**EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Customs Act 1901*

*Customs (United Kingdom Rules of Origin) Regulations 2022*

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 Customs Act, prescribing all matters which by the Customs Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Customs Act.

On 17 December 2021, the then Hon. Dan Tehan MP, then Minister for Trade, Tourism and Investment, with the UK Secretary of State for International Trade signed the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland (the Agreement). The Agreement, among other things, 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 the United Kingdom are originating goods (referred to as ‘UK originating goods’) and are thereby eligible for preferential rates of customs duty.

The *Customs Amendment (Australia-United Kingdom Free Trade Implementation) Act 2022* (the Customs Implementation Act) amends the Customs Act to, among other things, insert new Division 1P into Part VIII of the Customs Act to implement the provisions under the Agreement dealing with trade in goods and rules of origin. The Customs Implementation Act also inserts new Division 4M into Part VI of the Customs Act to implement obligations relating to record keeping and verification powers.

The purpose of the *Customs (United Kingdom Rules of Origin) Regulations 2022* (the Regulations) is to prescribe matters relating to the new rules for UK originating goods that are required or permitted to be prescribed under new Division 1P of Part VIII of the Customs Act. The Regulations prescribe the rules used to determine whether goods are UK originating goods, including the methods used to determine the regional value content of goods (used in determining whether a good made from originating and non‑originating materials is a UK originating good).

The Regulations also prescribe the valuation rules for different kinds of goods and set out the classes of records that must be retained under Division 4M of Part VI of the Customs Act by Australian exporters and producers of that issue a Declaration of Origin for Australian originating goods.

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.

Public consultation and stakeholder engagement on the Agreement commenced on 17 June 2020. Stakeholders were engaged during the four years of preparatory discussions under the bilateral Trade Working Group (TWG), established in September 2016. Once negotiations formally commenced, DFAT, in conjunction with other government agencies, consulted widely with industry and other stakeholders. In the 12 months leading up to conclusion of the agreement, DFAT communicated with over 140 organisations and participated in over 250 meetings. These are set out in detail in Attachment 1 to the National Interest Analysis.

In the lead-up to negotiations on the Agreement and throughout negotiations, negotiators regularly engaged with representatives of the business sector, academia and civil society organisations to provide them with an opportunity to share their views and expectations. After every negotiating round, online stakeholder consultation events took place, hosted by the Australian British Chamber of Commerce and/or the Australia-UK Chamber of Commerce.

DFAT hosted a number of peak industry body events updating industry on the Agreement’s negotiations, including biannual peak organisation meetings on trade and investment agreement negotiations and implementation as well as with peak bodies such as the Australian Services Round Table. The Government also convened meetings of the Ministerial Advisory Council to add to transparency around negotiations. Participants in these meetings included representatives from peak industry bodies and civil society. The Agreement was discussed in this forum on 12 August 2020, 25 November 2020 and 26 March 2021.

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*.

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

**ATTACHMENT A**

**Details of the *Customs (United Kingdom Rules of Origin) Regulations 2022***

**Part 1—Preliminary**

**Section 1 – Name**

This section provides that the title of the instrument is the *Customs (United Kingdom Rules of Origin) 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 the whole instrument to commence on the later of the day after the Regulations are registered, and the day on which Schedule 1 to the *Customs Amendment (Australia‑United Kingdom Free Trade Agreement Implementation) Act 2022* (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 Australia‑United Kingdom Free Trade Agreement(Agreement) enters into force for Australia.

**Section 3 – Authority**

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

**Section 4 – Definition**

This section sets out the definitions for the purpose of the Regulations:

* *Act* means the *Customs Act 1901*.
* *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* means the Agreement of that name:

1. set out in Annex 1A of the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994; and
2. as in force for Australia from time to time.

The note to the definition of *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994* indicates, as at 2022, the text of this Agreement is accessible through the Australian Treaties Library on the AustLII website.

The following words and expressions have the meanings given by subsection 153ZRB(1) of the Customs Act:

* *Agreement*
* *Australian originating goods*
* *declaration of origin*
* *Harmonized System*
* *non‑originating materials*
* *originating materials*
* *production*
* *territory of Australia*
* *territory of the United Kingdom*

The Regulations incorporate the definition of Harmonized System that is inserted into the Customs Act by the Customs Implementation Act (see subsection 153ZRB(1)), in accordance with subparagraph 14(1)(a)(i) of the *Legislation Act 2003*.

