



# Customs Act 1901

No. 6, 1901

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This compilation is in 5 volumes

Volume 1: sections 1–126C

**Volume 2:** sections **126D–183U**

Volume 3: sections 183UA–269SK

Volume 4: sections 269SM–279  
Schedule

Volume 5: Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Customs Act 1901* that shows the text of the law as amended and in force on 20 March 2024 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Part VIA—Electronic communications**

### **126D Comptroller-General of Customs to maintain information systems**

The Comptroller-General of Customs must establish and maintain such information systems as are necessary to enable persons to communicate electronically with the Department.

### **126DA Communications standards and operation**

- (1) After consulting with persons likely to be affected, the Comptroller-General of Customs must determine, and cause to be published in the *Gazette*:
  - (a) the information technology requirements that have to be met by persons who wish to communicate with the Department electronically; and
  - (c) the information technology requirements that have to be met to satisfy a requirement that a person's signature be given to the Department in connection with information when the information is communicated electronically; and
  - (d) the information technology requirements that have to be met to satisfy a requirement that a document be produced to the Department when the document is produced electronically.
- (2) The Comptroller-General of Customs may:
  - (a) determine alternative information technology requirements that may be used; and
  - (b) without limiting paragraph (a), determine different information technology requirements that may be used in different circumstances or by different classes of persons.

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**126DB Authentication of certain electronic communications**

An electronic communication that is made to the Department and is required or permitted by this Act is taken to be made by a particular person, even though the person did not authorise the communication, if:

- (a) the communication meets the information technology requirements that the Comptroller-General of Customs has determined under section 126DA have to be met to satisfy a requirement that the person's signature be given to the Department in connection with information in the communication; and
  - (b) the person did not notify the Department of a breach of security relating to those information technology requirements before the communication;
- unless the person provides evidence to the contrary.

**126DC Records of certain electronic communications**

- (1) The Comptroller-General of Customs must keep a record of each electronic communication made as required or permitted by this Act. The Comptroller-General of Customs must keep the record for 5 years after the communication is made.

Note: It does not matter whether the communication is made to the Department or by the Department or a Collector.

*Evidentiary value of the record*

- (2) The record kept is admissible in proceedings under this Act.
- (3) In proceedings under this Act, the record is prima facie evidence that a particular person made the statements in the communication, if the record purports to be a record of an electronic communication that:
  - (a) was made to the Department; and
  - (b) met the information technology requirements that the Comptroller-General of Customs has determined under section 126DA have to be met to satisfy a requirement that

the person's signature be given to the Department in connection with information in the communication.

- (4) In proceedings under this Act, the record is prima facie evidence that the Department or a Collector made the statements in the communication, if the record purports to be a record of an electronic communication that was made by the Department or a Collector.

### **126DD Authentication, records and *Electronic Transactions Act 1999***

Sections 126DB and 126DC have effect despite section 15 of the *Electronic Transactions Act 1999*.

### **126E Communication to Department when information system is temporarily inoperative**

- (1) If:
- (a) an information system becomes temporarily inoperative; or
  - (b) an information system that has become temporarily inoperative again becomes operative;
- the Comptroller-General of Customs must cause notice of the occurrence to be given:
- (c) on the Department's website; and
  - (d) where practicable, by email to persons who communicate with the Department electronically.
- (2) If an information system is temporarily inoperative, information that a person could otherwise have communicated electronically to the Department by means of the system may be communicated to the Department in either of the following ways:
- (a) if another information system by means of which the person can communicate information to the Department is operative—electronically by means of that other system;
  - (b) by document given or sent to an officer doing duty in relation to the matter to which the information relates.

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- (3) If:
- (a) because an information system is temporarily inoperative, a person communicates information to an officer by document in accordance with paragraph (2)(b); and
  - (b) the Comptroller-General of Customs causes notice to be given under paragraph (1)(b) stating that the information system has again become operative;
- the person must communicate the information electronically to the Department within 24 hours after the notice was given.

Penalty: 50 penalty units.

### **126F Payment when information system is temporarily inoperative**

- (1) This section applies when a person who is liable to make a payment to the Commonwealth and would ordinarily make the payment electronically is unable to do so because an information system is temporarily inoperative.
- (2) The person may give an undertaking to the Comptroller-General of Customs to make the payment as soon as practicable after, and in any case not later than 24 hours after, the Comptroller-General of Customs causes notice to be given under paragraph 126E(1)(b) stating that the information system has again become operative.
- (3) If the person is notified by an officer of Customs that the undertaking is accepted:
  - (a) this Act has the effect that it would have if the payment had been made; and
  - (b) the person must comply with the undertaking.

Penalty: 50 penalty units.

### **126G Meaning of *temporarily inoperative***

An information system that has become inoperative is not taken to be ***temporarily inoperative*** for the purposes of this Part unless the Comptroller-General of Customs is satisfied that the period for which it has been, or is likely to be, inoperative is significant.

**126H Comptroller-General of Customs may arrange for use of computer programs to make decisions etc.**

- (1) The Comptroller-General of Customs may arrange for the use, under the control of the Comptroller-General of Customs, of computer programs for any purposes for which the Comptroller-General of Customs, a Collector or an officer may, or must, under the provisions mentioned in subsection (3):
  - (a) make a decision; or
  - (b) exercise any power, or comply with any obligation; or
  - (c) do anything else related to making a decision, exercising a power, or complying with an obligation.
- (2) The Comptroller-General of Customs, Collector or officer (as the case requires) is taken to have:
  - (a) made a decision; or
  - (b) exercised a power, or complied with an obligation; or
  - (c) done something else related to the making of a decision, the exercise of a power, or the compliance with an obligation; that was made, exercised, complied with, or done (as the case requires) by the operation of a computer program under an arrangement made under subsection (1).
- (3) For the purposes of subsection (1), the provisions are:
  - (a) Parts IV and VI; and
  - (b) any provision of this Act or of the regulations that the Comptroller-General of Customs, by legislative instrument, determines for the purposes of this paragraph.

## Part VII—Ships' stores and aircraft's stores

### 127 Use of ships' and aircraft's stores

- (1) Ships' stores and aircraft's stores, whether shipped in a place outside Australia or in Australia:
  - (a) shall not be unshipped or unloaded; and
  - (b) shall not be used before the departure of the ship or aircraft from its last port of departure in Australia otherwise than for the use of the passengers or crew, or for the service, of the ship or aircraft.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the Collector has approved the unshipping, unloading or use.
- (4) An approval under subsection (3) may only be given on application under subsection (5).
- (5) The master or owner of a ship, or the pilot or owner of an aircraft, may apply for an approval under subsection (3) in respect of the ship or aircraft.
- (6) An application under subsection (5) must:
  - (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form.
- (7) The Comptroller-General of Customs may approve different forms for applications to be made under subsection (5) in different circumstances, by different kinds of masters or owners of ships or

pilots or owners of aircraft or in respect of different kinds of ships or aircraft.

- (8) An approval given to a person under subsection (3) is subject to any conditions specified in the approval, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.
- (9) A person commits an offence of strict liability if:
- (a) the person is the holder of an approval under subsection (3); and
  - (b) the person does an act or omits to do an act; and
  - (c) the act or omission breaches a condition of the approval.

Penalty for contravention of this subsection: 60 penalty units.

### **128 Unshipment of ships' and aircraft's stores**

Ships' stores and aircraft's stores which are unshipped or unloaded with the approval of the Collector shall be entered:

- (a) for home consumption; or
- (b) for warehousing.

### **129 Ships' and aircraft's stores not to be taken on board without approval**

- (1) The master or owner of a ship or the pilot or owner of an aircraft may make application to a Collector for the approval of the Collector to take ship's stores or aircraft's stores on board the ship or aircraft and the Collector may grant to the master, pilot or owner of the ship or aircraft approval to take on board such ship's stores or such aircraft's stores as the Collector, having regard to the voyage or flight to be undertaken by the ship or aircraft and to the number of passengers and crew to be carried, determines.

Note: See subsection (5) for application requirements.

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- (2) Approval under the last preceding subsection may be granted subject to the condition that the person to whom the approval is granted complies with such requirements as are specified in the approval, being requirements that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts.
- (3) If, in relation to any goods, a person to whom an approval has been granted under subsection (1) fails to comply with a requirement specified in the approval:
- (a) he or she commits an offence against this Act punishable, upon conviction, by a penalty not exceeding 60 penalty units; and
  - (b) if he or she failed to comply with a requirement before the goods were placed on board the ship or aircraft—the removal of the goods for the purpose of placing the goods on board the ship or aircraft shall, for the purposes of paragraph 229(1)(g), be deemed not to have been authorized by this Act.
- (3A) Subsection (3) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (4) Ship's stores or aircraft's stores taken on board a ship or aircraft otherwise than in accordance with an approval granted under subsection (1) shall, notwithstanding that the goods are taken on board by authority of an entry under this Act, be deemed, for the purposes, to be prohibited exports.
- (5) An application under subsection (1) must:
- (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form.
- (6) The Comptroller-General of Customs may approve different forms for applications to be made under subsection (1) in different circumstances, by different kinds of masters or owners of ships or

pilots or owners of aircraft or in respect of different kinds of ships or aircraft.

### **130 Ship's and aircraft's stores exempt from duty**

Except as provided by the regulations, ship's stores and aircraft's stores are not liable to duties of Customs.

### **130A Entry not required for ship's or aircraft's stores**

Goods consisting of ship's stores or aircraft's stores, other than goods of a prescribed kind, may be taken on board a ship or aircraft in accordance with an approval granted under section 129 notwithstanding that an entry has not been made in respect of the goods authorizing the removal of the goods to the ship or aircraft and duty has not been paid on the goods.

### **130B Payment of duty on ship's or aircraft's stores**

- (1) Where duty is payable on goods taken on board a ship as ship's stores, or on board an aircraft as aircraft's stores, in accordance with an approval granted under section 129 without duty having been paid on the goods, the duty shall, on demand for payment of the duty being made by a Collector to the master or owner of the ship or to the pilot or owner of the aircraft, be paid as if the goods had been entered for home consumption on the day on which the demand was made.
  - (2) The master or owner of a ship, if so directed by an officer, must give to a Collector a return, in accordance with the approved form, relating to the ship's stores of the ship and to goods taken on board the ship as ship's stores.
- (2AA) The return referred to in subsection (2) must include details of any:
- (a) drugs that are prohibited imports; and
  - (b) firearms; and
  - (c) ammunition;

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that are ship's stores of the ship or have been taken on board the ship as ship's stores.

- (2A) The owner of an aircraft, or, if so directed by an officer, the pilot of an aircraft, shall:
- (a) whenever so directed by an officer, give to a Collector particulars of:
    - (i) the prescribed aircraft's stores of the aircraft; and
    - (ii) goods taken on board the aircraft as prescribed aircraft's stores; and
  - (b) immediately before the departure of the aircraft from Australia, give to a Collector a return, in accordance with the approved form, relating to drugs that are prohibited imports and:
    - (i) are aircraft's stores of the aircraft; or
    - (ii) have been taken on board the aircraft as aircraft's stores.
- (3) A person who fails to comply with a direction under subsection (2) or (2A) commits an offence punishable upon conviction by a penalty not exceeding 60 penalty units.
- (3A) Subsection (3) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (4) In subsection (2A), *prescribed aircraft's stores* means prescribed aircraft's stores within the meaning of section 129.

### 130C Interpretation

In this Part:

*aircraft* does not include:

- (a) an aircraft that is not currently engaged in making international flights; or
- (b) an aircraft that is currently engaged in making international flights but is about to make a flight other than an international flight.

***aircraft's stores*** means stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft.

***international flight***, in relation to an aircraft, means a flight, whether direct or indirect, between:

- (a) a place in Australia from which the aircraft takes off and a place outside Australia at which the aircraft lands or is intended to land; or
- (b) a place outside Australia from which the aircraft takes off and a place in Australia at which the aircraft lands.

***international voyage***, in relation to a ship, means a voyage, whether direct or indirect, between a place in Australia and a place outside Australia.

***ship*** does not include:

- (a) a ship that is not currently engaged in making international voyages; or
- (b) a ship that is currently engaged in making international voyages but is about to make a voyage other than an international voyage.

