



Australian Government

**Department of Immigration
and Border Protection**

Inquiry into the provisions of the Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015 and the Customs Tariff Amendment (China- Australia Free Trade Agreement Implementation) Bill 2015.

**Foreign Affairs, Defence and Trade Legislation
Committee**

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Introduction

This submission has been prepared by the Department of Immigration and Border Protection (DIBP) to provide the Foreign Affairs, Defence and Trade Legislation Committee with information regarding the Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015 and the Customs Tariff Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015 by DIBP.

Departmental Submission

Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015

Purpose

The purpose of the Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015 (the Customs Implementation Bill) is to amend the *Customs Act 1901* (the Customs Act) to introduce new rules of origin for goods that are imported into Australia from China, and thus give effect to the China-Australia Free Trade Agreement (ChAFTA). These rules are set out in Chapter 3 of the ChAFTA and will be enacted in the Customs Act as new Division 1L of Part VIII of the Act and as new regulations. The Customs Act amendments will enable goods that satisfy the rules of origin to enter Australia at preferential rates of customs duty (i.e. duty free or at a reduced customs duty rate).

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

Complementary amendments to the *Customs Tariff Act 1995* contained in Customs Tariff Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015 (the Customs Tariff Bill) will provide for the preferential entry of goods that meet those rules.

Customs Implementation Bill

Previously, concerns have been raised by industry bodies regarding the complexity and lack of harmonisation of the rules of origin processes across Australia's Free Trade Agreements (FTAs). These concerns have been noted and taken account of wherever possible in the negotiation of the treaty and drafting of the Bills.

The approach to implementing the rules of origin in ChAFTA is consistent with the approach taken in Australia's other preferential trade agreements (e.g. The Japan-Australia Economic Partnership Agreement). The Customs Implementation Bill allows for goods to be considered Chinese goods in three ways:

- Goods that are wholly obtained or produced in China (i.e. goods that are raw products, or products that are made from these raw products);
- Goods produced in China, or China and Australia, from materials that are Chinese or Australian (i.e. goods that are produced only using materials that are from China or Australia); and
- Goods produced in China, or China and Australia, from materials that are not Chinese or Australian (i.e. goods that are produced using materials not from China or Australia).

In terms of origin documentation, ChAFTA provides two options for Australian traders: a certificate of origin issued by an authorised body (for Australian exports this is the Australian Chamber of Commerce and Industry or the Australian Industry Group); or a declaration of origin (self-declaration of origin by the exporter or producer of the good), when the originating goods are covered by an origin advance ruling issued by the importing Party.

An Australian origin advance ruling provides advice on whether particular goods imported into Australia qualify as originating from a particular country with which Australia has an FTA. These rulings are made by DIBP.

When an exporter or producer has an Australian origin advance ruling, ChAFTA allows them to make a declaration of origin rather than apply for a certificate of origin from an authorised body. Given the advantages of declarations over authorised body certificates (i.e. cheaper and faster to acquire), it is expected that traders will take advantage of this provision, and as a result, DIBP will see an increase in the number of Australian origin advance ruling applications for goods being imported from China.

DIBP is increasing its capacity to assess and provide advance rulings on the origin of goods imported from China. This increased capacity in the origin advance rulings service will allow more rulings for both importers and exporters to access the benefits of ChAFTA using declarations.

Communication

DIBP works closely with the Department of Foreign Affairs and Trade (DFAT), other government agencies and key stakeholders to improve the awareness of business benefits available to traders under Australia's broad range of FTAs.

DIBP will, as part of its ongoing FTA education program, hold information seminars in Brisbane, Sydney, Melbourne, Adelaide and Perth with the aim of providing industry with information on accessing preferential customs duty under ChAFTA. These information sessions will follow a similar format to those provided for the implementation of other recent FTAs, such as the Korea-Australia Free Trade Agreement and the Japan-Australia Economic Partnership Agreement.