The Harmonized System is a structure for classifying goods based on internationally agreed descriptors for goods and related six-digit codes administered by the World Customs Organization (the WCO). This six-digit classification uniquely identifies all traded goods and commodities and is uniform across all countries that have adopted the Harmonized System. The WCO, review the system every five years to reflect changes in industry practice, technological developments and evolving international trade patterns.

The expression ‘Harmonised System’ is used in the record‑keeping obligations in sections 12 and 13 of the Regulations to require records be kept of the classification of goods or materials under the Harmonized System. This in turn implements the record keeping obligations under the Agreement.

The Agreement also uses the codes of the Harmonized System. The codes in the Agreement are from the version of the Harmonized System in place from 1 January 2017, commonly referred to as the 2017 version of the Harmonized System.

The 2017 version of the Harmonized System is available free of charge on webpages administered by the WCO.

**Part 2 – Tariff Change Requirement**

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

Annex 4B to the Agreement, amongst other matters, sets out the product specific rules of origin and chapter specific 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 4B to the Agreement that may apply to goods is the change in tariff classification requirement. A change in tariff classification requires that any non-originating materials that are incorporated into the final good undergo a specified change in classification in one or more of the Parties to the Agreement.

Where that requirement applies, 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 153ZRE(3) of the Customs Act refers).

For the purposes of subsection 153ZRE(3) of the Customs Act, 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 territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory 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.

Section 5 of the Regulations 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 the territory of the United Kingdom and/or the territory of Australia. The components of these goods may be produced by yet another producer in either territory or may have been imported by another importer. It is possible that one or more of the non-originating materials from which the final good is produced do not meet the applicable change in tariff classification requirement in Annex 4B to the Agreement (thus failing to meet the requirements for a good to be a UK originating good produced from non-originating materials in subsection 153ZRE(1) of the Customs Act). This may mean that the final good is non‑originating.

However, section 5 of the Regulations allows the examination of each constituent component of each non‑originating material that has not met the change in tariff classification requirement in Annex 4B to the Agreement, to determine whether components used in the production satisfy the change in tariff classification requirement that applies to the final good. If each non-originating material in that component that was produced in the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, satisfies the change in tariff classification requirement for the final good, then the non-originating material will be taken to have met the change in tariff classification requirement and the final good will be a UK originating good (subject to satisfying all other requirements of Division 1P of Part VIII of the Customs Act).

**Part 3 – Regional Value Content Requirement**

Under subsection 153ZRE(6) of the Customs Act, 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:

1. the RVC of the goods is to be worked out in accordance with the Agreement; 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 153ZRE(6) of the Customs Act, Part 3 of the Regulations provides different methods by which the RVC of goods can be calculated. These methods are the build-down method (section 6 of the Regulations) and the build-up method (section 7 of the Regulations). These methods are specified in Article 4.4 of Chapter 4 of the Agreement.

**Section 6 - Build-down method**

Subsection 7(1) of the Regulations provides that the RVC of goods under the build‑down method is worked out using the formula:

where:

***customs value*** means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

***value of non‑originating materials*** means the value, worked out under Part 4, of the non‑originating materials used in the production of the goods.

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

The following is 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 $10.00 (including the costs of international shipment – calculated as set out under Part 4 of the Regulations – Determination of Value) and the value of the non‑originating materials (including packaging) is $3.50. Using the build‑down method, the RVC is calculated as follows:

Therefore, the RVC for the canned coffee is 65 per cent (since the build down method has established that 35 per cent of the good originates from outside the area of the Parties).

**Section 7 – Build-up method**

Subsection 7(1) of the Regulations provides that the RVC of goods under the build-up method is worked out using the formula:

where:

***customs value*** means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

***value of originating materials*** means the value, worked out under Part 4 of these Regulations, of the originating materials used in the production of the goods.

Subsection 7(2) of the Regulations provides that RVC must be expressed as a percentage.