***ship's stores*** means stores for the use of the passengers or crew of a ship, or for the service of a ship.

**Part VIII** The duties

**Division 1** The payment and computation of duties generally

Section 131A

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**Part VIII—The duties**

**Division 1—The payment and computation of duties generally**

**131A Fish caught by Australian ships**

Fish and other goods the produce of the sea which are caught or gathered by a ship which:

- (a) is registered in Australia; and
  - (b) was fitted out for the voyage during which those fish or goods were caught or gathered at a port or place in Australia;
- shall not, when brought into Australia by that ship, or by a tender (which is registered in Australia) of that ship, be liable to any duty of Customs, or be subject to customs control.

**131AA No duty on goods for Timor Sea petroleum activities purpose**

- (1) Goods taken out of Australia for the Timor Sea petroleum activities purpose are not liable to any duty of Customs in relation to the taking of the goods out of Australia.
- (2) Goods brought into Australia for the Timor Sea petroleum activities purpose are not liable to any duty of Customs in relation to the bringing of the goods into Australia.

**131B Liability of Commonwealth authorities to pay duties of Customs**

- (1) Subject to subsection (2), to the extent that, but for this section, an Act (whether enacted before, on or after 1 July 1987) would:
  - (a) exempt a particular Commonwealth authority from liability to pay duties of Customs; or

- (b) exempt a person from liability to pay duties of Customs in relation to goods for use by a particular Commonwealth authority;
- then, by force of this section, the exemption has no effect.
- (2) Subsection (1) does not apply to an exemption if:
- (a) the provision containing the exemption is enacted after 30 June 1987; and
  - (b) the exemption expressly refers to duties of Customs (however described).

### **132 Rate of import duty**

- (1) Subject to this section and to sections 105C and 132B, the rate of any import duty payable on goods is the rate of the duty in force when the goods are entered for home consumption.
- (2) Where goods are entered for home consumption more than once before import duty is paid on them, the rate at which the import duty is payable is the rate of the duty in force when the goods were first entered for home consumption.
- (3) For the purposes of this section, if an entry for home consumption in respect of goods is withdrawn under section 71F and the goods are subsequently entered for warehousing, the entry for home consumption is to be disregarded.
- (4) The rate of any import duty on goods about which the owner, or a person acting on behalf of the owner, is required by section 71 to provide information is the rate of the duty in force at the later of the following times (or either of them if they are the same):
- (a) the time when the information is provided;
  - (b) the time when the goods arrive in Australia.
- (5) The rate of any import duty on goods:
- (a) that are goods of a kind referred to in paragraph 68(1)(e); and
  - (b) about which neither the owner, nor any person acting on behalf of the owner, is required to provide information;

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is the rate of duty in force at the time when the goods arrive in Australia.

**132AA When import duty must be paid**

*General rule*

- (1) Import duty payable on goods described in an item of the following table must be paid by the time indicated in the item. Import duty on goods covered by both items 1 and 2 is payable by the time indicated in item 2.

<b>When import duty must be paid</b>		
<b>Item</b>	<b>Description of goods</b>	<b>Time by which duty on goods must be paid</b>
1	Goods entered for home consumption	Time of entry of the goods for home consumption
2	Goods prescribed by the regulations and entered for home consumption	Time worked out under the regulations made for the purposes of this item
3	Goods about which the owner, or a person acting on behalf of the owner, is required by section 71 to provide information	When the information is provided, or when the goods arrive in Australia, whichever is later
4	Goods of a kind referred to in paragraph 68(1)(e) that are not covered by item 3	Time of delivery of the goods into home consumption

Note: The regulations may prescribe goods by reference to classes, and may provide for different times for payment for different classes of goods. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Regulations prescribing goods*

- (2) For the purposes of subsection (1), goods may be prescribed by reference to a class identified by reference to characteristics or actions of the persons importing goods in the class. This does not limit the ways in which goods may be prescribed.

*Regulations setting time for payment of duty*

- (3) For the purposes of subsection (1), the regulations may provide for the time by which import duty must be paid to be worked out by reference to a time specified by the Comptroller-General of Customs. This does not limit the ways in which the regulations may provide for working out that time.

*Exceptions to this section*

- (4) Subsection (1) has effect subject to the provisions listed in column 2 of the following table:

<b>Exceptions to this section</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Provisions</b>	<b>Subject</b>
1	paragraphs 69(8)(h) and 70(7)(b)	payment of duty on certain goods delivered into home consumption without entry for home consumption
3	section 162A	temporary importation of goods without paying duty

**132A Prepayment of duty**

Where, before goods are entered for home consumption, an amount is paid to a Collector in respect of duty that may become payable in respect of the goods, the amount shall, upon the goods being entered for home consumption, be deemed, for the purposes of this Act, to be an amount of duty paid in respect of the goods.

**132B Declared period quotas—effect on rates of import duty**

- (1) If at any time the Comptroller-General of Customs is of the opinion that, for the reason that persons are anticipating, or may anticipate, an increase in the rate of duty applicable to goods of a particular kind, the quantity of goods of that kind that may be entered for home consumption during a period is likely to be greater than it would otherwise be, the Comptroller-General of

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**Section 132B**

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Customs may, by notice published in the *Gazette*, declare that that period is, for the purposes of this section, a declared period with respect to goods of that kind.

- (2) The Comptroller-General of Customs shall, in a notice under subsection (1) declaring that a period is a declared period for the purposes of this section, specify in the notice another period being a period ending before the commencement of the declared period, as the base period in relation to the declared period.
- (3) Where the Comptroller-General of Customs makes a declaration under subsection (1) specifying a declared period in respect of goods of any kind, he or she may, in respect of that kind of goods, or goods of a kind included in that kind of goods, make an order in writing (in this Act referred to as a *quota order*) applicable to a person specified in the order, being an order that states that the person's quota, for the declared period, in respect of goods of the kind to which the order relates is such quantity as is specified in the order or is nil, and, subject to subsection (4) of this section, the order comes into force forthwith.
- (4) Where, during a declared period, a person enters goods for home consumption, being goods of a kind in respect of which there is no quota order in force that is applicable to that person for the declared period, the Comptroller-General of Customs may, before authority to deal with the goods is given under section 71C and whether or not the declared period has expired, make, under subsection (3), a quota order that is applicable to that person for that declared period in respect of goods of that kind, and a quota order so made shall, unless the contrary intention appears in the order, be deemed to have come into force immediately before the time of entry of the goods.
- (5) In making a quota order under subsection (3), or revoking or varying a quota order under section 132C, with respect to a person, the Comptroller-General of Customs shall have regard to the quantity of goods (if any) of the kind to which the order relates that, at any time or times during the period that is the base period with respect to the declared period to which the order relates or

during any other period that the Comptroller-General of Customs considers relevant, the person has entered for home consumption, and to such other matters as the Comptroller-General of Customs considers relevant.

(6) If:

- (a) at any time during a declared period, a person has entered any goods (in this section referred to as the *relevant goods*) for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person's quota in respect of goods of that kind is a quantity specified in the order;
- (b) the quantity of the relevant goods so entered, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota; and
- (c) the amount of import duty paid or payable on the relevant goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in accordance with the rate of duty in force on the day immediately following the last day of the declared period;

the rate of import duty payable on the relevant goods, or on so much of the relevant goods as, together with goods (if any) of that kind previously entered for home consumption by the person during the declared period, exceeds the quota, is the rate of duty in force on the day immediately following the last day of the declared period.

(7) If:

- (a) at any time during a declared period, a person has entered any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that states that the person's quota in respect of goods of that kind is nil; and
- (b) the amount of import duty paid or payable on those goods at the rate of duty in force at the time of entry of the goods is less than the amount of duty applicable to those goods in

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accordance with the rate of duty in force on the day immediately following the last day of the declared period; the rate of import duty payable on the goods is the rate of duty in force on the day immediately following the last day of the declared period.

- (8) Where at any time during a declared period, a person enters any goods for home consumption, being goods of a kind in respect of which there is in force at the time of entry of the goods a quota order that is applicable to that person for the declared period, the Commonwealth has the right, before authority to deal with the goods is given under section 71C, in addition to requiring import duty to be paid on the goods at the rate in force at that time of entry of the goods, to require and take, for the protection of the revenue in relation to any additional amount of duty that may become payable on the goods, or on a part of the goods, by virtue of the operation of subsection (6) or (7), security by way of cash deposit of an amount equal to the amount of duty payable on the goods, or on that part of the goods, at the rate in force at the time of entry of the goods.

**132C Revocation and variation of quota orders**

- (1) The Comptroller-General of Customs may, by writing under his or her hand, revoke or vary a quota order at any time before the expiration of the declared period to which the quota order relates.
- (2) Where a quota order is revoked by the Comptroller-General of Customs under this section, the revocation shall be deemed to have taken effect on the day on which the order came into force.
- (3) The revocation of a quota order under this section does not prevent the making of a further quota order that is applicable to the person to whom the revoked quota order was applicable and that has effect with respect to the declared period in respect of which the revoked quota order had effect, whether or not the kind of goods to which the further quota order relates is the same as the kind of goods to which the revoked quota order related.

- (4) Subject to subsection (5), a variation of a quota order under this section shall, for the purposes of section 132B, be deemed to have had effect on and from the day on which the quota order came into force.
- (5) Where:
- (a) a quota order applicable to a person states that the person's quota in respect of goods of the kind to which the order relates is a quantity specified in the order; and
  - (b) the Comptroller-General of Customs varies the order in such a way that the order specifies a lesser quantity or states that the person's quota is nil;
- the variation has effect on and from the day on which it is made.

### **132D Service of quota orders etc.**

The Comptroller-General of Customs shall, as soon as practicable after he or she makes a quota order or revokes or varies a quota order, cause a copy of the quota order or of the revocation or variation, as the case may be, to be served on the person to whom the quota order is applicable.

### **133 Export duties**

- (1) All export duties shall be finally payable at the rate in force when the goods are actually exported but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.
- (2) Duty imposed on coal by the *Customs Tariff (Coal Export Duty) Act 1975* shall be payable at the rate in force when the coal is exported and shall be paid before the coal is exported or within such further period as the Collector allows.
- (5) Duty imposed on Alligator Rivers Region uranium concentrate by the *Customs Tariff (Uranium Concentrate Export Duty) Act 1980* shall be payable at the rate in force when that concentrate is exported and shall be paid before that concentrate is exported or within such further period as the Collector allows.

### **134 Weights and measures**

Where duties are imposed according to weight or measure the weight or measurement of the goods shall be ascertained according to the standard weights and measures by law established.

### **135 Proportion**

Where duties are imposed according to a specified quantity weight size or value the duties shall apply in proportion to any greater or lesser quantity weight size or value.

### **136 Manner of fixing duty**

Whenever goods (other than beer that is entered for home consumption after 31 January 1989) are sold or prepared for sale as or are reputed to be of a size or quantity greater than their actual size or quantity duties shall be charged according to such first-mentioned size or quantity.

