

EXPLANATORY STATEMENT

Issued by the Assistant Minister for Citizenship, Customs and Multicultural Affairs

Customs Act 1901

Customs (International Obligations) Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Regulations 2025

The *Customs Act 1901* (the Customs Act) concerns customs-related functions and is the legislative authority that sets out the customs requirement for the importation of goods into, and the exportation of goods 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. Paragraph 270(1A)(d) clarifies that regulations made under subsection 270(1) may make provision for and in relation to the remission, refund or waiver of fees charged in respect of any matter under the Customs Act or the regulations.

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

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

Conclusion of the Australia-United Arab Emirates Comprehensive Economic Partnership Agreement (the Agreement) negotiations was announced by the Minister for Trade and Tourism on 17 September 2024, and the Agreement was signed on 6 November 2024. 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 Arab Emirates are eligible goods in accordance with the Agreement (hereon referred to as “UAE originating goods”), and thereby eligible for preferential rates of customs duty.

The *Customs Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025* (the Customs Implementation Act) amends the Customs Act to, among other things, insert new Division 1Q into Part VIII of the Customs Act to implement the provisions under the Agreement dealing with trade in goods and rules of origin, enabling goods that satisfy the rules of origin to enter Australia at preferential rates of customs duty.

The purpose of the *Customs (International Obligations) Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Regulations 2025* (the Regulations) is to amend the *Customs (International Obligations) Regulation 2015* to prescribe two new customs duty refund circumstances in respect of UAE originating goods imported into Australia.

These new circumstances are:

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

The details and effect of the Regulations are set out in Attachment A.

The Department of Foreign Affairs and Trade (DFAT) led Australia's negotiations for the Agreement in consultation with Treasury; the Department of Agriculture, Fisheries and Forestry; the Department of Finance; the Attorney-General's Department; IP Australia; the Department of Health; the Department of Industry, Science and Resources; Austrade; the Department of Home Affairs; and State and Territory governments. Australia's negotiating positions for the Agreement were informed by the views and information provided by stakeholders through both formal and informal consultation.

DFAT undertook regular stakeholder engagement on the Agreement once negotiations commenced in 2023. DFAT consulted extensively across business, civil society, industry and worker organisations, meeting separately with over 97 public, private and civil society stakeholders both virtually and in person. In addition to a call for public submissions from March 2022, negotiators regularly engaged with representatives of the business sector, academia, civil society organisations, and First Nations stakeholders to provide an opportunity to share their views and expectations of the negotiations. Throughout the negotiations, DFAT's Chief Negotiator held regular open forums to provide updates for all interested stakeholders on the status of negotiations. These consultations were conducted via a range of channels including virtual and in-person meetings. DFAT held virtual consultations with peak bodies on the Agreement in January 2024 and engaged regularly with peak bodies during the negotiations.

An Impact Analysis for the Agreement is contained in the Explanatory Memorandum for the Customs Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Bill 2025. The Explanatory Memorandum is available, together with the Bill, on the Australian Parliament House website.¹

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

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 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.

¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7334

Details of the Customs (International Obligations) Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Regulations 2025

Section 1 Name

This section provides that the title of the instrument is the *Customs (International Obligations) Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Regulations 2025* (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 Regulations 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 Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025* (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 Arab Emirates Comprehensive Economic Partnership 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 Act 1901* (the Customs 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 (International Obligations) Regulation 2015* (the International Obligations Regulation) is amended by the Regulations.

Schedule 1—Amendments

Customs (International Obligations) Regulation 2015

It is necessary to provide for importers of goods from the United Arab Emirates (UAE) which satisfy the rules of origin introduced by the Customs Implementation Act (known as “UAE originating goods”) to be entitled to claim a refund of any duty paid when not necessary, or paid in excess, on these goods which are eligible for preferential tariff treatment under the Agreement.

Consequently, a claim for refund of duty paid on goods which are UAE originating goods imported into Australia is available under the Regulations on presentation of the following to the Australian Government agency which administers the Customs Act (being the Department of Home Affairs):

- a certificate of origin and other evidence that the good qualifies as a UAE originating good; and
- such other documentation in relation to the importation as the customs authority may require to satisfactorily evidence the preferential tariff treatment claimed.