The following is an example using the build-up method to calculate the RVC for canned coffee where the value of originating material for each can of coffee is $4.50. The customs value of each can of coffee is $10.00. Using the build‑up method, the RVC is calculated as follows:

Therefore, the RVC for the canned coffee is 45 per cent (since the build-up method has established that 45 per cent of the materials originate from within the territory of the Parties).

**Part 4 – Determination of value**

For the purposes of new Division 1P of Part VIII of the Customs Act, new subsection 153ZRB(2) of that Act provides that the value of goods is to be worked out in accordance with the regulations, and the regulations may prescribe different valuation rules for different kinds of goods.

Part 4 of the Regulations sets out the rules to determine the value of different kinds of goods that are materials used in the production of goods for the purposes of new Division 1P of Part VIII of the Customs Act.

Part 4 of the Regulations contains section 8 (Value of goods that are originating materials or non-originating materials), section 9 (Value of accessories, spare parts, tools or instructional or other information materials) and section 10 (Value of packaging material and container).

**Section 8 – Value of goods that are originating materials or non‑originating materials**

For the purposes of subsection 153ZRB(2) of the Customs Act, section 8 of the Regulations explains how to work out the value of originating materials and non-originating materials used in the production of goods (subsection 8(1) of the Regulations refers).

Subsection 8(2) of the Regulations provides that the value of the materials is as follows:

1. for materials imported into the territory of the United Kingdom by the producer of the goods:
2. the price paid or payable for the materials at the time of importation; or
3. if the value of the materials cannot be determined under subparagraph (i)—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*;
4. for materials acquired in the territory of the United Kingdom—one of the following chosen by the importer of the goods:
5. the price paid or payable for the materials by the producer of the goods;
6. the value of those materials worked out under paragraph (a) on the assumption that those materials had been imported into the territory of the United Kingdom by the producer of the goods;
7. the earliest ascertainable price paid or payable for the materials in the territory of the United Kingdom;
8. for materials that are produced by the producer of the goods—the sum of all the costs incurred in the production of the materials, including general expenses, and one of the following chosen by the importer of the goods:
9. an amount that is the equivalent of the amount of profit that the producer would make for the materials in the normal course of trade;
10. an amount that is the equivalent of the amount of profit that is usually reflected in the sale of goods of the same class or kind as the materials.

Paragraph 8(2)(a) of the Regulations incorporates the Agreement on Implementation of Article VII of the *General Agreement on Tariffs and Trade 1994* (the GATT). The GATT is not a disallowable legislative instrument and as such, in accordance with paragraph 14(1)(b) and subsection 14(2) of the *Legislation Act 2003* (the Legislation Act), the application, adoption or incorporation of this document would normally be to the document in force at the time the Regulations commence.

Subsection 153ZRB(5) of the Customs Act provides that, despite subsection 14(2) of the Legislation Act, regulations made for the purposes of Division 1P of Part VIII of the Customs Act may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

The term GATT as defined under section 4 of the Regulations is the version of the GATT as in force for Australia from time to time. This means that should the relevant provisions of the GATT be changed, the current version of the GATT is also captured by the Regulations without the need for further amendments.

A note under section 4 of the Regulations provides that the GATT is available to be viewed for free on the Australian Treaties Library on the AustLII website.

For the purposes of paragraph 8(2)(a) of the Regulations, in working out the value of particular materials, subsection 8(3) of the Regulations requires that the costs incurred in the international shipment of the materials must be included.

In working out the value of particular originating materials under subsection (2), the following may be included, to the extent that they have not been taken into account under that subsection:

1. the costs of freight, insurance, packing and all other costs incurred to transport the materials to the location of the producer of the goods;
2. duties, taxes and customs brokerage fees on the materials that:
3. have been paid in either or both of the territory of the United Kingdom and the territory of Australia; and
4. have not been waived or refunded; and
5. are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

1. the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by‑products.

In addition, when working out the value of particular non‑originating materials under subsection (2), the following may be deducted:

1. the costs of freight, insurance, packing and all other costs incurred to transport the materials to the location of the producer of the goods;
2. duties, taxes and customs brokerage fees on the materials that:
3. have been paid in either or both of the territory of the United Kingdom and the territory of Australia; and
4. have not been waived or refunded; and
5. are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

1. the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by‑products.