### **137 Manner of determining volumes of, and fixing duty on, beer**

- (1) For the purposes of the Customs Acts in their application to beer that is entered for home consumption after 31 January 1989 in a bulk container, the container in which the beer is packaged shall be treated as containing:
  - (a) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered before 1 July 1991 and the actual volume of the contents of the container does not exceed 101.5% of the nominated volume—the nominated volume;
  - (b) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered before 1 July 1991 and the actual volume of the contents of the container exceeds 101.5% of the nominated volume—a volume equal to the sum of:
    - (i) the nominated volume; and

- (ii) the volume by which the actual volume of the contents of the container exceeds 101.5% of the nominated volume;
  - (c) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered after 30 June 1991 and the actual volume of the contents of the container does not exceed 101% of the nominated volume—the nominated volume;
  - (d) if the volume of the contents of the container is nominated for the purpose of the entry, the beer is entered after 30 June 1991 and the actual volume of the contents of the container exceeds 101% of the nominated volume—a volume equal to the sum of:
    - (i) the nominated volume; and
    - (ii) the volume by which the actual volume of the contents of the container exceeds 101% of the nominated volume; or
  - (e) if the volume of the contents of the container is not nominated for the purpose of the entry—the actual volume of the contents of the container;
- and duty on beer so entered shall be fixed accordingly.
- (2) For the purposes of the application of the Customs Acts in their application to beer that is entered for home consumption after 31 January 1989 in a container other than a bulk container, the container in which the beer is packaged shall be treated as containing:
- (a) if the volume of the contents of the container is indicated on a label printed on, or attached to, the container and the actual volume of the contents of the container does not exceed 101.5% of the volume so indicated—the volume so indicated;
  - (b) if the volume of the contents of the container is indicated on a label printed on, or attached to, the container and the actual volume of the contents of the container exceeds 101.5% of the volume so indicated—a volume equal to the sum of:
    - (i) the volume so indicated; and

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- (ii) the volume by which the actual volume of the contents of the container exceeds 101.5% of the volume so indicated; or
  - (c) if the volume of the contents of the container is not indicated on a label printed on, or attached to, the container—the actual volume of the contents of the container;
- and duty on beer so entered shall be fixed accordingly.
- (3) In determining, for the purposes of this section, the volume of the contents of containers entered for home consumption, a Collector is not required to take a measurement of the contents of each container so entered but may employ such methods of sampling as are approved in writing by the Comptroller-General of Customs for the purpose.
  - (4) In this section:

*bulk container*, in relation to beer, means a container that has the capacity to have packaged in it more than 2 litres of beer.

*container*, in relation to beer, includes a bottle, can or any other article capable of holding liquids.

**142 Measurement for duty**

Goods charged with duty by measurement shall at the expense of the owner be heaped piled sorted framed or otherwise placed in such manner as the Collector may require to enable measurement and account thereof to be taken; and in all cases where the same are measured in bulk the measurement shall be taken to the full extent of the heap or pile.

**145 Value of goods sold**

When the duty on any goods sold at any Collector's sale shall be ad valorem the value of such goods shall if approved by the Collector be taken to be the value as shown by the sale.

### **148 Derelict goods dutiable**

All goods derelict flotsam jetsam or lagan or landed saved or coming ashore from any wreck or sold as droits of Admiralty shall be charged with duty as if imported in the ordinary course.

### **149 Duty on goods in report of cargo that are not produced or landed**

- (1) If any dutiable goods which are included in the report of any ship or aircraft are not produced to the officer the master or owner of the ship or the pilot or owner of the aircraft shall on demand by the Collector pay the duty thereon as estimated by the Collector unless the goods are accounted for to the satisfaction of the Collector.
- (2) For the purposes of sections 132 and 132AA, goods to which subsection (1) of this section applies that have not been entered for home consumption shall be taken to have been entered for home consumption on the day on which the demand for duty on the goods is made.

### **150 Samples**

Small samples of the bulk of any goods subject to customs control may, with the approval of a Collector, be delivered free of duty.

### **152 Alterations to agreements where duty altered**

- (1) If after any agreement is made for the sale or delivery of goods duty paid any alteration takes place in the duty collected affecting such goods before they are entered for home consumption, or for export, as the case may be, then in the absence of express written provision to the contrary the agreement shall be altered as follows:
  - (a) In the event of the alteration being a new or increased duty the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.

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- (b) In the event of the alteration being the abolition or reduction of duty the purchaser may deduct the difference caused by the alteration from the agreed price.
  - (c) Any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case may require.
- (2) Subsection (1) does not apply in relation to duty imposed by the *Customs Tariff (Coal Export Duty) Act 1975*.
  - (3) Subsection (1) does not apply in relation to duty imposed by the *Customs Tariff (Uranium Concentrate Export Duty) Act 1980*.

## **Division 1AA—Calculation of duty on certain alcoholic beverages**

### **153AA Meaning of *alcoholic beverage***

In this Division:

*alcoholic beverage* has the meaning given by the regulations.

### **153AB Customs duty to be paid according to labelled alcoholic strength of prescribed alcoholic beverages**

(1) If:

- (a) an alcoholic beverage is entered for home consumption or delivered into home consumption in accordance with a permission given under section 69; and
- (b) the percentage by volume of the alcoholic content of the beverage indicated on the beverage's label exceeds the actual percentage by volume of the alcoholic content of the beverage;

customs duty is to be charged according to the percentage by volume of alcoholic content indicated on the label.

(2) If:

- (a) an alcoholic beverage is entered for or delivered into home consumption in a labelled form and an unlabelled form; and
  - (b) subsection (1) applies to the beverage in its labelled form;
- then subsection (1) applies to the beverage in its unlabelled form as if it had been labelled and the label had indicated the same percentage by volume of alcoholic content as is indicated on the beverage in its labelled form.

**153AC Rules for working out strength of prescribed alcoholic beverages**

- (1) The Comptroller-General of Customs may, by instrument in writing, determine, in relation to an alcoholic beverage included in a class of alcoholic beverages, rules for working out the percentage by volume of alcohol in the beverage.
- (2) Without limiting the generality of subsection (1), rules determined by the Comptroller-General of Customs for working out the percentage by volume of alcohol in an alcoholic beverage:
  - (a) may specify sampling methods; and
  - (b) may, for the purposes of working out the customs duty payable, permit minor variations between the nominated or labelled volume of alcohol in the beverage and the actual volume of alcohol in the beverage so as to provide for unavoidable variations directly attributable to the manufacturing process.
- (3) The Comptroller-General of Customs may make different determinations for alcoholic beverages included in different classes of alcoholic beverages.
- (4) A determination applicable to an alcoholic beverage included in a class of alcoholic beverages applies only to an alcoholic beverage in that class that is entered for, or delivered into, home consumption on or after the making of the determination.
- (5) The Comptroller-General of Customs makes a determination public:
  - (a) by publishing it; and
  - (b) by publishing notice of it in the *Gazette*.
- (6) The notice in the *Gazette* must include a brief description of the contents of the determination.
- (7) The determination is made at the later of the time when it is published and the time when notice of it is published in the *Gazette*.

**153AD Obscuration**

If, in the opinion of the Collector, the strength of any spirits cannot immediately be accurately ascertained by application of the rules (if any) made for that purpose under section 153AC, the strength may be ascertained after distillation or in any prescribed manner.

## Division 1A—Rules of origin of preference claim goods

### 153A Purpose of Division

- (1) The purpose of this Division is to set out rules for determining whether goods are the produce or manufacture:
  - (a) of a particular country other than Australia; or
  - (b) of a Developing Country but not of a particular Developing Country.
- (2) Goods are not the produce or manufacture of a country other than Australia unless, under the rules as so set out, they are its produce or manufacture.

### 153B Definitions

In this Division:

**allowable factory cost**, in relation to preference claim goods and to the factory at which the last process of their manufacture was performed, means the sum of:

- (a) the allowable expenditure of the factory on materials in respect of the goods worked out under section 153D; and
- (b) the allowable expenditure of the factory on labour in respect of the goods worked out under section 153F; and
- (c) the allowable expenditure of the factory on overheads in respect of the goods worked out under section 153G.

**Developing Country** has the same meaning as in the *Customs Tariff Act 1995*.

**factory**, in relation to preference claim goods, means:

- (a) if the goods are claimed to be the manufacture of a particular preference country—the place in that country where the last process in the manufacture of the goods was performed; and
- (b) if the goods are claimed to be the manufacture of a preference country that is a Developing Country but not a

particular Developing Country—the place in Papua New Guinea or in a Forum Island Country where the last process in the manufacture of the goods was performed.

**Forum Island Country** has the same meaning as in the *Customs Tariff Act 1995*.

**inner container** includes any container into which preference claim goods are packed, other than a shipping or airline container, pallet or other similar article.

**Least Developed Country** has the same meaning as in the *Customs Tariff Act 1995*.

**manufacturer**, in relation to preference claim goods, means the person undertaking the last process in their manufacture.

**materials**, in relation to preference claim goods, means:

- (a) if the goods are unmanufactured raw products—those products; and
- (b) if the goods are manufactured goods—all matter or substances used or consumed in the manufacture of the goods (other than that matter or those substances that are treated as overheads); and
- (c) in either case—the inner containers in which the goods are packed.

**person** includes partnerships and unincorporated associations.

**preference claim goods** means goods that are claimed, when they are entered for home consumption, to be the produce or manufacture of a preference country.

**preference country** has the same meaning as in the *Customs Tariff Act 1995*.

**qualifying area**, in relation to particular preference claim goods, means:

- (b) if the goods are claimed to be the manufacture of Canada—Canada and Australia; or

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- (c) if the goods are claimed to be the manufacture of Papua New Guinea—Papua New Guinea, the Forum Island Countries, New Zealand and Australia; or
- (d) if the goods are claimed to be the manufacture of a Forum Island Country—the Forum Island Countries, Papua New Guinea, New Zealand and Australia; or
- (e) if the goods are claimed to be the manufacture of a particular Developing Country—the Developing Country, Papua New Guinea, the Forum Island Countries, the other Developing Countries and Australia; or
- (f) if the goods are claimed to be the manufacture of a Developing Country but not a particular Developing Country—Papua New Guinea, the Forum Island Countries, the Developing Countries and Australia; or
- (fa) if goods are claimed to be the manufacture of a Least Developed Country—the Developing Countries, the Forum Island Countries and Australia; or
- (g) if the goods are claimed to be the manufacture of a country that is not a preference country—that country and Australia.

***total factory cost***, in relation to preference claim goods, means the sum of:

- (a) the total expenditure of the factory on materials in respect of the goods, worked out under section 153C; and
- (b) the allowable expenditure of the factory on labour in respect of the goods, worked out under section 153F; and
- (c) the allowable expenditure of the factory on overheads in respect of the goods, worked out under section 153G.

**153C Total expenditure of factory on materials**

The total expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of the materials in the form they are received at the factory, worked out under section 153E.

### **153D Allowable expenditure of factory on materials**

*General rule for determining allowable expenditure of a factory on materials*

- (1) Subject to the exceptions set out in this section, the allowable expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of those materials in the form they are received at the factory, worked out under section 153E.

*Goods wholly or partly manufactured from materials imported from outside the qualifying area*

- (2) If:
- (a) preference claim goods (other than goods wholly manufactured from unmanufactured raw products) are manufactured, in whole or in part, from particular materials; and
  - (b) those particular materials, in the form they are received at the factory, are imported from a country outside the qualifying area;

there is no allowable expenditure of the factory on those particular materials.

*Goods claimed to be the manufacture of a Least Developed Country—special rule*

- (2A) If:
- (a) goods claimed to be the manufacture of a Least Developed Country contain materials that, in the form they were received by the factory, were manufactured or produced in Developing Countries that are not Least Developed Countries; and
  - (b) the allowable expenditure of the factory on those materials in aggregate would, but for this subsection, exceed 25% of the total factory cost of the goods;

that allowable expenditure on those materials is taken to be 25% of the total factory cost of the goods.

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*Inland freight rule*

- (3) If:
- (a) preference claim goods are manufactured, in whole or in part, from particular materials; and
  - (b) the preference country is Papua New Guinea or a Forum Island Country; and
  - (ba) the goods are claimed to be the manufacture of Papua New Guinea or a Forum Island Country; and
  - (c) those particular materials:
    - (i) were imported into the preference country from a country outside the qualifying area; or
    - (ii) incorporate other materials (*contributing materials*) imported into the preference country from a country outside the qualifying area;

then, despite subsection (2), the allowable expenditure of the factory on those particular materials includes:

- (d) the cartage of those particular materials; or
- (e) the part of the cost of those particular materials that is attributable to the cartage of those contributing materials;

from the port or airport in the preference country where those particular materials or contributing materials are first landed to the factory or to the plant where they are processed or first processed.

*Goods wholly or partly manufactured from materials imported from outside the qualifying area—intervening manufacture*

- (4) If:
- (a) preference claim goods are manufactured, in whole or in part, from particular materials; and
  - (b) other materials (*contributing materials*) have been incorporated in those particular materials; and
  - (c) those contributing materials were imported into a country in the qualifying area from a country outside the qualifying area; and

- (d) after their importation and to achieve that incorporation, those contributing materials have been subjected to a process of manufacture, or a series of processes of manufacture, in the qualifying area without any intervening exportation to a country outside that area;

the allowable expenditure of the factory on those particular materials in the form they are received at the factory does not include any part of the cost of those particular materials to the manufacturer, worked out under section 153E, that is attributable to the cost of those contributing materials in the form in which the contributing materials were received by the person who subjected them to their first manufacturing process in the qualifying area after importation.