The purpose of the Regulations is to specify the circumstances under which an importer of goods may apply for a refund of any excess duty paid on UAE originating goods and goods that would have been UAE originating goods had the importer been in possession of a certificate of origin at the time of importation. The amendments made by items 1 to 6 of the Regulations implement the facility to apply for a refund of customs duty in these circumstances.

Item 1 Section 4

This item amends section 4 of the International Obligations Regulation to insert a new definition of *UAE originating goods*, which has the same meaning as that given by subsection 153ZSB(1) of new Division 1Q of Part VIII of the Customs Act.

Under subsection 153ZSB(1) of the Customs Act, *UAE originating goods* means goods that, under Division 1Q of Part VIII of the Customs Act, are UAE originating goods. Goods produced in the territory of the United Arab Emirates must satisfy the requirements of Division 1Q in order to be UAE originating goods.

Item 2 Section 23 (at the end of the table)

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

- table item 21 – UAE originating goods, where duty has been paid on the goods;
- table item 22 – goods that would have been UAE originating goods if, at the time the goods were imported, the importer held a certificate of origin, or a copy of a certificate of origin, for the goods where both of the following apply:
 - (i) duty has been paid on the goods;
 - (ii) the importer holds a certificate of origin or a copy of a certificate of origin for the goods at the time of making the application for the refund.

The term “certificate of origin” is defined to have the same meaning as in subsection 153ZSB(1) of the Customs Act, which means a certificate that is in force and that complies with the requirements of Article 3.22 of Chapter 3 of the Agreement. In accordance with Article 3.22, this document must also contain the information described in Annex 3B of the Agreement.

Possession of a certificate of origin for goods imported into Australia from the UAE is one of the requirements for the goods to be considered UAE originating under Division 1Q of Part VIII of the Customs Act.

Under paragraph 1 of Article 3.22 of Chapter 3 of the Agreement, a certificate of origin:

- shall contain information, as set out in Annex 3B to Chapter 3 of the Agreement (certificate of origin minimum information requirements);
- may cover one or more goods under one consignment provided that each good qualifies as an originating good separately in its own right;
- shall be in printed or electronic format.

The purpose of the amendments made by this item is to allow for refunds to be made to importers of UAE originating goods who have paid customs duty on the goods where duty was not required to be paid under the provisions of the Customs Act and *Customs Tariff Act 1995* giving effect to the Agreement. It encompasses customs duty paid on goods even where an importer did not have a certificate of origin at the time the goods were imported, but is able to procure one prior to the time the claim for a refund is made, proving the originating status of the goods.

Item 3 At the end of section 24

This item amends section 24 of the International Obligations Regulation to add paragraph (k) to include references to new table items 21 and 22 of the table in section 23 of that Regulation.

Section 24 of the International Obligations Regulation provides that a refund is not payable under table item 6 of the table in clause 1 of Schedule 6 to the *Customs Regulation 2015* (the Customs Regulation) to the extent that an application for a refund relates to one or more of the factors that determine whether goods are eligible for preferential tariff treatment in accordance with a Free Trade Agreement to which Australia is a Party.

Table item 6 of the table in clause 1 of Schedule 6 to the Customs Regulation provides that refunds of duty are payable where duty has been paid because of manifest error of fact or patent misconception of the law. A refund of duty could be paid under item 6 in respect of goods mentioned in new table items 21 and 22 of the table in section 23 if the application does not relate to the factors that determine whether the goods are UAE originating goods.

The purpose of the amendment made by this item is to restrict refunds of duty in relation to UAE originating goods to the extent that the application for a refund relates to any of the factors that determine whether goods mentioned in table items 21 and 22 in section 23 of the International Obligations Regulation are UAE originating goods.

Items 4 to 6

Section 31 of the International Obligations Regulation sets out the formula by which the refund, rebate or remission of customs duty is to be calculated. That is, the amount of customs duty paid on the goods subtracted by the “duty payable”. Under subsection 31(2) of the International Obligation Regulation, the expression “duty payable” is defined to mean either:

- (a) the amount of duty payable on the goods as relevant originating goods (paragraph (a) of the definition of “duty payable” refers); or
- (b) the amount of duty payable on the goods as if they had been relevant originating goods at the time of their importation (paragraph (b) of the definition of “duty payable” refers).

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

Item 4 of the Regulations inserts a reference to table item 21 into the definition of “duty payable” under paragraph 31(2)(a) to cover the circumstance where duty has been paid on UAE originating goods and the importer is in possession of a certificate of origin, or a copy of one at the time of importation.