**Section 9 – Value of accessories, spare parts, tools or instructional or other information materials**

Section 153ZRG of the Customs Act deals with accessories, spare parts, tools or instructional or other information materials.

That section provides for those goods to be UK originating goods when they are imported with other UK originating goods, not invoiced for separately and their amount is customary for the other UK originating goods. In effect, the origins of these goods are disregarded when imported in this way with other UK originating goods.

If paragraphs 153ZRE(6)(a), (b), (c) and (d) of the Customs Act are satisfied in relation to goods:

1. the value of the accessories, spare parts, tools or instructional or other information materials need to be taken into account for the purposes of working out the regional value content of the goods under Part 3 of the Regulations; and
2. if the accessories, spare parts, tools or instructional or other information materials are originating materials—for the purposes of sections 7 and 8 of the Regulations, those accessories, spare parts, tools or instructional or other information materials need to be taken into account as originating materials used in the production of the goods; and
3. if the accessories, spare parts, tools or instructional or other information materials are non-originating materials—for the purposes of sections 6 and 8 of the Regulations, those accessories, spare parts, tools or instructional or other information materials need to be taken into account as non‑originating materials used in the production of the goods.

**Section 10 – Value of packaging material and container**

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

Subsection 153ZRF(1) of the Customs Act 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 this subdivision.

However, if a requirements that applies in relation to the goods is that the goods must have RVC of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:

1. the value of the packing material or container to be taken into account the purposes of working out the RVC of the goods;
2. the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

For the purposes of subsection 153ZRF(2) of the Customs Act, section 10 of the Regulations provides that if paragraphs 153ZRF(1)(a) and (b) of the Customs Act 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:

1. the value of the packaging material or container in which the goods are packaged need to be taken into account for the purposes of working out the RVC of the goods under Part 3 of the Regulations; and
2. if that packaging material or container is an originating material—for the purposes of sections 7 and 8 of the Regulations, that packaging material or container need to be taken into account as an originating material used in the production of the goods; and
3. if that packaging material or container is a non‑originating material—for the purposes of sections 6 and 8 of the Regulations, that packaging material or container need to be taken into account as a non‑originating material used in the production of the goods.

**Part 5—Record keeping obligations**

Part 5 of the Regulations specifies the records that must be kept for goods exported from Australia to the United Kingdom and where the goods are claimed to be originating goods, in accordance with Chapter 4 of the Agreement, for the purpose of obtaining a preferential tariff treatment in the United Kingdom.

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

1. are exported to the territory of the United Kingdom; and
2. are claimed to be Australian originating good, in accordance with Chapter 4 of the Agreement, for the purpose of obtaining a preferential tariff in the territory of the United Kingdom.

Under new subsection 126ARB(2) of the Customs Act, regulations for the purposes of subsection 126ARB(1) may impose such obligations on an exporter or producer of goods.

**Section 11 – Exportation of goods to the United Kingdom—record keeping by exporter who is not the producer of the goods**

For the purposes of subsection 126ARB(1) of the Customs Act, subsection 11(1) of the Regulations provides that an exporter of goods mentioned in subsection 126ARB(1), who issues a declaration of origin for the goods and 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 so purchased; 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 11(1) of the Regulations, subsection 11(2) of the Regulations provides that the records must be kept for at least 4 years starting on the date the Declaration of Origin is issued.

Subsection 11(3) of the Regulations sets out the manner in which a record is to be kept. The exporter may keep the records at any place (whether or not in Australia), and need to ensure that:

* the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and
* 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
* if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

**Section 12 – Exportation of goods to the United Kingdom—record keeping by the producer of the goods**

For the purposes of subsection 126ARB(1) of the Customs Act, subsection 12(1) of the Regulations provides that a producer of goods mentioned in subsection 126ARB(1) who issues a declaration of origin for the goods, whether or not the producer is the exporter of the goods, need to 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 so purchased; 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 12(1) of the Regulations, subsection 12(2) of the Regulations provides that the records must be kept for at least 4 years starting on the date the Declaration of Origin is issued.