*Intervening export of contributing materials*

- (5) If contributing materials within the meaning of subsection (4) are, after their importation into a country in the qualifying area and before their incorporation into the particular materials from which preference claim goods are manufactured, subsequently exported to a country outside that area, then, on their reimportation into a country in the qualifying area, subsection (2) or (4), as the case requires, applies as if that subsequent reimportation were the only importation of those materials.
- (6A) If:
- (a) goods claimed to be the manufacture of Papua New Guinea or a particular Forum Island Country are manufactured, in whole or in part, from particular materials; and
  - (b) if the qualifying area for that country consisted only of that country and Australia—under subsection (4), the allowable expenditure of the factory on those particular materials, after excluding any costs required to be excluded under subsection (4), would be at least 50% of the total expenditure of the factory on those particular materials worked out in accordance with section 153C;

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then, despite subsection (4), the allowable expenditure of the factory on those particular materials is taken to be that total expenditure.

*Waste or scrap*

- (7) If:
- (a) materials are imported into a country; and
  - (b) the subjecting of those materials to a process of manufacture gives rise to waste or scrap; and
  - (c) that waste or scrap is fit only for the recovery of raw materials;
- any raw materials that are so recovered in that country are to be treated, for the purposes of this section, as if they were unmanufactured raw products of that country.

*Transshipment*

- (8) If, in the course of their exportation from one country to another country, materials are transhipped, that transshipment is to be disregarded for the purpose of determining, under this section, the country from which the materials were exported.

**153E Calculation of the cost of materials received at a factory**

*Purpose of section*

- (1) This section sets out, for the purposes of sections 153C and 153D, the rules for working out the cost of materials in the form they are received at a factory.

*General rule*

- (2) Subject to this section, the cost of materials received at a factory is the amount paid or payable by the manufacturer in respect of the materials in the form they are so received.

*Customs and excise duties and certain other taxes to be disregarded*

- (3) Any part of the cost of materials in the form they are received at a factory that represents:
- (a) a customs or excise duty; or
  - (b) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty;
- imposed on the materials by a country in the qualifying area is to be disregarded.

*Comptroller-General of Customs may require artificial elements of cost to be disregarded*

- (4) If the Comptroller-General of Customs is satisfied that preference claim goods consist partly of materials added or attached solely for the purpose of artificially raising the allowable factory cost of the goods, the Comptroller-General of Customs may, by written notice given to the importer of the preference claim goods, require the part of that cost that is, in the opinion of the Comptroller-General of Customs, reasonably attributable to those materials, to be disregarded.

*Comptroller-General of Customs may require cost over normal market value to be disregarded*

- (5) If the Comptroller-General of Customs is satisfied that the cost to the manufacturer of materials in the form they are received at a factory exceeds, by an amount determined by the Comptroller-General of Customs, the normal market value of the materials, the Comptroller-General of Customs may, by written notice given to the importer of preference claim goods in which those materials are incorporated, require the excess to be disregarded.

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*Comptroller-General of Customs may determine cost of certain materials received at a factory*

- (6) If the Comptroller-General of Customs is satisfied:
- (a) that materials in the form they are received at a factory are so received:
    - (i) free of charge; or
    - (ii) at a cost that is less than the normal market value of the materials; and
  - (b) that the receipt of the materials free of charge or at a reduced cost has been arranged, directly or indirectly, by a person who will be the importer of preference claim goods in which those materials are incorporated;

the Comptroller-General of Customs may, by written notice given to the importer, require that an amount determined by the Comptroller-General of Customs to be the difference between the cost, if any, paid by the manufacturer and the normal market value be treated as the amount, or a part of the amount, paid by the manufacturer in respect of the materials.

*Effect of determination*

- (7) If the Comptroller-General of Customs gives a notice to the importer of preference claim goods under subsection (4), (5) or (6) in respect of materials incorporated in those goods, the cost of the materials to the manufacturer must be determined having regard to the terms of that notice.

**153F Allowable expenditure of factory on labour**

*Calculation of allowable expenditure of factory on labour*

- (1) Allowable expenditure of a factory on labour in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:
- (a) that is incurred by the manufacturer of the goods; and
  - (b) that relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and

- (c) that can reasonably be allocated to the manufacture of the goods.

*Regulations may specify manner of working out cost*

- (2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

### **153G Allowable expenditure of factory on overheads**

*Calculation of allowable expenditure of factory on overheads*

- (1) Allowable expenditure of a factory on overheads in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:
  - (a) that is incurred by the manufacturer of the goods; and
  - (b) that relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and
  - (c) that can reasonably be allocated to the manufacture of the goods.

*Regulations may specify manner of working out cost*

- (2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

### **153H Unmanufactured goods**

Goods claimed to be the produce of a country are the produce of that country if they are its unmanufactured raw products.

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**153L Manufactured goods originating in Papua New Guinea or a Forum Island Country**

*Rule for certain goods wholly manufactured in Papua New Guinea*

- (1) Goods claimed to be the manufacture of Papua New Guinea are the manufacture of that country if they are wholly manufactured in Papua New Guinea from one or more of the following:
  - (a) unmanufactured raw products;
  - (b) materials wholly manufactured in Australia or Papua New Guinea or Australia and Papua New Guinea;
  - (c) materials imported into Papua New Guinea that the Comptroller-General of Customs has determined, by *Gazette* notice, to be manufactured raw materials of Papua New Guinea.

*Rule for manufactured goods last processed in PNG or a Forum Island Country*

- (2) Goods claimed to be the manufacture of Papua New Guinea or of a Forum Island Country are the manufacture of that country if:
  - (a) the last process in their manufacture was performed in that country; and
  - (b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

*Specified percentage*

- (4) The specified percentage of the total factory cost of goods referred to in subsection (2) is:
  - (a) unless paragraph (b) applies—50%; or
  - (b) if the goods are of a kind for which the Comptroller-General of Customs has determined, by *Gazette* notice, that a lesser percentage is appropriate—that percentage.

### **153LA Modification of section 153L in special circumstances**

*When 50% in subsection 153L(4) can be read as 48%*

- (1) If the Comptroller-General of Customs is satisfied:
- (a) that the allowable factory cost of preference claim goods in a shipment of such goods that are claimed to be the manufacture of Papua New Guinea or a Forum Island Country is at least 48% but not 50% of the total factory cost of those goods; and
  - (b) that the allowable factory cost of those goods would be at least 50% of the total factory cost of those goods if an unforeseen circumstance had not occurred; and
  - (c) that the unforeseen circumstance is unlikely to continue;
- the Comptroller-General of Customs may determine, in writing, that section 153L has effect:
- (d) for the purpose of the shipment of goods that is affected by that unforeseen circumstance; and
  - (e) for the purposes of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153L(4) to 50% were a reference to 48%.

*Effect of determination*

- (2) If the Comptroller-General of Customs makes a determination, then, in relation to all preference claim goods imported into Australia that are covered by the determination, section 153L has effect in accordance with the determination.

*Comptroller-General of Customs may revoke determination*

- (3) If:
- (a) the Comptroller-General of Customs makes a determination; and

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- (b) the Comptroller-General of Customs becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;

the Comptroller-General of Customs may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

*Definition of similar goods*

- (4) In this section:

*similar goods*, in relation to goods in a particular shipment, means goods:

- (a) that are contained in another shipment that is imported by the same importer; and
- (b) that undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.

**153M Manufactured goods originating in a particular Developing Country**

Goods claimed to be the manufacture of a particular Developing Country are the manufacture of that country if:

- (a) the last process in their manufacture was performed in that country; and
- (b) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

**153N Manufactured goods originating in a Developing Country but not in any particular Developing Country**

Goods claimed to be the manufacture of a Developing Country, but not of any particular Developing Country, are the manufacture of a Developing Country, but not a particular Developing Country, if:

- (a) the last process in their manufacture was performed in Papua New Guinea or a Forum Island Country; and
- (b) they are not the manufacture of Papua New Guinea or a Forum Island Country under section 153L; and

- (c) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

### **153NA Manufactured goods originating in a Least Developed Country**

Goods claimed to be the manufacture of a Least Developed Country are the manufacture of that country if:

- (a) the last process in their manufacture was performed in that country; and
- (b) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

### **153P Manufactured goods originating in Canada**

#### *General rule*

- (1) Despite section 153H and subsections (2) and (3), goods claimed to be the produce or manufacture of Canada are not the produce or manufacture of that country unless:
  - (a) they have been shipped to Australia from Canada; and
  - (b) either:
    - (i) they have not been transhipped; or
    - (ii) the Comptroller-General of Customs is satisfied that, when they were shipped from Canada, their intended destination was Australia.

#### *Rule for certain manufactured goods wholly manufactured in Canada*

- (2) Goods claimed to be the manufacture of Canada are the manufacture of that country if they are wholly manufactured in Canada from one or more of the following:
  - (a) unmanufactured raw products;
  - (b) materials wholly manufactured in Australia or Canada or Australia and Canada;

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- (c) materials imported into Canada that the Comptroller-General of Customs has determined, by *Gazette* notice, to be manufactured raw materials of Canada.

*Rule for other manufactured goods last processed in Canada*

- (3) Goods claimed to be the manufacture of Canada are the manufacture of that country if:
  - (a) the last process in their manufacture was performed in Canada; and
  - (b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

*Specified percentage*

- (4) The specified percentage of the total factory cost of goods referred to in subsection (3) is:
  - (a) if the goods are of a kind commercially manufactured in Australia—75%; or
  - (b) if the goods are of a kind not commercially manufactured in Australia—25%.

**153Q Manufactured goods originating in a country that is not a preference country**

*Rule for certain goods wholly manufactured in a country that is not a preference country*

- (1) Goods claimed to be the manufacture of a country that is not a preference country are the manufacture of that country if they are wholly manufactured in that country from one or more of the following:
  - (a) unmanufactured raw products;
  - (b) materials wholly manufactured in Australia or the country or Australia and the country;

- (c) materials imported into the country that the Comptroller-General of Customs has determined, by *Gazette* notice, to be manufactured raw materials of the country.

*Rule for other manufactured goods last processed in a country that is not a preference country*

- (2) Goods claimed to be the manufacture of a country that is not a preference country are the manufacture of that country if:
- (a) the last process in their manufacture was performed in that country; and
  - (b) having regard to their qualifying area, their allowable factory cost is not less than the specified percentage of their total factory cost.

*Specified percentage*

- (3) Subject to subsection (4), the specified percentage of the total factory cost of goods referred to in subsection (2) is:
- (a) if the goods are of a kind commercially manufactured in Australia—75%; or
  - (b) if the goods are of a kind not commercially manufactured in Australia—25%.

*Special rule for Christmas Island, Cocos (Keeling) Islands and Norfolk Island*

- (4) If the country that is not a preference country is Christmas Island, Cocos (Keeling) Islands or Norfolk Island, the specified percentage of the total factory cost of goods referred to in subsection (2) is:
- (a) if the goods are of a kind commercially manufactured in Australia—50%; or
  - (b) if the goods are of a kind not commercially manufactured in Australia—25%.

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**153R Are goods commercially manufactured in Australia?**

*Comptroller-General of Customs may determine that goods are, or are not, commercially manufactured in Australia*

- (1) For the purposes of sections 153P and 153Q, the Comptroller-General of Customs may, by *Gazette* notice, determine that goods of a specified kind are, or are not, commercially manufactured in Australia.

*Effect of determination*

- (2) If such a determination is made, this Division has effect accordingly.

**153S Rule against double counting**

In determining the allowable factory cost or the total factory cost of preference claim goods, a cost incurred, whether directly or indirectly, by the manufacturer of the goods must not be taken into account more than once.

## **Division 1BA—Singaporean originating goods**

### **Subdivision A—Preliminary**

#### **153XC Simplified outline of this Division**

- This Division defines Singaporean originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Singaporean originating goods if they are wholly obtained or produced entirely in Singapore or in Singapore and Australia.
- Subdivision C provides that goods are Singaporean originating goods if they are produced entirely in Singapore, or in Singapore and Australia, from originating materials only.
- Subdivision D sets out when goods are Singaporean originating goods because they are produced entirely in Singapore, or in Singapore and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Singaporean originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Singaporean originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Singaporean originating goods.