Item 5 of the Regulations inserts a reference to table item 22 into the definition of “duty payable” under paragraph 31(2)(b) to cover the circumstance where duty has been paid on goods which would have been UAE originating goods at the time of their importation, and the importer is in possession of a certificate of origin, or a copy of one, at the time of applying for a refund.

Item 6 of the Regulations inserts new subparagraph 31(2)(k), for UAE originating goods, into the definition of “relevant originating goods”.

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

Statement of Compatibility with Human Rights

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

Customs (International Obligations) Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Regulations 2025

The 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 6 November 2024, Senator the Hon Don Farrell, the Minister for Trade and Tourism, and his counterpart from the United Arab Emirates (UAE), Minister for Foreign Trade, His Excellency Dr. Thani bin Ahmed Al Zeyoudi, signed the *Comprehensive Economic Partnership Agreement between Australia and the United Arab Emirates* (the Agreement).

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 Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Act 2025* (Customs Implementation Act) amends the *Customs Act 1901* (the Customs Act) to, among other things, insert new Division 1Q into Part VIII of the Customs Act to implement the provisions under the Agreement dealing with trade in goods and rules of origin.

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

Article 3.21 of Chapter 3 of the Agreement provides that an importer may make a claim for preferential tariff treatment under the Agreement on importation into the other Party, on the basis of a Proof of Origin. In order to claim preferential tariff treatment, the importer shall possess a valid certificate of origin, which shall remain valid for one year from the date on which it is issued.

Article 3.31 of Chapter 3 further provides that if a claim for preferential tariff treatment is denied, the importer may appeal the decision according to the importing party's laws and regulations. Where overturned, the importer may apply for a refund of any excess duties paid for a good as a result of the good not having been granted preferential tariff treatment.

The purpose of the *Customs (International Obligations) Amendment (Australia-United Arab Emirates Comprehensive Economic Partnership Agreement Implementation) Regulations 2025* (the Regulations) is to amend the *Customs (International Obligations) Regulation 2015*

to prescribe two new refund circumstances in respect of goods imported into Australia from the UAE, in order to fulfil the above-mentioned obligation, as follows:

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

The expression “certificate of origin” is inserted into new subsection 153ZSB(1) of the Customs Act by the Customs Implementation Act. It means a certificate that is in force and that complies with the requirements of Article 3.22 of Chapter 3 of the Agreement. In accordance with Article 3.22, this document must also contain the information described in Annex 3B of the Agreement. This document is required to meet the documentary requirement for UAE originating goods under new sections 153ZSC, 153ZSD and 153ZSE.

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 that the Regulations involve the disclosure of personal information by requiring an importer to hold a copy of the Certificate of Origin when applying for a refund of customs duty paid where the importer did not make a claim for preferential tariff treatment at the time of importation, the Regulations may engage and limit the right to privacy under Article 17 of the ICCPR. Article 17(1) sets out:

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

Under Article 3.22 of Chapter 3 of the Agreement, a “certificate of origin” document provided by an exporter or a producer or an authorised representative of the exporter or producer shall support a claim that goods are eligible for preferential tariff treatment in accordance with the Agreement. The key information that must be included in a “certificate of origin” document is detailed in Article 3.22 and Annex 3B, of Chapter 3 of the Agreement and includes personal information. The measures in the Regulations implement the requirements of the Agreement by bringing UAE originating goods within the customs duty refund scheme, including the requirement that the importer hold a certificate of origin document in order to be eligible for a refund. Existing provisions in the Customs Act and the *Customs Regulations 2015* in relation to obtaining a refund may require an importer to provide a copy of the certificate of origin with an application for a refund. To the extent that

the certificate of origin may need to be provided in support of a claim for a refund, the right to privacy may be engaged.

The verification of the eligibility for preferential treatment is required under the Agreement and the measures in the Regulations to hold a certificate of origin are directed at the legitimate purpose of facilitating and supporting Australia's international obligations under the Agreement. To the extent that this measure may involve the disclosure of personal information, it 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, any 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 the Regulations may limit the right to privacy, the limitation is reasonable, necessary and proportionate in achieving a legitimate objective.

The Hon Julian Hill MP
Assistant Minister for Citizenship, Customs and Multicultural Affairs