



**Australian Government**

**Immigration and Border Protection Portfolio**

**Submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee regarding the Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 and the Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014.**

**Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014**

Purpose

The purpose of the Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 (the Customs Implementation Bill) is to amend the *Customs Act 1901* (the Customs Act) to provide for new rules of origin for goods that are imported into Australia from Japan to give effect to the Japan-Australia Economic Partnership Agreement (JAEPA).

The Bill also contains amendments which impose certain obligations on exporters of Australian goods to Japan for which a preferential rate of duty will be claimed. Obligations are also imposed on people who produce those goods.

The Governments of Australia and Japan have agreed to be in a position for JAEPA to come into force early in 2015. In Australia our legislative processes will be complete when the JAEPA Bills have been enacted and relevant Regulations are made.

Complementary amendments to the *Customs Tariff Act 1995* contained in Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 (the Customs Tariff Bill) will provide for the preferential entry of goods that meet those rules.

Customs Implementation Bill

In light of comments made by the Export Council of Australia (ECA) and the Customs Brokers and Forwarders Council of Australia (CBFCA) in their submissions to the Senate Legal and Constitutional Affairs Committee on the Korea-Australia Free Trade Agreement (KAFTA) and similar comments made to the JSCOT inquiry on JAEPA by the Australian Chamber of Commerce and Industry (ACCI), the Australian Customs and Border Protection Service (ACBPS) provides the following comments on the Customs Implementation Bill for JAEPA.

Procedural Consistency Across Australia's FTAs

Concerns raised by industry bodies regarding the complexity and lack of harmonisation of the rules of origin processes across Australia's FTAs have been noted.

The approach to rules of origin in JAEPA is consistent with the approach taken in Australia's other preferential trade agreements. A key criterion used to determine origin is the change of tariff classification approach, which is based on the World Customs Organization (WCO) harmonised system (HS). How these rules are presented in the Product Specific Rules schedules differs from one FTA to another. Some agreements are more complex than others.

In terms of origin documentation, JAEPA provides two options for Australian traders: a certificate of origin issued by an authorised body (currently the Australian Chamber of Commerce and Industry (ACCI) or the Australian Industry Group (AiGroup), or an origin certification document (self-declaration) completed by the importer, the exporter or the producer. There is a strong international trend towards self-declaration of origin in FTAs. Self-declaration is supported by a broad range of Australian industry sectors including agriculture. It is particularly beneficial to small and medium-sized enterprises seeking to cut red tape and costs.

The Department of Foreign Affairs and Trade is working closely with ACCI and the AiGroup to ensure the smooth implementation of processes relating to certificates of origin issued by Australian authorised bodies. Both the Japanese and Australian customs authorities are familiar with implementing preferential origin requirements under existing FTAs.

### Communication

ACBPS will continue to work with the Department of Foreign Affairs and Trade, other government agencies and industry to improve access to free trade agreements (FTA) by improving awareness of their scope and the requirements and processes for accessing benefits under these agreements. ACBPS and other Commonwealth departments will also keep working to reduce the complexity of these agreements by, for example, promoting greater standardisation in their language and rules, whenever possible.

ACBPS is currently undertaking an education campaign that will provide industry with information on how to access the benefits of the recently concluded JAEPA by holding seminars in major capital cities. These seminars will be similar in content to those provided for the implementation of other FTAs, including those scheduled in this week for the Korea-Australia Free Trade Agreement.

The seminars are aimed at customs brokers, freight forwarders and other professional service providers and will provide information on how to access preferential tariff treatment under JAEPA. They will include information on how to identify the relevant tariff commitment rules of origin for imported goods, including the Product Specific Rules. They will be underpinned by Instructions and Guidelines and other material which will be available publically on the ACBPS website before the commencement of JAEPA.

### Potential Offences

Australia has an existing penalty regime under its Infringement Notice Scheme (see below) that is established by section 243X of the Customs Act. After the Customs Implementation Bill is passed by the Parliament, the ACBPS will have created customs regulations specific to the JAEPA. These customs regulations will cover record keeping obligations for 'Exportation of goods to Japan - record keeping by exporter who is not the producer of the goods' and 'Exportation of goods to Japan - record keeping by the producer of the goods'.