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**153XD Interpretation**

*Definitions*

(1) In this Division:

**Agreement** means the Singapore-Australia Free Trade Agreement done at Singapore on 17 February 2003, as amended from time to time.

Note: The Agreement is in Australian Treaty Series 2003 No. 16 ([2003] ATS 16) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**aquaculture** has the meaning given by Article 1 of Chapter 3 of the Agreement.

**Australian originating goods** means goods that are Australian originating goods under a law of Singapore that implements the Agreement.

**certification of origin** means a certificate that is in force and that complies with the requirements of Article 18 of Chapter 3 of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**enterprise** has the meaning given by Article 1 of Chapter 3 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or
- (b) if the table in Annex 2 to the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

**indirect materials** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) catalysts and solvents; and
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (f) tools, dies and moulds; and
- (g) spare parts and materials; and
- (h) lubricants, greases, compounding materials and other similar goods.

**Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**national**, for Singapore, has the same meaning as it has in Chapter 3 of the Agreement.

**non-originating materials** means goods that are not originating materials.

**non-Party** has the same meaning as it has in Chapter 3 of the Agreement.

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***originating materials*** means:

- (a) Singaporean originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) recovered goods derived in the territory of Australia, or in the territory of Singapore, and used in the production of, and incorporated into, remanufactured goods; or
- (d) indirect materials.

***person of Singapore*** means:

- (a) a national of Singapore; or
- (b) an enterprise of Singapore.

***production*** means growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling.

***recovered goods*** means goods in the form of one or more individual parts that:

- (a) have resulted from the disassembly of used goods; and
- (b) have been cleaned, inspected, tested or processed as necessary for improvement to sound working condition.

***remanufactured goods*** means goods that:

- (a) are classified to any of Chapters 84 to 90, or to heading 94.02, of the Harmonized System; and
- (b) are entirely or partially composed of recovered goods; and
- (c) have a similar life expectancy to, and perform the same as or similar to, new goods:
  - (i) that are so classified; and
  - (ii) that are not composed of any recovered goods; and
- (d) have a factory warranty similar to that applicable to such new goods.

***Singaporean originating goods*** means goods that, under this Division, are Singaporean originating goods.

***territory of Australia*** means territory within the meaning, so far as it relates to Australia, of Article 2 of Chapter 1 of the Agreement.

***territory of Singapore*** means territory within the meaning, so far as it relates to Singapore, of Article 2 of Chapter 1 of the Agreement.

*Value of goods*

- (3) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced entirely in Singapore or in Singapore and Australia**

**153XE Goods wholly obtained or produced entirely in Singapore or in Singapore and Australia**

- (1) Goods are *Singaporean originating goods* if:
  - (a) they are wholly obtained or produced entirely in Singapore or in Singapore and Australia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a certification of origin for the goods.
- (2) Goods are *wholly obtained or produced entirely in Singapore or in Singapore and Australia* if, and only if, the goods are:
  - (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the territory of Singapore or in the territory of Singapore and the territory of Australia; or
  - (b) live animals born and raised in the territory of Singapore or in the territory of Singapore and the territory of Australia; or
  - (c) goods obtained in the territory of Singapore from live animals referred to in paragraph (b); or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of Singapore; or
  - (e) goods obtained from aquaculture conducted in the territory of Singapore; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the territory of Singapore; or
  - (g) fish, shellfish or other marine life taken from the high seas by vessels that are entitled to fly the flag of Singapore; or

- (h) goods produced, from goods referred to in paragraph (g), on board factory ships that are registered, listed or recorded with Singapore and are entitled to fly the flag of Singapore; or
- (i) goods, other than fish, shellfish or other marine life, taken by Singapore, or a person of Singapore, from the seabed, or subsoil beneath the seabed, outside the territory of Singapore, and beyond areas over which non-Parties exercise jurisdiction, but only if Singapore, or the person of Singapore, has the right to exploit that seabed or subsoil in accordance with international law; or
- (j) waste or scrap that:
  - (i) has been derived from production in the territory of Singapore; or
  - (ii) has been derived from used goods that are collected in the territory of Singapore and that are fit only for the recovery of raw materials; or
- (k) goods produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

**Subdivision C—Goods produced in Singapore, or in Singapore and Australia, from originating materials**

**153XF Goods produced in Singapore, or in Singapore and Australia, from originating materials**

Goods are *Singaporean originating goods* if:

- (a) they are produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

- (ii) Australia has waived the requirement for a certification of origin for the goods.

**Subdivision D—Goods produced in Singapore, or in Singapore and Australia, from non-originating materials**

**153XG Goods produced in Singapore, or in Singapore and Australia, from non-originating materials**

- (1) Goods are *Singaporean originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 2 to the Agreement; and
  - (b) they are produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a certification of origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 2 to the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in

the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
- (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
  - (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

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- (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

(7) If:

- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
- (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
- (c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
- (d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153XD(3).

- (8) For the purposes of subsection (7), disregard section 153XI in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

*Goods put up in a set for retail sale*

(9) If:

- (a) goods are put up in a set for retail sale; and
- (b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

the goods are Singaporean originating goods under this section only if:

- (c) all of the goods in the set, when considered separately, are Singaporean originating goods; or
- (d) the total customs value of the goods (if any) in the set that are not Singaporean originating goods does not exceed 10% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

### **153XH Packaging materials and containers**

- (1) If:
  - (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;then the packaging material or container is to be disregarded for the purposes of this Subdivision.

#### *Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153XD(3).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153XI Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Singaporean originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are Singaporean originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- (e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

**Subdivision F—Consignment**

**153XJ Consignment**

- (1) Goods are not Singaporean originating goods under this Division if:
    - (a) the goods are transported through the territory of one or more non-Parties; and
    - (b) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia).
  - (2) This section applies despite any other provision of this Division.
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## **Subdivision G—Regulations**

### **153XK Regulations**

The regulations may make provision for and in relation to determining whether goods are Singaporean originating goods under this Division.

## Division 1C—US originating goods

### Subdivision A—Preliminary

#### 153Y Simplified outline

The following is a simplified outline of this Division:

- This Division defines US originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to US originating goods that are imported into Australia.
- Subdivision B provides that goods are US originating goods if they are wholly obtained or produced entirely in the US.
- Subdivision C provides that goods are US originating goods if they are produced entirely in the US, or in the US and Australia, exclusively from originating materials.
- Subdivision D sets out when goods that are produced entirely in the US, or in the US and Australia, from non-originating materials only, or from non-originating materials and originating materials, are US originating goods.
- Subdivision F sets out when accessories, spare parts or tools (imported with other goods) are US originating goods.
- Subdivision G deals with how the packaging materials or containers in which goods are packaged affects whether the goods are US originating goods.
- Subdivision H deals with how the consignment of goods affects whether the goods are US originating goods.

- Subdivision I allows regulations to make provision for and in relation to determining whether goods are US originating goods.

## 153YA Interpretation

### *Definitions*

(1) In this Division:

***Agreement*** means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

***Australian originating goods*** means goods that are Australian originating goods under a law of the US that implements the Agreement.

***Convention*** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2004 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

***customs value***, in relation to goods, has the meaning given by section 159.

***fuel*** has its ordinary meaning.

***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

***Harmonized System*** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2007; or

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- (b) if the table in Annex 4-A or 5-A of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***Harmonized US Tariff Schedule*** means the Harmonized Tariff Schedule of the United States (as in force from time to time).

***indirect materials*** means:

- (a) goods used in the production, testing or inspection of other goods, but that are not physically incorporated in the other goods; or
- (b) goods used in the operation or maintenance of buildings or equipment associated with the production of other goods;

including:

- (c) fuel; and
- (d) tools, dies and moulds; and
- (e) lubricants, greases, compounding materials and other similar goods; and
- (f) gloves, glasses, footwear, clothing, safety equipment and supplies for any of these things; and
- (g) catalysts and solvents.

***Interpretation Rules*** means the General Rules for the Interpretation of the Harmonized System provided for by the Convention.

***non-originating materials*** means goods that are not originating materials.

***originating materials*** means:

- (a) goods that are used in the production of other goods and that are US originating goods; or
- (b) goods that are used in the production of other goods and that are Australian originating goods; or
- (c) indirect materials.

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Example: This example illustrates goods produced from originating materials and non-originating materials.

Pork sausages are produced in the US from US cereals, Hungarian frozen pork meat and Brazilian spices.

The US cereals are originating materials since they are goods used in the production of other goods (the sausages) and they are US originating goods under Subdivision B.

The Hungarian frozen pork meat and Brazilian spices are non-originating materials since they are produced in countries other than the US and Australia.

**person of the US** means a person of a Party within the meaning, in so far as it relates to the US, of Article 1.2 of the Agreement.

**produce** means grow, raise, mine, harvest, fish, trap, hunt, manufacture, process, assemble or disassemble. **Producer** and **production** have corresponding meanings.

**recovered goods** means goods in the form of individual parts that:

- (a) have resulted from the complete disassembly of goods which have passed their useful life or which are no longer useable due to defects; and
- (b) have been cleaned, inspected or tested (as necessary) to bring them into reliable working condition.

**remanufactured goods** means goods that:

- (a) are produced entirely in the US; and
- (b) are classified to:
  - (i) Chapter 84, 85 or 87 (other than heading 8418, 8516 or 8701 to 8706), or to heading 9026, 9031 or 9032 of Chapter 90, of the Harmonized System; or
  - (ii) any other tariff classification prescribed by the regulations; and
- (c) are entirely or partially comprised of recovered goods; and
- (d) have a similar useful life, and meet the same performance standards, as new goods:
  - (i) that are so classified; and
  - (ii) that are not comprised of any recovered goods; and

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(e) have a producer's warranty similar to such new goods.

**textile or apparel good** has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

**US** means the United States of America.

**used** means used or consumed in the production of goods.

**US originating goods** means goods that, under this Division, are US originating goods.

**wholly formed**, in relation to elastomeric yarn, has the same meaning as it has in the Agreement.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the following:
- (a) the Harmonized System;
  - (b) the Harmonized US Tariff Schedule.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Regulations*

- (5) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced entirely in the US**

**153YB Goods wholly obtained or produced entirely in the US**

- (1) Goods are *US originating goods* if they are wholly obtained or produced entirely in the US.
- (2) Goods are *wholly obtained or produced entirely in the US* if, and only if, the goods are:
  - (a) minerals extracted in the US; or
  - (b) plants grown in the US, or in the US and Australia, or products obtained from such plants; or
  - (c) live animals born and raised in the US, or in the US and Australia, or products obtained from such animals; or
  - (d) goods obtained from hunting, trapping, fishing or aquaculture conducted in the US; or
  - (e) fish, shellfish or other marine life taken from the sea by ships registered or recorded in the US and flying the flag of the US; or
  - (f) goods produced exclusively from goods referred to in paragraph (e) on board factory ships registered or recorded in the US and flying the flag of the US; or
  - (g) goods taken from the seabed, or beneath the seabed, outside the territorial waters of the US by the US or a person of the US, but only if the US has the right to exploit that part of the seabed; or
  - (h) goods taken from outer space by the US or a person of the US; or
  - (i) waste and scrap that:
    - (i) has been derived from production operations in the US; or
    - (ii) has been derived from used goods that are collected in the US and that are fit only for the recovery of raw materials; or

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- (j) recovered goods derived in the US and used in the US in the production of remanufactured goods; or
- (k) goods produced entirely in the US exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.

**Subdivision C—Goods produced entirely in the US or in the US and Australia exclusively from originating materials**

**153YC Goods produced entirely in the US or in the US and Australia exclusively from originating materials**

Goods are *US originating goods* if they are produced entirely in the US, or entirely in the US and Australia, exclusively from originating materials.

**Subdivision D—Goods produced in the US, or in the US and Australia, from non-originating materials**

**153YD Goods produced in the US, or in the US and Australia, from non-originating materials**

- (1) Goods are *US originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4-A or 5-A of the Agreement; and
  - (b) they are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in Annex 4-A or 5-A of the Agreement.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4-A or 5-A of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

*Rules for goods that are not a textile or apparel good*

- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are not a textile or apparel good; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (c) does not exceed 10% of the customs value of the goods.

