



**Australian
BORDER FORCE**

Submission – Inquiry into the Customs Amendment (Product Specific Rules Modernisation) Bill 2019 [Provisions]

Senate Legal and Constitutional Affairs Legislation Committee

1 Introduction

The Australian Border Force (the ABF) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) inquiry into the Customs Amendment (Product Specific Rule Modernisation) Bill 2019 (the Bill), following its introduction into the House of Representatives on 12 September 2019.

The Bill will amend the *Customs Act 1901* (the Customs Act) to improve and streamline the way in which the Product Specific Rules of Origin (PSRs) of six of Australia's existing free trade agreements (FTAs) are given effect in domestic legislation.

These six FTAs are:

- Australia-Chile Free Trade Agreement (ACLFTA)
- Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)
- Australia-United States Free Trade Agreement (AUSFTA)
- Malaysia-Australia Free Trade Agreement (MAFTA)
- Korea-Australia Free Trade Agreement (KAFTA)
- Thailand-Australia Free Trade Agreements (TAFTA)

This Bill, if passed, will significantly reduce the amount of time and resources that otherwise would need to be regularly committed to updating PSRs in the regulations for each of the FTAs.

This submission explains the purpose and key measures contained in the Bill. It complements information on the Bill contained in the Explanatory Memorandum¹.

¹ https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6391

2 Australian Border Force Submission

2.1 Purpose of the Bill

This Bill makes a second tranche of amendments to the Customs Act to change the way Australia gives effect to PSRs in domestic legislation, following the earlier *Customs Amendment (Product Specific Rule Modernisation) Act 2018* (the 2018 Act)². Amongst the amendments made by the 2018 Act, was a new approach to how the Customs Act gives effect to the PSRs of three of Australia's FTAs.

The 2018 Act applied this new approach to the following FTAs:

- the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)
- China-Australia Free Trade Agreement (ChAFTA)
- Japan-Australia Economic Partnership Agreement (JAEPA)

This approach was also used to apply the PSRs contained in both the amended Singapore-Australia Free Trade Agreement (Amended SAFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) under the customs act by direct reference.

This Bill proposes similar amendments covering Australia's remaining six FTAs.

2.2 Background of the Bill

Australia's FTAs contain Rules of Origin, including PSRs. PSRs define the minimum requirements that goods made partly or wholly of non-originating materials – being materials that do not originate in a party to the FTA – must meet in order to be considered as 'originating' and therefore eligible for preferential tariff treatment in accordance with the FTA. PSRs are based on the International Harmonized Commodity Description and Coding System (Harmonized System).

Each of Australia's FTAs has a separate PSR Annex. Australia's current practice is to give effect to these PSRs in separate regulations made for each FTA (the FTA regulations).

Five yearly revisions of the Harmonized System by the World Customs Organization (WCO) usually compel FTA parties to update their agreements' PSRs. In Australia's case, this process requires us to amend each of the separate FTA regulations. The latest revision to the Harmonized System entered into force on 1 January 2017, and the WCO recently agreed to the next version, that will enter into force on 1 January 2022. The PSRs of Australia's FTAs will need to be updated into the next version of the Harmonised System once it comes into effect.

The FTA regulations for the six FTAs covered by the Bill range from 210 to 966 pages. Due to their size and the steadily increasing number of Australia's FTAs (currently 11), amendment of the FTA regulations to update the PSRs requires considerable time and resources for what are technical changes that do not alter the operation of the FTA and do not have any financial implications for the Australian Government.

² https://www.apf.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6182

The amendments will enable application of the PSRs in force from time to time, by direct reference in the Customs Act to the Annex of the FTA that contains the PSRs. The Department of Foreign Affairs and Trade (DFAT) and the Office of Parliamentary Counsel have endorsed the process.

Our experience with the 2018 Act demonstrates that the new approach to implementing PSRs is effective. There was no adverse feedback from traders about this new approach in the 2018 Act. As a consequence of the changes in the 2018 Act, Australia was able to meet its commitment to implement revised AANZFTA PSRs by 1 January 2019 and the FTA regulations for the three FTAs were reduced from a total of 2,740 pages to 48 pages.

2.3 Current Requirements under the Customs Act

The Customs Act currently requires the PSRs to be specified in a schedule to the FTA regulations, with each of the FTA regulations named in the Customs Act. Our current practice also requires the PSRs to be structured differently to the PSR Annex of the relevant FTA. This in turn causes the ABF to undertake a lengthy process of transcribing the PSRs for the purpose of the FTA regulation, particularly where an Agreement's PSRs are specified as abbreviations in that Agreement.