These information seminars target customs brokers, freight forwarders and other professional service providers, and will provide advice on preferential customs duty commitments under ChAFTA and how to use the rules of origin, including the product specific rules. The information sessions will be underpinned by detailed Instructions and Guidelines and other material, which will be available publically on the DIBP website before the commencement of ChAFTA.

Potential Offences

The DIBP compliance regime assesses non-compliance by importers and exporters, to import and export laws, on a case-by-case basis. DIBP's compliance interactions with Australian traders are risk-based and intelligence-led. These activities range from education and awareness to the applications of penalties and prosecution. The DIBP uses a proportionate response to non-compliant behaviour and risk when making decisions about compliance action.

In anticipation of the Customs Implementation Bill being passed by the Parliament, the DIBP will arrange for customs regulations specific to the ChAFTA to be created.

In relation to offences and sanctions, Australian traders' ChAFTA compliance will be assessed against the existing provisions within the Customs Act. No new Customs Act offences will be created with the introduction of ChAFTA.

Australia has an existing system of verification procedures for imports under its extant laws that cover all imports, and there is no need to establish new provisions to support implementation of ChAFTA. For example, section 71DA of the Customs Act allows an officer of Customs to seek additional information on imports (i.e. it allows an officer to verify the particulars of an import before it has been released to the importer) and section 214 of the Customs Act (Subdivision J) allows the DIBP to verify the particulars of an import (at the importers premises) after the goods have been released to the importer.

Infringement Notice Scheme

DIBP may issue an administrative infringement notice resulting in a fine in certain circumstances. Infringement notices are a valuable enforcement and regulatory tool as they can provide a timely and cost-efficient outcome for Australian traders.

In determining whether an infringement notice is an appropriate compliance action, DIBP takes into account a broad range of factors. Circumstances where DIBP 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 DIBP bringing the issues of concern to the Australian traders 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 DIBP considers the infringement notice is necessary to form part of a broader industry or sector compliance and enforcement programme.

Regulations

A number of provisions in ChAFTA will be implemented in a new set of ChAFTA Regulations and by the amendment of the *Customs (International Obligations) Regulation 2015* (Customs Regulation).

The ChAFTA Regulations will specify the different product specific rules of origin applicable to goods for each tariff heading and subheading in the Harmonized System, which provides an internationally recognised classification of all goods. These ChAFTA regulations will also cover record keeping obligations for both exporters and producers of goods for export to China.

The ChAFTA 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 ChAFTA, the Customs Regulations will be amended to prescribe new refund circumstances in respect of goods imported into Australia from China.

A key Customs Regulation will allow for refunds of customs duty. ChAFTA allows for refunds of customs duty to be paid in respect of Chinese originating goods that are imported into Australia, if an importer has paid 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 ChAFTA and Related Legislation, Regulations and Procedures

In response to previous recommendations made by the Senate Legal and Constitutional Affairs Legislation Committee, in its report on the Korea-Australia Free Trade Agreement (KAFTA), the former Australian Customs and Border Protection Service published a table outlining each of the

specific provisions of Chapters 3 and 4 of KAFTA. The table identified where those provisions were adopted, whether in the implementing Bills, in regulations or by procedure.

A similar table is being prepared for the ChAFTA and it will be available on DIBP's ChAFTA web page as soon as possible after the legislative processes are finalised.

Customs Tariff Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015

Purpose

The purpose of the Customs Tariff Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015 (the Tariff Bill) is to amend the *Customs Tariff Act 1995* (the Customs Tariff) to implement the ChAFTA by:

- providing free rates of customs duty for goods that are Chinese originating goods in accordance with new Division 1L of Part VIII of the Customs Act;
- amending Schedule 4 to the Customs Tariff to maintain customs duty rates for certain Chinese originating goods in line with the applicable concessional item;
- phasing, or reduction over time, of the preferential rates of customs duty for certain Chinese originating goods to Free by the fifth year of phasing; and
- inserting a new Schedule in the Customs Tariff to accommodate the preferential and phasing rates of customs 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 manufactured in Australia.

Comment

DIBP provides no comments in relation to the Customs Tariff Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015.