In respect of 'verification procedures for imports' in Australia has an existing system of verification allowed for under its current laws, that covers all imports, and there is no need to establish new provisions. For example, section 71DA of the Customs Act allows ACBPS to seek additional information on imports (i.e. it allows ACBPS to verify the particulars of an import before it has been released from customs control) and section 214 of the Customs Act (Subdivision J) allows ACBPS to verify the particulars of an import (at the importers premises) post-import.



In respect of 'denial of preferential treatment', the Customs Implementation Bill defines Japanese originating goods as (i.e. wholly obtained (section 153ZNC), produced from originating materials (153ZND) or produced from non-originating materials (153ZNE)). If imported goods do not meet this definition (or requirements) then they are not Japanese originating goods. Only goods that meet the definition (or requirements) of the Customs Implementation Bill can claim or get access to the preferential tariff treatment.

Voluntary disclosure provisions in the Agreement are consistent with existing voluntary disclosure provisions in the Customs Act.

#### Infringement Notice Scheme

An infringement notice is an administrative enforcement penalty that the ACBPS may issue in certain circumstances. Infringement notices are a valuable enforcement and regulatory tool as they can provide a timely and cost-efficient outcome for both ACBPS and the entity that is the subject of an investigation.

The new Infringement Notice Scheme (INS) which commenced on 1 February 2014 is applicable to specific strict liability offences that are listed in Schedule 1ABA of the *Customs Regulations 1926*. A person may be given an infringement notice in relation to any contravention of a provision of the Customs Act that is subject to an infringement notice under this Schedule. In determining whether an infringement notice is an appropriate enforcement response, the ACBPS takes into account a broad range of factors.

Circumstances where ACBPS is more likely to give an infringement notice rather than prosecute for an offence may include:

- where the alleged offence is isolated or non-systematic
- where remedial or risk mitigation action was taken following ACBPS bringing the issues of concern to the person's attention (for example, through a formal warning)
- where the facts that led to the alleged offence are straight forward and are not in dispute
- where the alleged offence does not pose a significant risk to the border or the collection of revenue or
- where the ACBPS considers the infringement notice is necessary to form part of a broader industry or sector compliance and enforcement program.

The Guidelines for the new INS are available for reference at:

<http://www.customs.gov.au/webdata/resources/files/INSGuide2014.pdf>.

The manner in which its Japanese counterparts deal with minor or inadvertent errors associated with compliance with the Rules of Origin clauses of JAEPA is a matter for Japan.

#### Regulations

A number of provisions in JAEPA will be provided for by the making of new Regulations pertaining specifically to JAEPA and by the amendment of the *Customs Regulations 1926* (Customs Regulations).

JAEPA contains rules that will determine whether goods imported into Australia from Japan are originating goods and thereby eligible for preferential rates of duty under the *Customs Tariff Act 1995*. These rules are set out in Chapter 3 of the JAEPA and will be enacted in the Customs Act as new Division 1K of Part VIII of that Act and as new regulations. New Division 1K will be inserted by the Customs Implementation Bill.

Consistent with the regulations which implement, *inter alia*, the Australia-US Free Trade Agreement (the *Customs (Australia-United Free Trade Agreement) Regulations 2004*), the Malaysia-Australia Free Trade Agreement (*Customs (Malaysian Rules of Origin) Regulation 2012*) and the Korea-Australia Free Trade Agreement (*Customs (Korean Rules of Origin) Regulation 2014*), new regulations are required to implement part of JAEPA.

The JAEPA Regulations will implement and specify the different product-specific rules of origin applicable to goods for each tariff heading and subheading in the Harmonized Commodity Description and Coding System for the classification of goods that are contained in Annex 3-A to JAEPA.

In line with Parliamentary practice these Regulations were forwarded to the Office of Parliamentary Counsel for drafting after the introduction of the JAEPA Bills in the Parliament on 29 October 2014.

Under the provisions of the *Legislative Instruments Act 2003* the Regulations (when agreed) are required to be registered on the Federal Register of Legislative Instruments and tabled in both Houses of Parliament for scrutiny.

