

The committee acknowledges this explanation, but notes that the extension is a lengthy one, of seven years—particularly given the indication in the ES that work to substantively update the relevant instruments is already in progress. The committee considers that, while there may be reasons for this timeline, further justification of the need for such a long extension would have been useful in the ES.

The committee draws the extension of directions under the instrument for a further seven years to the attention of the minister and the Senate.

Instrument	Customs (International Obligations) Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Regulations 2017 [F2017L01486]
Purpose	Amends the Customs (International Obligations) Regulation 2015 to implement amendments to the Singapore-Australia Free Trade Agreement agreed in 2016 and enacted for Australia in the <i>Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017</i>
Authorising legislation	<i>Customs Act 1901</i>
Portfolio	Home Affairs
Disallowance	15 sitting days after tabling (tabled Senate 27 November 2017) Notice of motion to disallow must be given by 15 February 2018 ²²

Incorporation of document²³

The *Legislation Act 2003* (Legislation Act) provides that instruments may incorporate, by reference, part or all of Acts, legislative instruments and other documents as they exist at particular times:

- as in force from time to time (which allows any future amendment or version of the document to be automatically incorporated);
- as in force at an earlier specified date; or
- as in force at the commencement of the instrument.

22 In the event of any change to the Senate's sitting days, the last day for the notice would change accordingly.

23 Scrutiny principle: Senate Standing Order 23(3)(a).

The manner in which the material is incorporated must be authorised by legislation.

Subsections 14(1)(a) and 14(3) of the Legislation Act provide that an instrument may apply, adopt or incorporate provisions of an Act or a Commonwealth disallowable legislative instrument, with or without modification, as in force at a particular time or as in force from time to time.

Paragraph 14(1)(b) of the Legislation Act allows a legislative instrument to incorporate any other document in writing which exists at the time the legislative instrument is made. However, subsection 14(2) provides that such other documents may not be incorporated as in force from time to time. They may only be incorporated as in force or existence at a date before or at the same time as the legislative instrument commences, unless a specific provision in the legislative instrument's authorising Act (or another Act of Parliament) overrides subsection 14(2) to specifically allow the documents to be incorporated in the instrument as in force or existence from time to time.

With reference to the above, the committee notes that item 2 of Schedule 1 to the instrument inserts into the Customs (International Obligations) Regulation 2015 (principal regulations) a definition of 'SAFTA', defined as 'the Singapore-Australia Free Trade Agreement done at Singapore on 17 February 2003, as amended from time to time'. The definition is then used in relation to reporting and record-keeping obligations under sections 6 and 9 of the principal regulations.

The explanatory statement (ES) to the instrument states that the definition is being inserted into the principal regulations because the (same) definition which was previously in section 153UA of the *Customs Act 1901*, is to be repealed from the Act by item 9 of Schedule 2 of the *Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017*.

However, neither the instrument nor the ES identifies a legislative provision overriding subsection 14(2) of the Legislation Act which would authorise the incorporation of the SAFTA treaty into the instrument as in force from time to time.

The committee requests the minister's advice as to the legislative authority for incorporation in the instrument of the Singapore-Australia Free Trade Agreement as in force from time to time.