule 1 to the Customs Implementation Act commences on the later of the day after that Act receives the Royal Assent, and the day the Agreement enters into force for Australia. Some of the amendments in the Regulations are made in reliance of section 4 of the *Acts Interpretation Act 1901*.

Details of the *Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Regulations 2022*

Section 1 Name

This section provides that the title of the instrument in the *Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Regulations 2022* (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 (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (the Tariff Implementation Act).

Schedule 1 to the Tariff Implementation Act commences at the same time as Schedule 1 to the *Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (the Customs Implementation Act), which is the later of the day after the Customs Implementation Act receives the Royal Assent, and the day the India-Australia Economic Cooperation and Trade Agreement (the Agreement) enters into force for Australia.

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 section 3 of the Tariff Regulations to define ‘Schedule 10A item’, which means an item in the table in new Schedule 10A to the Tariff Act, which was added by the Tariff Implementation Act.

The purpose of this amendment is to support the amendments made by items 2 and 3 of the Regulations to identify goods that are prescribed in items 258, 259 and 260 under new Schedule 10A to the Tariff Act.

Item 2 After regulation 5A

This item inserts new section 5AA into the Tariff Regulations, which provides that, for each Schedule 10A item mentioned in column 2 of an item in Schedule 3A to the Tariff Regulations goods are prescribed. New Schedule 3A 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 3A to the Tariff Regulations are prescribed for table items 258, 259 and 260 under new Schedule 10A to the Tariff Act and will thereby be subject to the phasing rates of customs duty specified under those table items in Schedule 10A to the Tariff Act.

Item 3 After Schedule 3

This item inserts new Schedule 3A – Indian originating goods into the Tariff Regulations.

New Schedule 3A sets out each item in the table in Schedule 10A to the Tariff Act that applies to prescribed goods only, and prescribes the goods for each of those items.

For example, for item 258 of new Schedule 10A to the Tariff Act, which provides for goods classified to subheading 9021.10.49, the following goods, of iron or steel, specially designed for use exclusively in implants in medical, surgical, dental or veterinary science, are prescribed:

- (a) screws and bolts, whether or not with their nuts or washers (other than wood screws, screw hooks and screw rings and self-tapping screws), nuts or other threaded articles;
- (b) non-threaded articles (other than washers, rivets, cotters and cotter pins)

This means that only these goods are subject to the phasing rates of duty set out in item 258 of Schedule 10A to the Tariff Act. All other goods classified to subheading 9021.10.49 are subject to a 'Free' rate of customs duty from entry into force of 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 (India-Australia Economic Cooperation and Trade Agreement Implementation) Regulations 2022

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

On 2 April 2022, the *India-Australia Economic Cooperation and Trade Agreement* (the Agreement) was signed by the Hon Dan Tehan MP, then Minister for Trade, Tourism and Investment, and his counterpart from the Republic of India (India), Minister Piyush Goyal. The Agreement delivers outcomes for trade in goods and services and sets out related customs procedures and rules of origin for claiming preferential rates of customs duty.

The *Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* (the Tariff Implementation Act) amends the *Customs Tariff Act 1995* (the Tariff Act) to, among other things, insert new Schedule 10A into the Tariff Act to implement the rates of duty under the Agreement that are payable for Indian originating goods, other than where those goods have a Free rate of duty.

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 Indian originating goods not listed in new Schedule 10A, with effect from entry into force of the Agreement;
- inserting a new Schedule 10A to:
 - (i) specify the phasing rates of customs duty for certain Indian originating goods that will incrementally reduce to 'Free' by, at the latest, the 5th year after the Agreement enters into force for Australia; and
 - (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
- amending Schedule 4 to maintain customs duty rates for certain Indian originating goods in accordance with the applicable concessional items.

The purpose of the *Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Regulations 2022* (the Regulations) is to amend the *Customs Tariff Regulations 2004* (the Tariff Regulations) to prescribe goods as required in new Schedule 10A to the Tariff Act. The prescribed goods are listed in new Schedule 3A to the Tariff Regulations.

The Regulations commences 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 instrument is registered.

Table item 2 provides for Schedule 1 to the Regulations to commence on the later of the start of the day after the instrument is registered, and immediately after the commencement of Schedule 1 to the Tariff Implementation Act. Schedule 1 to the Tariff Implementation Act commences at the same time as Schedule 1 to the Customs Implementation Act, which is the later of the day after the Customs Implementation Act receives the Royal Assent, and the day the Agreement enters into force for Australia.

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 they do not raise any human rights issues.

The Hon Clare O’Neil MP, Minister for Home Affairs