In order to fulfil Australia's obligations under JAEPA it is proposed that the *Customs Regulations 1926* be amended to prescribe new refund circumstances in respect of goods imported into Australia from Japan.

JAEPA allows for refunds of customs duty to be paid in respect of Japanese originating goods that are imported into Australia. It is possible that an importer may pay customs duty on such goods where no duty, or a lesser amount of duty, should have been paid.

#### Comparison Table of the Specific Provisions of JAEPA and Related Legislation, Regulations and Procedures

In response to a recommendation made by the Senate Legal and Constitutional Affairs Legislation Committee in its report on KAFTA, tabled on 24 September 2014, ACBPS has published a table (<http://www.customs.gov.au/webdata/resources/files/kafta-comparison-table.pdf>) which refers to each of the specific provisions of Chapters 3 and 4 of KAFTA and identifies where those provisions have been adopted whether in the Bills, in regulations or by procedure. A similar table is currently being prepared for the JAEPA Agreement and will be available on the JAEPA web page as soon as possible after the legislative processes are finalised.

## **Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014**

### Purpose

The purpose of the Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 (the Tariff Bill) is to amend the *Customs Tariff Act 1995* (the Customs Tariff) to implement the Japan-Australia Economic Partnership Agreement (JAEPA) by:

- providing free rates of customs duty for goods that are Japanese originating goods in accordance with new Division 1K of Part VIII of the Customs Act;
- amending Schedule 4 to the Customs Tariff to maintain customs duty rates for certain Japanese originating goods in accordance with the applicable concessional item;
- phasing the preferential rates of customs duty for certain goods to Free by 2021; and
- inserting a new Schedule 11 in the Customs Tariff to accommodate the preferential and phasing rates of duty and to maintain excise-equivalent rates of duty on certain alcohol, tobacco and petroleum products. These rates are equivalent to the rates of excise duty payable on these goods when these products are locally manufactured.

### Comment

The ACBPS provides no comments in relation to this Bill.



## Comparison Table of the Specific Provisions of Chapters 3 and 4 of KAFTA and Related Legislation, Regulations or Procedures

### Abbreviations:

Customs Act: Customs Amendment (Korea-Australia Free Trade Agreement Implementation) Act 2014

KAFTA: Korea-Australia Free Trade Agreement

The Regulations: the *Customs (Korean Rules of Origin) Regulations 2014*

The Customs Act: Customs Act 1901

Articles in Chapters 3 and 4 of KAFTA	Legislation/Regulation/Procedure
Article 3.1 Originating Goods	Sections 153ZMC, 153ZMD, 153ZME, and 153ZMF of Part 1 Division 1.1 of the Customs Act and in the Schedule 1 of the Regulations
Article 3.2: Wholly Obtained Goods	Section 153ZMC of the Customs Act and in the Regulations
Article 3.3: Regional Value Content	Subsections 153ZME(7) and (8) of the Customs Act and Part 3 of the Regulations
Article 3.4: Value of Materials	Sections 153ZME and Part 4 of the Regulations
Article 3.5: Accumulation	Paragraph 153ZME(1)(b) of the Customs Act and Part 4 of the Regulations
Article 3.6: <i>De Minimis</i>	Subsections 153ZME (4) and (6) of the Customs Act
Article 3.7: Fungible Goods and Materials	Australia does not legislate for fungible goods as this provision is provided for under the General Accounting Principles of the other Party, that is, Korea
Article 3.8: Accessories, Spare Parts and Tools	Subsection 153ZME(8) of the Customs Act and in Part 4 of the Regulations
Article 3.9: Packaging Materials and Containers for Retail Sale	Section 153ZMF of the Customs Act and in Part 4 of the Regulations
Article 3.10: Packing Materials and Containers for Transportation and Shipment	Part 4 of the Regulations
Article 3.11: Indirect Materials	Subsection 153ZMB(1) of the Customs Act
Article 3.12: Non-Qualifying Operation	Section 153ZMG of the Customs Act
Article 3.13: Outward Processing Zones on the Korean Peninsula	Section 153ZMI of the Customs Act
Article 3.14: Direct Transport	Section 153ZMH of the Customs Act
Article 3.15: Certificate of Origin	Subsections 153ZMB(1), 153ZMC, 153ZMD and 153ZME of the Customs Act
Article 3.16: Authorised Bodies	Administrative procedures
Article 3.17: Claims for Preferential Tariff Treatment	Covered in the Act, the Regulations, refer to Articles 3.1 to 3.15, Section 126AMB, 126AMC and 126AMD of the Customs Act
Article 3.18: Post-Importation Claims for Preferential Tariff Treatment	A new refund circumstance has been included in the <i>Customs Regulations 1926</i>
Article 3.19: Waiver of Certificate of Origin	Sections 153ZMC, 153ZMD and 153ZME of the Customs Act.