Note: See subsection (6) for goods that are a textile or apparel good.

- (5) In applying subsection (4), disregard non-originating materials covered by paragraph 2 of Article 5.2 of Chapter 5 of the Agreement.

*Rules for goods that are a textile or apparel good*

- (6) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are a textile or apparel good; and

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- (c) if the component of the goods, that determines the tariff classification of the goods, contains elastomeric yarn—the yarn is wholly formed in the US or Australia; and
- (d) the component of the goods, that determines the tariff classification of the goods, contains fibres or yarns that are non-originating materials and that do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the fibres or yarns covered by paragraph (d) does not exceed 7% of the total weight of that component.

*Regional value content*

- (7) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
  - (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (8) If:
  - (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with standard accessories, standard spare parts or standard tools; and
  - (c) the accessories, spare parts or tools are not invoiced separately from the goods; and
  - (d) the quantities and value of the accessories, spare parts or tools are customary for the goods;

the regulations must provide for the value of the accessories, spare parts or tools to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts or tools are originating materials or non-originating materials).

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Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153YA(2).

- (9) For the purposes of subsection (8), disregard section 153YJ in working out whether the accessories, spare parts or tools are originating materials or non-originating materials.

*Goods put up in a set for retail sale*

- (10) If:
- (a) goods are put up in a set for retail sale; and
  - (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules as a textile or apparel good;
- the goods are US originating goods under this section only if:
- (c) all of the goods in the set, when considered separately, are US originating goods; or
  - (d) the total customs value of the goods (if any) in the set that are not US originating goods does not exceed 10% of the customs value of the set of goods.

**Subdivision F—Goods that are standard accessories, spare parts or tools**

**153YJ Goods that are standard accessories, spare parts or tools**

Goods are *US originating goods* if:

- (a) they are standard accessories, standard spare parts or standard tools in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts or tools; and
- (c) the other goods are US originating goods; and
- (d) the accessories, spare parts or tools are not invoiced separately from the other goods; and
- (e) the quantities and value of the accessories, spare parts or tools are customary for the other goods.

## Subdivision G—Packaging materials and containers

### 153YK Packaging materials and containers

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Division (with 1 exception).

#### *Regional value content*

- (2) The exception is that, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153YA(2).

## Subdivision H—Consignment

### 153YL Consignment

- (1) Goods are not US originating goods under this Division if:
- (a) they are transported through a country or place other than the US or Australia; and
  - (b) they undergo any process of production, or any other operation, in that country or place (other than unloading, reloading, any operation to preserve them in good condition or any operation that is necessary for them to be transported to Australia).

(2) This section applies despite any other provision of this Division.

### **Subdivision I—Regulations**

#### **153YM Regulations**

The regulations may make provision for and in relation to determining whether goods are US originating goods under this Division.

## Division 1D—Thai originating goods

### Subdivision A—Preliminary

#### 153Z Simplified outline

The following is a simplified outline of this Division:

- This Division defines Thai originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Thai originating goods that are imported into Australia.
- Subdivision B sets out when goods that are wholly obtained goods of Thailand are Thai originating goods.
- Subdivision C sets out when goods that are produced entirely in Thailand, or in Thailand and Australia, are Thai originating goods.
- Subdivision D sets out when accessories, spare parts or tools (imported with other goods) are Thai originating goods.
- Subdivision E deals with how the packaging materials or containers in which goods are packaged affects whether the goods are Thai originating goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Thai originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Thai originating goods.

## 153ZA Interpretation

### *Definitions*

(1) In this Division:

***Agreement*** means the Thailand-Australia Free Trade Agreement, done at Canberra on 5 July 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible through the website of the Department of Foreign Affairs and Trade.

***Australian originating goods*** means goods that are Australian originating goods under a law of Thailand that implements the Agreement.

***Certificate of Origin*** means a certificate that is in force and that complies with the requirements of Annex 4.2 of the Agreement.

***Convention*** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2004 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible through that Department's website.

***customs value***, in relation to goods, has the meaning given by section 159.

***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

***Harmonized System*** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2005; or
- (b) if the table in Annex 4.1 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and

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Coding System—the later version of the Harmonized Commodity Description and Coding System.

**Interpretation Rules** means the General Rules for the Interpretation of the Harmonized System provided for by the Convention.

**non-originating materials** means goods that are not originating materials.

**originating materials** means:

- (a) goods that are used in the production of other goods and that are Thai originating goods; or
- (b) goods that are used in the production of other goods and that are Australian originating goods.

**produce** means grow, raise, mine, harvest, fish, trap, hunt, manufacture, process, assemble or disassemble. **Producer** and **production** have corresponding meanings.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**Thai originating goods** means goods that, under this Division, are Thai originating goods.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Regulations*

- (5) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

**Subdivision B—Wholly obtained goods of Thailand**

**153ZB Wholly obtained goods of Thailand**

- (1) Goods are *Thai originating goods* if:
- (a) they are wholly obtained goods of Thailand; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are *wholly obtained goods of Thailand* if, and only if, the goods are:
- (a) minerals extracted in Thailand; or
  - (b) agricultural goods harvested, picked or gathered in Thailand; or
  - (c) live animals born and raised in Thailand; or
  - (d) products obtained from live animals in Thailand; or
  - (e) goods obtained directly from hunting, trapping, fishing, gathering or capturing carried out in Thailand; or
  - (f) fish, shellfish, plant or other marine life taken:
    - (i) within the territorial sea of Thailand; or
    - (ii) within any other maritime zone in which Thailand has sovereign rights under the law of Thailand and in accordance with UNCLOS; or
    - (iii) from the high seas by ships flying the flag of Thailand; or

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- (g) goods obtained or produced exclusively from goods referred to in paragraph (f) on board factory ships flying the flag of Thailand; or
- (h) goods taken from the seabed or the subsoil beneath the seabed of the territorial sea of Thailand or of the continental shelf of Thailand:
  - (i) by Thailand; or
  - (ii) by a national of Thailand; or
  - (iii) by a body corporate incorporated in Thailand; or
- (i) waste and scrap that has been derived from production operations in Thailand and that is fit only for the recovery of raw materials; or
- (j) used goods that are collected in Thailand and that are fit only for the recovery of raw materials; or
- (k) goods produced entirely in Thailand exclusively from goods referred to in paragraphs (a) to (j).

**Subdivision C—Goods produced entirely in Thailand or in Thailand and Australia**

**153ZC Goods produced entirely in Thailand or in Thailand and Australia**

- (1) Goods are *Thai originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4.1 of the Agreement; and
  - (b) they are produced entirely in Thailand, or entirely in Thailand and Australia, from originating materials or non-originating materials, or both; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

- (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4.1 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

*Regional value content*

- (5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or

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- (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (6) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with standard accessories, standard spare parts or standard tools; and
  - (c) the accessories, spare parts or tools are not invoiced separately from the goods; and
  - (d) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and
  - (e) the quantities and value of the accessories, spare parts or tools are customary for the goods; and
  - (f) the accessories, spare parts or tools are non-originating materials;

the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (f) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZA(2).

- (7) For the purposes of subsection (6), disregard section 153ZF in working out whether the accessories, spare parts or tools are non-originating materials.

**Subdivision D—Goods that are standard accessories, spare parts or tools**

**153ZF Goods that are standard accessories, spare parts or tools**

Goods are *Thai originating goods* if:

- (a) they are standard accessories, standard spare parts or standard tools in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts or tools; and
- (c) the other goods are Thai originating goods; and
- (d) the accessories, spare parts or tools are not invoiced separately from the other goods; and
- (e) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
- (f) the quantities and value of the accessories, spare parts or tools are customary for the other goods.

**Subdivision E—Packaging materials and containers**

**153ZG Packaging materials and containers**

- (1) If:
  - (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;then the packaging material or container is to be disregarded for the purposes of this Division (with 1 exception).

*Regional value content*

- (2) The exception is that, if:
  - (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and

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(b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZA(2).

**Subdivision F—Consignment**

**153ZH Consignment**

- (1) Goods are not Thai originating goods under this Division if:
  - (a) they are transported through a country or place other than Thailand or Australia; and
  - (b) either:
    - (i) they undergo any process of production or other operation in that country or place (other than any operation to preserve them in good condition or any operation that is necessary for them to be transported to Australia); or
    - (ii) they are traded or used in that country or place.
- (2) This section applies despite any other provision of this Division.

**Subdivision G—Regulations**

**153ZI Regulations**

The regulations may make provision for and in relation to determining whether goods are Thai originating goods under this Division.

## **Division 1E—New Zealand originating goods**

### **Subdivision A—Preliminary**

#### **153ZIA Simplified outline**

The following is a simplified outline of this Division:

- This Division defines New Zealand originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to New Zealand originating goods that are imported into Australia.
- Subdivision B provides that goods are New Zealand originating goods if they are wholly obtained or produced in New Zealand or in New Zealand and Australia.
- Subdivision C provides that goods are New Zealand originating goods if they are produced entirely in New Zealand, or in New Zealand and Australia, from originating materials only.
- Subdivision D sets out when goods are New Zealand originating goods because they are produced entirely in New Zealand, or in New Zealand and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are New Zealand originating goods because they are accessories, spare parts or tools imported with other goods.
- Subdivision F sets out when goods are New Zealand originating goods because they are wholly manufactured in New Zealand.

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- Subdivision G provides that goods are not New Zealand originating goods under this Division merely because of certain operations.
- Subdivision H deals with how the consignment of goods affects whether the goods are New Zealand originating goods.
- Subdivision I allows regulations to make provision for and in relation to determining whether goods are New Zealand originating goods.

**153ZIB Interpretation**

*Definitions*

(1) In this Division:

***Agreement*** means the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983, as amended from time to time.

Note: The text of the Agreement is set out in Australian Treaty Series 1983 No. 2. In 2006 the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

***aquaculture*** has the meaning given by Article 3 of the Agreement.

***Australian originating goods*** means goods that are Australian originating goods under a law of New Zealand that implements the Agreement.

***Convention*** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2006 the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

***customs value*** of goods has the meaning given by section 159.

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***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

***Harmonized System*** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 September 2011; or
- (b) if the table in Annex G of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***indirect materials*** means:

- (a) goods or energy used or consumed in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used or consumed in the operation or maintenance of buildings or equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

***manufacture*** means the creation of an article essentially different from the matters or substances that go into that creation.

***New Zealand originating goods*** means goods that, under this Division, are New Zealand originating goods.

***non-originating materials*** means goods that are not originating materials.

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***originating materials*** means:

- (a) New Zealand originating goods that are used or consumed in the production of other goods; or
- (b) Australian originating goods that are used or consumed in the production of other goods; or
- (c) indirect materials.

***produce*** means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process, assemble, restore or renovate.

***territorial sea*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

***Value of goods***

- (3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

***Tariff classifications***

- (4) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

***Incorporation of other instruments***

- (6) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced in New Zealand or New Zealand and Australia**

**153ZIC Goods wholly obtained or produced in New Zealand or New Zealand and Australia**

- (1) Goods are *New Zealand originating goods* if they are wholly obtained or produced in New Zealand or in New Zealand and Australia.
- (2) Goods are *wholly obtained or produced in New Zealand or in New Zealand and Australia* if, and only if, the goods are:
  - (a) minerals extracted in New Zealand; or
  - (b) plants grown in New Zealand, or in New Zealand and Australia, or products obtained in New Zealand from such plants; or
  - (c) live animals born and raised in New Zealand, or in New Zealand and Australia; or
  - (d) products obtained from live animals in New Zealand; or
  - (e) goods obtained from hunting, trapping, fishing, capturing or aquaculture conducted in New Zealand; or
  - (f) fish, shellfish or other marine life taken from the sea by ships that are registered or recorded in New Zealand and are flying, or are entitled to fly, the flag of New Zealand; or
  - (g) goods produced or obtained exclusively from goods referred to in paragraph (f) on board factory ships that are registered or recorded in New Zealand and are flying the flag of New Zealand; or
  - (h) goods taken from the seabed, or the subsoil beneath the seabed, of the territorial sea of New Zealand or of the continental shelf of New Zealand:
    - (i) by New Zealand; or
    - (ii) by a New Zealand citizen; or
    - (iii) by a body corporate incorporated in New Zealand; but only if New Zealand has the right to exploit that part of the seabed; or

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- (i) waste and scrap that has been derived from production operations in New Zealand, or from used goods collected in New Zealand, and that is fit only for the recovery of raw materials; or
- (j) goods produced entirely in New Zealand, or in New Zealand and Australia, exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.