Subsection 12(3) of the Regulations sets out the manner in which a record is to be kept. The producer may keep the records at any place (whether or not in Australia), and would need to ensure that:

* the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and
* 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
* 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 (United Kingdom Rules of Origin) Regulations 2022**

ThisDisallowable 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 17 December 2021, the Hon. Dan Tehan MP, then Minister for Trade, Tourism and Investment and the UK Secretary of State for International Trade signed the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland (the Agreement).

The Agreement, among other things, 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 Amendment (Australia-United Kingdom Free Trade Agreement Implementation) Act 2022* (Customs Implementation Act) amends the *Customs Act 1901* (the Customs Act) to fulfil Australia’s obligation under Chapter 4 of the Agreement, which details the Agreement’s rules of origin.

The new rules of origin determine whether goods imported into Australia from the United Kingdom are originating goods (referred to as UK originating goods) and are thereby eligible for preferential rates of customs duty. UK originating goods are goods from the United Kingdom that satisfy the rules of origin; the framework of which is contained in new Division 1P of Part VIII of the Customs Act.

The purpose of the *Customs (United Kingdom Rules of Origin) Regulations 2022* (the Regulations) is to prescribe matters for and relating to the new rules that are required to be prescribed under new Division 1P of Part VIII of the Customs Act.

In particular, the Regulations:

* set out the circumstance under which the tariff change requirement is taken to be satisfied;
* prescribe the method used to determine the regional value content (a calculation used in determining whether a good is a UK originating good) of goods for the purposes of some of the product-specific requirements set out in Annex 4B of the Agreement. Annex 4B are applied by reference in section 153ZRE of new Division 1P of Part VIII of the Customs Act;
* specify the valuation rules that may apply to the goods in Annex 4B;
* prescribe the classes of records that must be kept by Australian exporters and producers of Australian originating goods where they issue a Declaration of Origin.

The expression ‘Declaration of Origin’ is inserted into new subsection 153ZRB(1) of the Customs Act by the Customs Implementation Act. It means a declaration that is in force and that complies with the requirements of Article 4.18 of Chapter 4 of the Agreement. The information required to be provided as part of a Declaration of Origin includes personal information. The Regulations bring UK originating goods within the scope of the preferential customs duty scheme in the Customs Act.

The Regulations commence on the later of the day after the instrument is 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.

**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 the Regulations facilitate the collection and disclosure of personal information, by requiring certain information to be provided in a Declaration of Origin document, the Regulations engage 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 4.22 of Chapter 4 of the Agreement, a Declaration of Origin document provided by the exporter or producer shall support a claim that goods are eligible for preferential tariff treatment in accordance with the Agreement. The information that must be included in a Certificate of Origin document is detailed in Articles 4.18 and Annex 4A to Chapter 4 of the Agreement and includes personal information.

The Customs Implementation Act inserts new sections 126ARB, 126ARC and 126ARD into the Customs Act to enable regulations to prescribe record keeping obligations that apply in relation to goods claimed to be Australian originating goods exported from Australia to the United Kingdom, in accordance with the Agreement.

The regulations prescribed for record keeping obligations are contained in Part 5 of the Regulations, 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 four years starting on the date the Declaration of Origin for the goods is issued. The Regulations implement the record requirements of Article 4.23 of Chapter 4 of the Agreement.

Part 5 of the Regulations together with new sections 126ARB, 126ARC and 126ARD of the Customs Act, operate to allow the UK to verify the origin of goods exported from Australia that are claimed to be Australian originating goods. As the Declaration of Origin includes personal information, this engages the right to privacy. Information contained in the Declaration of Origin may be disclosed to a United Kingdom customs official (within the meaning of section 126ARA of the Customs Act) for the purpose of verifying a claim for a preferential tariff.

The limitation on the right to privacy is not arbitrary and is pursuant to law. Amendments to the Customs Act made by the Customs Implementation Act permit the collection and disclosure of personal information in relation to goods claiming to be originating goods. Neither the Customs Implementation Act nor the Regulations alters the existing protections.

The verification of the eligibility for preferential treatment is required under the Agreement and the measures in the Regulations are directed at the legitimate purpose of facilitating and supporting Australia’s international obligations under the Agreement. 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 Regulations are compatible with human rights because to the extent that it may limit the right to privacy, the limitation is reasonable, necessary and proportionate in achieving a legitimate objective.

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