Articles in Chapters 3 and 4 of KAFTA	Legislation/Regulation/Procedure
Article 3.20: Discrepancies and Variations	This concept is incorporated in the definition of Certificate of Origin in subsection 153ZMB(1) of the Customs Act.
Article 3.21: Obligations Regarding Exportations	This article is discretionary and Australia has not required the implementation of this article
Article 3.22: Record Keeping Requirements	Section 126AMB of the Customs Act and Part 5 of the Regulations
Article 3.23: Origin Verification	Section 126AMB, 126AMC and 126AMD of the Customs Act
Article 3.24: Verification Visit	This is done by consent and therefore it is not necessary to include it in the Customs Act
Article 3.25: Denial of Preferential Tariff Treatment	Procedures as set out in the Customs Act or normal Customs procedures
Article 3.26: Non-Party Invoices	This concept is incorporated in the definition of Certificate of Origin in subsection 153ZMB(1) of the Customs Act.
Article 3.27: Confidentiality	Section 16 of the <i>Customs Administration Act 1985</i>
Article 3.28: Penalties	Part XIII of the Customs Act
Article 3.29: Appeal Procedures	Sections 167 and 273GA of the Customs Act and procedures
Article 3.30: Definitions	Subsection 153ZMB(1), section 153ZME of the Customs Act, Part 1 of the Regulations, and also Division 2 of Part VIII of the Customs Act
Article 4.1: Objectives	This is a general guide to Chapter 4 and does not specify particular actions for the Parties
Article 4.2: Transparency	Documents relating to KAFTA including the Treaty documents, the Legislation and the Instructions and Guidelines are, or will be, available on the ACBPS website at: <a href="http://www.customs.gov.au/site/Korea-Australia-free-trade-agreement.asp">http://www.customs.gov.au/site/Korea-Australia-free-trade-agreement.asp</a>
Article 4.3: Harmonisation of Documents and Data Elements	Procedural matter
Article 4.4: Use of Automated Systems in the Paperless Trading Environment	Business as usual
Article 4.5: Risk Management	Procedural matter
Article 4.6: Release of Goods	Division 4 of Part IV the Customs Act and procedures
Article 4.7: Advance Rulings	Information on Advance Rulings for Origin is at: <a href="http://www.customs.gov.au/site/Korea-Australia-free-trade-agreement.asp">http://www.customs.gov.au/site/Korea-Australia-free-trade-agreement.asp</a> and for Tariff Advice at: <a href="http://www.customs.gov.au/tariff/tariff-advice.asp">http://www.customs.gov.au/tariff/tariff-advice.asp</a>
Article 4.8: Appeal Procedures	Section 167 and 273GA of the Customs Act
Article 4.9: Customs Cooperation	Procedural matter - ongoing

<b>Articles in Chapters 3 and 4 of KAFTA</b>	<b>Legislation/Regulation/Procedure</b>
Article 4.10: Bilateral Customs Consultation	Procedural matter - ongoing
Article 4.11: Confidentiality	Refer to Section 16 of the <i>Customs Administration Act 1985</i>
Article 4.12: Committee on Rules of Origin and Trade Facilitation	Procedural matter
Article 4.13: Definitions - Customs procedures and goods	The Customs Act and the provisions of <i>Customs Tariff Act 1995</i>