**Subdivision C—Goods produced in New Zealand or New Zealand and Australia from originating materials**

**153ZID Goods produced in New Zealand or New Zealand and Australia from originating materials**

Goods are *New Zealand originating goods* if they are produced entirely in New Zealand, or entirely in New Zealand and Australia, from originating materials only.

**Subdivision D—Goods produced in New Zealand or New Zealand and Australia from non-originating materials**

**153ZIE Goods produced in New Zealand or New Zealand and Australia from non-originating materials**

- (1) Goods are *New Zealand originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex G of the Agreement; and
  - (b) they are produced entirely in New Zealand, or entirely in New Zealand and Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex.

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- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex G of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used or consumed in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used or consumed in the production of the goods is taken to satisfy the change in tariff classification.

- (4) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used or consumed in the production of the goods must have undergone a particular change in tariff classification; and
- (b) one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

*Regional value content*

- (5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
- (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

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(6) If:

- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
- (b) the goods are imported into Australia with standard accessories, standard spare parts or standard tools; and
- (c) the accessories, spare parts or tools are not invoiced separately from the goods; and
- (d) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and
- (e) the quantities and value of the accessories, spare parts or tools are customary for the goods;

the regulations must provide for the value of the accessories, spare parts or tools to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts or tools are originating materials or non-originating materials).

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZIB(3).

(7) For the purposes of subsection (6), disregard section 153ZIG in working out whether the accessories, spare parts or tools are originating materials or non-originating materials.

**153ZIF Packaging materials and containers**

(1) If:

- (a) goods are packaged for retail sale in packaging material or a container; and
- (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the General Rules for the Interpretation of the Harmonized System provided for by the Convention;

then the packaging material or container is to be disregarded for the purposes of this Subdivision (with 1 exception).

*Regional value content*

- (2) The exception is that, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZIB(3).

**Subdivision E—Goods that are standard accessories, spare parts or tools**

**153ZIG Goods that are standard accessories, spare parts or tools**

Goods are *New Zealand originating goods* if:

- (a) they are standard accessories, standard spare parts or standard tools in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts or tools; and
- (c) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
- (d) the other goods are New Zealand originating goods; and
- (e) the accessories, spare parts or tools are not invoiced separately from the other goods; and
- (f) the quantities and value of the accessories, spare parts or tools are customary for the goods.

## Subdivision F—Goods wholly manufactured in New Zealand

### 153ZIH Goods wholly manufactured in New Zealand

- (1) Goods are *New Zealand originating goods* if they are wholly manufactured in New Zealand from one or more of the following:
  - (a) unmanufactured raw products;
  - (b) materials wholly manufactured in Australia or New Zealand or Australia and New Zealand;
  - (c) materials covered by subsection (2).
- (2) The Comptroller-General of Customs may, by legislative instrument, determine specified materials imported into New Zealand to be manufactured raw materials of New Zealand.

## Subdivision G—Non-qualifying operations

### 153ZIJ Non-qualifying operations

- (1) Goods are not New Zealand originating goods under this Division merely because of the following operations:
  - (a) operations to preserve goods in good condition for the purposes of transport or storage;
  - (b) disassembly of goods;
  - (c) affixing of marks, labels or other similar distinguishing signs on goods or their packaging;
  - (d) packaging, changes to packaging, the breaking up or assembly of packages or presenting goods for transport or sale;
  - (e) quality control inspections;
  - (f) any combination of operations referred to in paragraphs (a) to (e).
- (2) This section applies despite any other provision of this Division.

## **Subdivision H—Consignment**

### **153ZIK Consignment**

- (1) Goods are not New Zealand originating goods under this Division if:
  - (a) they are transported through a country or place other than New Zealand or Australia; and
  - (b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling or any operation that is necessary to preserve them in good condition or to transport them to Australia).
- (2) This section applies despite any other provision of this Division.

## **Subdivision I—Regulations**

### **153ZIKA Regulations**

The regulations may make provision for and in relation to determining whether goods are New Zealand originating goods under this Division.

## Division 1EA—Peruvian originating goods

### Subdivision A—Preliminary

#### 153ZIL Simplified outline of this Division

- This Division defines Peruvian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Peruvian originating goods if they are wholly obtained or produced entirely in Peru or in Peru and Australia.
- Subdivision C provides that goods are Peruvian originating goods if they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are Peruvian originating goods because they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Peruvian originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Peruvian originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Peruvian originating goods.

## 153ZIM Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the Peru-Australia Free Trade Agreement, done at Canberra on 12 February 2018, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**aquaculture** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**Australian originating goods** means goods that are Australian originating goods under a law of Peru that implements the Agreement.

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 3.17 of Chapter 3 of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**enterprise** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or

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- (b) if the table in Annex 3-B of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***indirect materials*** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) catalysts and solvents; and
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (f) tools, dies and moulds; and
- (g) spare parts and materials; and
- (h) lubricants, greases, compounding materials and other similar goods.

***Interpretation Rules*** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

***non-originating materials*** means goods that are not originating materials.

***non-Party*** has the same meaning as it has in Chapter 3 of the Agreement.

***originating materials*** means:

- (a) Peruvian originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

**person of Peru** means:

- (a) a national within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement; or
- (b) an enterprise of Peru.

**Peruvian originating goods** means goods that, under this Division, are Peruvian originating goods.

**production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

**territory of Peru** means territory within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

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**Subdivision B—Goods wholly obtained or produced entirely in Peru or in Peru and Australia**

**153ZIN Goods wholly obtained or produced entirely in Peru or in Peru and Australia**

- (1) Goods are *Peruvian originating goods* if:
  - (a) they are wholly obtained or produced entirely in Peru or in Peru and Australia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are *wholly obtained or produced entirely in Peru or in Peru and Australia* if, and only if, the goods are:
  - (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the territory of Peru or in the territory of Peru and the territory of Australia; or
  - (b) live animals born and raised in the territory of Peru or in the territory of Peru and the territory of Australia; or
  - (c) goods obtained from live animals in the territory of Peru; or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of Peru; or
  - (e) goods obtained from aquaculture conducted in the territory of Peru; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the territory of Peru; or
  - (g) fish, shellfish, other goods of sea-fishing or other marine life taken from the sea, seabed or subsoil beneath the seabed:
    - (i) outside the territory of Peru and the territory of Australia; and

- (ii) in accordance with international law, outside the territorial sea of non-Parties;  
by vessels that are registered or recorded with Peru and are entitled to fly the flag of Peru; or
- (h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered or recorded with Peru and is entitled to fly the flag of Peru; or
- (i) goods (except fish, shellfish, other goods of sea-fishing or other marine life) taken by Peru, or a person of Peru, from the seabed, or subsoil beneath the seabed, outside the territory of Peru and the territory of Australia, and beyond areas over which non-Parties exercise jurisdiction, but only if Peru, or the person of Peru, has the right to exploit that seabed or subsoil in accordance with international law; or
- (j) waste or scrap that:
  - (i) has been derived from production in the territory of Peru and that is fit only for the recovery of raw materials; or
  - (ii) has been derived from used goods that are collected in the territory of Peru and that are fit only for the recovery of raw materials; or
- (k) goods produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

### **Subdivision C—Goods produced in Peru, or in Peru and Australia, from originating materials**

#### **153ZIO Goods produced in Peru, or in Peru and Australia, from originating materials**

Goods are *Peruvian originating goods* if:

- (a) they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from originating materials only; and

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- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

**Subdivision D—Goods produced in Peru, or in Peru and Australia, from non-originating materials**

**153ZIP Goods produced in Peru, or in Peru and Australia, from non-originating materials**

- (1) Goods are *Peruvian originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-B of the Agreement; and
  - (b) they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

Note: Subsection (9) sets out a limitation for goods that are put up in a set for retail sale.

- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-B of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.
- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

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*Regional value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (7) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
  - (d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;
- the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).
- Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZIM(2).
- (8) For the purposes of subsection (7), disregard section 153ZIR in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.
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*Goods put up in a set for retail sale*

- (9) If:
- (a) goods are put up in a set for retail sale; and
  - (b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;
- the goods are Peruvian originating goods under this section only if:
- (c) all of the goods in the set, when considered separately, are Peruvian originating goods; or
  - (d) the total customs value of the goods (if any) in the set that are not Peruvian originating goods does not exceed 20% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

### **153ZIQ Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods

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(whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZIM(2).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153ZIR Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Peruvian originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are Peruvian originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- (e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

**Subdivision F—Consignment**

**153ZIS Consignment**

- (1) Goods are not Peruvian originating goods under this Division if the goods are transported through the territory of one or more non-Parties and either or both of the following apply:
  - (a) the goods undergo subsequent production or any other operation in the territory of a non-Party (other than unloading, reloading, storing, separation from a bulk shipment, labelling or any other operation that is necessary to

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preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) while the goods are in the territory of a non-Party, the goods do not remain under customs control at all times.

(2) This section applies despite any other provision of this Division.

**Subdivision G—Regulations**

**153ZIT Regulations**

The regulations may make provision for and in relation to determining whether goods are Peruvian originating goods under this Division.

## Division 1F—Chilean originating goods

### Subdivision A—Preliminary

#### 153ZJA Simplified outline

The following is a simplified outline of this Division:

- This Division defines Chilean originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Chilean originating goods that are imported into Australia.
- Subdivision B provides that goods are Chilean originating goods if they are wholly obtained goods of Chile.
- Subdivision C provides that goods are Chilean originating goods if they are produced entirely in the territory of Chile from originating materials only.
- Subdivision D sets out when goods are Chilean originating goods because they are produced entirely in the territory of Chile, or in the territory of Chile and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Chilean originating goods because they are accessories, spare parts, tools or instructional or other information resources imported with other goods.
- Subdivision F provides that goods are not Chilean originating goods under this Division merely because of certain operations.
- Subdivision G deals with how the consignment of goods affects whether the goods are Chilean originating goods.

- Subdivision H allows regulations to make provision for and in relation to determining whether goods are Chilean originating goods.

## 153ZJB Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the Australia-Chile Free Trade Agreement, done at Canberra on 30 July 2008, as amended from time to time.

Note: In 2008, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**Australian originating goods** means goods that are Australian originating goods under a law of Chile that implements the Agreement.

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 4.16 of the Agreement.

**Chilean originating goods** means goods that, under this Division, are Chilean originating goods.

**composite goods** has the same meaning as it has in the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983 [1988] ATS 30, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**customs value** of goods has the meaning given by section 159.

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**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 6 March 2009; or
- (b) if the table in Annex 4-C of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

**indirect materials** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

**Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**non-originating materials** means goods that are not originating materials.

***originating materials*** means:

- (a) Chilean originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

***person of Chile*** means person of a Party within the meaning, insofar as it relates to Chile, of Article 2.1 of the Agreement.

***produce*** means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

***territorial sea*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

***territory of Australia*** means territory within the meaning, insofar as it relates to Australia, of Article 2.1 of the Agreement.

***territory of Chile*** means territory within the meaning, insofar as it relates to Chile, of Article 2.1 of the Agreement.