Given each FTA can have thousands of rows in the Annex containing the PSRs, this process creates additional risks. It also draws heavily on the resources of the ABF.

Below is an example of the formatting between the PSRs from the text of MAFTA which can be compared with the text in the regulations. These have the same meaning when read alongside the Headnote to the Annex. Businesses appear to be comfortable with either formatting, and DFAT's FTA Portal³ provides detailed guidance on what these terms mean for small and medium enterprises that may be new to using FTAs.

HS Code	Rule as specified in Annex 2 of the Malaysia-Australia Free Trade Agreement	PSR as specified in <i>Customs (Malaysian Rules of Origin) Regulation 2012</i> in Schedule 1 - Product-specific rules of origin
0305	RVC(40) or CTH	Either: <ul style="list-style-type: none"> (a) a change to heading 0305 from any other heading; or (b) no change in tariff classification is required provided that there is a regional value content of at least 40%

³ <https://ftaportal.dfat.gov.au/>

HS Code	Rule as specified in Annex 2 of the Malaysia-Australia Free Trade Agreement	PSR as specified in <i>Customs (Malaysian Rules of Origin) Regulation 2012</i> in Schedule 1 - Product-specific rules of origin
0811	RVC(40) or CTH or no change in tariff classification is required provided that the good is cooked in the territory of the Parties	Either: <ul style="list-style-type: none"> (a) a change to heading 0811 from any other heading; or (b) no change in tariff classification is required provided that: <ul style="list-style-type: none"> i. there is a regional value content of at least 40%; or ii. the good is cooked in Australia or Malaysia

Due to the periodic revisions to the Harmonized System, and the increasing number of FTAs that Australia is a party to, maintaining such an approach for each agreement's PSR becomes administratively more complex over time.

Australia began the process of implementing FTA PSRs by direct reference with the Amended SAFTA. While initially only including the Table to the Annex by direct reference in the Customs Act, this approach was subsequently refined to include the entire Annex through the 2018 Act, removing certain process rules, such as chemical reactions, from the Customs Act.

The CPTPP and the legislation for the PACER Plus Agreement used this approach and all future FTAs that Australia negotiates will apply this approach.

2.4 Expected Impact and Benefit of the Bill

The amendments will recognise the version of the Harmonized System that is currently used for the six FTAs. The amendments will automatically recognise subsequent versions of the Harmonized System in the Customs Act when FTA Parties update the relevant PSR Annex according to their domestic treaty making processes. These changes will continue to deliver benefits into the future as and when the Harmonized System is updated and applied to the PSR Annexes.

For Australia, the domestic process includes referring FTA amendments to the Joint Standing Committee on Treaties (JSCOT) as a Category 3 (minor) treaty action. JSCOT has agreed to treat all Harmonized System transpositions as minor treaty actions. This provides an opportunity for Parliament to scrutinise the transposition of the PSRs to ensure that the updated Annex that is agreed by an FTA's parties only includes changes that are technical in nature and does not alter the commitments made in the treaty.

The Bill will directly apply the PSR Annexes of the ACLFTA, ANZCERTA, AUSFTA, KAFTA, MAFTA and TAFTA in the Customs Act by reference.

Together, these changes will make the legislative framework of the six FTAs consistent in the Customs Act. Given the length of time that has passed since many of these FTAs were first legislated, the Bill makes the structure and language of the legislation more consistent, reflecting

both modern drafting practices and Australia's experience in legislating our binding international trade commitments.

2.5 Compliance with Domestic and International Obligations

The Bill is technical in nature and will not affect the operation of any of the FTAs that are the subject of the Bill, or affect any domestic legislation.

2.6 Consultation

The ABF consulted the Department of Foreign Affairs and Trade, the Office of International Law and the Administrative Law Section of the Attorney-General's Department and the Office of Parliamentary Counsel to ensure the Bill is consistent with Australia's commitments under the six affected FTAs.

Industry raised no concerns with the approach taken with regards to ChAFTA, JAEPA and AANZFTA as a result of the 2018 Act.

3 Conclusion

This Bill will simplify administration of the six identified FTAs, without changing their operation. The Bill will achieve this without requiring changes in practice by traders claiming preferential tariff treatment for goods imported under the FTAs.

These amendments will complete the process of modernising how Australia gives effect to its FTA commitments. This Bill will streamline administrative processes and improve resource allocation.

There will be no additional cost for traders or consumers for goods imported under any FTAs as a result of the passage of this Bill.