*Value of goods*

- (3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (4) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

## Subdivision B—Wholly obtained goods of Chile

### 153ZJC Wholly obtained goods of Chile

- (1) Goods are *Chilean originating goods* if:
  - (a) they are wholly obtained goods of Chile; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are *wholly obtained goods of Chile* if, and only if, the goods are:
  - (a) minerals extracted in or from the territory of Chile; or
  - (b) goods listed in Section II of the Harmonized System that are harvested, picked or gathered in the territory of Chile; or
  - (c) live animals born and raised in the territory of Chile; or
  - (d) goods obtained from live animals in the territory of Chile; or
  - (e) goods obtained from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Chile; or
  - (f) fish, shellfish or other marine life taken from the high seas by ships that are registered or recorded in Chile and are flying the flag of Chile; or
  - (g) goods obtained or produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in Chile and are flying the flag of Chile; or
  - (h) goods taken from the seabed, or beneath the seabed, outside the territorial sea of Chile:
    - (i) by Chile; or
    - (ii) by a person of Chile;but only if Chile has the right to exploit that part of the seabed in accordance with international law; or

- (i) waste and scrap that have been derived from production operations in the territory of Chile, or from used goods collected in the territory of Chile, and that are fit only for the recovery of raw materials; or
- (j) goods obtained or produced entirely in the territory of Chile exclusively from goods referred to in paragraphs (a) to (i).

### **Subdivision C—Goods produced in Chile from originating materials**

#### **153ZJD Goods produced in Chile from originating materials**

Goods are *Chilean originating goods* if:

- (a) they are produced entirely in the territory of Chile from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

### **Subdivision D—Goods produced in Chile, or Chile and Australia, from non-originating materials**

#### **153ZJE Goods produced in Chile, or Chile and Australia, from non-originating materials**

- (1) Goods are *Chilean originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4-C of the Agreement; and
  - (b) they are produced entirely in the territory of Chile, or entirely in the territory of Chile and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

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- (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4-C of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

*Regional value content*

- (5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (6) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information resources; and
  - (c) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the goods; and
  - (d) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the goods; and
  - (e) the accessories, spare parts, tools or instructional or other information resources are non-originating materials;
- the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information resources covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.
- Note: The value of the accessories, spare parts, tools or instructional or other information resources is to be worked out in accordance with the regulations: see subsection 153ZJB(3).
- (7) For the purposes of subsection (6), disregard section 153ZJG in working out whether the accessories, spare parts, tools or instructional or other information resources are non-originating materials.

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*Goods put up in a set for retail sale*

- (8) If:
- (a) goods are put up in a set for retail sale; and
  - (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;
- the goods are Chilean originating goods under this section only if:
- (c) all of the goods in the set, when considered separately, are Chilean originating goods; or
  - (d) the total customs value of the goods (if any) in the set that are not Chilean originating goods does not exceed 25% of the customs value of the set of goods.

*Composite goods*

- (9) If:
- (a) goods are composite goods; and
  - (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;
- the goods are Chilean originating goods under this section only if:
- (c) all of the components of the composite goods, when considered separately, are Chilean originating goods; or
  - (d) the total customs value of the components (if any) of the composite goods that are not Chilean originating goods does not exceed 25% of the customs value of the goods.

**153ZJF Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision (with 1 exception).

*Regional value content*

- (2) The exception is that, if:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information resources**

**153ZJG Goods that are accessories, spare parts, tools or instructional or other information resources**

Goods are *Chilean originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information resources in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information resources; and
- (c) the other goods are Chilean originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the other goods; and
- (e) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the other goods.

## **Subdivision F—Non-qualifying operations**

### **153ZJH Non-qualifying operations**

- (1) Goods are not Chilean originating goods under this Division merely because of the following operations:
  - (a) operations to preserve goods in good condition for the purpose of storage of the goods during transport;
  - (b) changing of packaging or the breaking up or assembly of packages;
  - (c) disassembly of goods;
  - (d) placing goods in bottles, cases or boxes or other simple packaging operations;
  - (e) making up of sets of goods;
  - (f) any combination of operations referred to in paragraphs (a) to (e).
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Consignment**

### **153ZJI Consignment**

- (1) Goods are not Chilean originating goods under this Division if:
  - (a) they are transported through a country or place other than Chile or Australia; and
  - (b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling, exhibition or any operation that is necessary to preserve them in good condition or to transport them to Australia).
- (2) This section applies despite any other provision of this Division.

## **Subdivision H—Regulations**

### **153ZJJ Regulations**

The regulations may make provision for and in relation to determining whether goods are Chilean originating goods under this Division.

## **Division 1G—ASEAN-Australia-New Zealand (AANZ) originating goods**

### **Subdivision A—Preliminary**

#### **153ZKA Simplified outline**

The following is a simplified outline of this Division:

- This Division defines AANZ originating goods (short for ASEAN-Australia-New Zealand originating goods). Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to AANZ originating goods that are imported into Australia.
- Subdivision B provides that goods are AANZ originating goods if they are wholly obtained goods of a Party.
- Subdivision C provides that goods are AANZ originating goods if they are produced entirely in a Party from originating materials only.
- Subdivision D sets out when goods are AANZ originating goods because they are produced from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are AANZ originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are AANZ originating goods.

- Subdivision G allows regulations to make provision for and in relation to determining whether goods are AANZ originating goods.

## 153ZKB Interpretation

### *Definitions*

(1) In this Division:

***AANZ originating goods*** means goods that, under this Division, are AANZ originating goods.

***Agreement*** means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Thailand on 27 February 2009, as amended and in force for Australia from time to time.

Note: In 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

***aquaculture*** has the meaning given by Article 1 of Chapter 3 of the Agreement.

***Certificate of Origin*** means a certificate that is in force and that complies with the requirements of Rule 7 of the Annex to Chapter 3 of the Agreement.

***Convention*** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30 ([1988] ATS 30). In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

***customs value*** of goods has the meaning given by section 159.

***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

***Harmonized System*** means:

- (a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or
- (b) if the table in Annex 2 to the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***in a Party*** includes:

- (a) the territorial sea of a Party; and
- (b) the exclusive economic zone of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law; and
- (c) the continental shelf of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law.

***indirect materials*** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

***Interpretation Rules*** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

***non-originating materials*** means goods that are not originating materials.

***originating materials*** means:

- (a) AANZ originating goods that are used or consumed in the production of other goods; or
- (b) indirect materials.

***Party*** means a Party (within the meaning of the Agreement) for which the Agreement has entered into force.

Note: See also subsection (7).

***produce*** means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

***territorial sea*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

*Value of goods*

- (3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (4) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

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*Incorporation of other instruments*

- (6) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

*Notification of entry into force of Agreement for a Party*

- (7) The Minister must announce by notice in the *Gazette* the day on which the Agreement enters into force for a Party (other than Australia). For the purposes of this subsection, **Party** means a Party (within the meaning of the Agreement).
- (8) A notice referred to in subsection (7) is not a legislative instrument.

**Subdivision B—Wholly obtained goods of a Party**

**153ZKC Wholly obtained goods of a Party**

- (1) Goods are **AANZ originating goods** if:
- (a) they are wholly obtained goods of a Party; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are **wholly obtained goods of a Party** if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in a Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  - (b) live animals born and raised in a Party; or
  - (c) goods obtained from live animals in a Party; or
  - (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or

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- (e) minerals or other naturally occurring substances extracted or taken in a Party; or
- (f) fish, shellfish or other marine goods taken from the high seas, in accordance with international law, by ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
- (g) goods produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
- (h) goods taken by a Party, or a person of a Party, from the seabed, or beneath the seabed, outside:
  - (i) the exclusive economic zone of that Party; and
  - (ii) the continental shelf of that Party; and
  - (iii) an area over which a third party exercises jurisdiction; and taken under exploitation rights granted in accordance with international law; or
- (i) waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials; or
- (j) used goods that are collected in a Party and that are fit only for the recovery of raw materials; or
- (k) goods produced or obtained entirely in a Party exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

**Subdivision C—Goods produced from originating materials**

**153ZKD Goods produced from originating materials**

Goods are *AANZ originating goods* if:

- (a) they are produced entirely in a Party from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or

- (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

### **Subdivision D—Goods produced from non-originating materials**

#### **153ZKE Goods produced from non-originating materials**

- (1) Goods are *AANZ originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 2 to the Agreement; and
  - (b) they are produced entirely in a Party from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 2 to the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

#### *Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

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- (7) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are not imported solely for the purpose of artificially raising the regional value content of the goods; and
  - (d) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
  - (e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

- (8) For the purposes of subsection (7), disregard section 153ZKI in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

**153ZKG Non-qualifying operations or processes**

- (1) This section applies for the purposes of working out if goods are AANZ originating goods under section 153ZKE where the goods are claimed to be AANZ originating goods solely on the basis that

the goods have a regional value content of not less than a particular percentage worked out in a particular way.

- (2) The goods are not AANZ originating goods merely because of the following:
- (a) operations or processes to preserve goods in good condition for the purpose of transport or storage of the goods;
  - (b) operations or processes to facilitate the shipment or transportation of goods;
  - (c) packaging (other than encapsulation of electronics) for transportation or sale or presenting goods for transportation or sale;
  - (d) simple processes of sifting, classifying, washing, cutting, slitting, bending, coiling, uncoiling or other similar simple processes;
  - (e) affixing of marks, labels or other distinguishing signs on goods or on their packaging;
  - (f) dilution with water or another substance that does not materially alter the characteristics of goods;
  - (g) any combination of things referred to in paragraphs (a) to (f).

### **153ZKH Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision (with one exception).

#### *Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or

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container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153ZKI Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *AANZ originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the accessories, spare parts, tools or instructional or other information materials are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
- (d) the other goods are AANZ originating goods; and
- (e) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and
- (f) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

## **Subdivision F—Consignment**

### **153ZKJ Consignment**

- (1) Goods are not AANZ originating goods under this Division if:
  - (a) the goods are transported through a country or place other than a Party; and
  - (b) at least one of the following applies:
    - (i) the goods undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing or any operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);
    - (ii) the goods enter the commerce of that country or place;
    - (iii) the transport through that country or place is not justified by geographical, economic or logistical reasons.
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Regulations**

### **153ZKJA Regulations**

The regulations may make provision for and in relation to determining whether goods are AANZ originating goods under this Division.

## Division 1GA—Pacific Islands originating goods

### Subdivision A—Preliminary

#### 153ZKK Simplified outline of this Division

- This Division defines Pacific Islands originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Pacific Islands originating goods if they are wholly obtained or produced in a Party.
- Subdivision C provides that goods are Pacific Islands originating goods if they are produced entirely in one or more of the Parties, by one or more producers, from originating materials only.
- Subdivision D sets out when goods are Pacific Islands originating goods because they are produced entirely in one or more of the Parties, by one or more producers, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Pacific Islands originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Pacific Islands originating goods.

- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Pacific Islands originating goods.

## 153ZKL Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa, Tonga on 14 June 2017, as amended and in force for Australia from time to time.

Note: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**aquaculture** has the meaning given by Article 1 of Chapter 3 of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**Declaration of Origin** means a declaration that is in force and that complies with the requirements of Article 15 of Chapter 3 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

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- (b) if the table in Annex 3-B to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

*in a Party* has the same meaning as it has in Chapter 3 of the Agreement.

*indirect materials* means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or  
(b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and  
(d) tools, dies and moulds; and  
(e) spare parts and materials; and  
(f) lubricants, greases, compounding materials and other similar goods; and  
(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and  
(h) catalysts and solvents.

*Interpretation Rules* means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

*non-originating materials* means goods that are not originating materials.

*non-party* has the same meaning as it has in Chapter 3 of the Agreement.

***originating materials*** means:

- (a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or
- (b) indirect materials.

***Pacific Islands originating goods*** means goods that, under this Division, are Pacific Islands originating goods.

***Party*** has the meaning given by Article 2 of Chapter 1 of the Agreement.

Note: See also subsection (6).

***person of a Party*** has the same meaning as it has in Chapter 3 of the Agreement.

***producer*** means a person who engages in the production of goods.

***production*** has the meaning given by Article 1 of Chapter 3 of the Agreement.

***Value of goods***

- (2) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

***Tariff classifications***

- (3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

***Incorporation of other instruments***

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or

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without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

*Notification of entry into force of Agreement for a Party*

- (6) The Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

**Subdivision B—Goods wholly obtained or produced in a Party**

**153ZKM Goods wholly obtained or produced in a Party**

- (1) Goods are *Pacific Islands originating goods* if:
- (a) they are wholly obtained or produced in a Party; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.
- (2) Goods are *wholly obtained or produced in a Party* if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in a Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  - (b) live animals born and raised in one or more of the Parties; or
  - (c) goods obtained from live animals in a Party; or
  - (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or
  - (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or beneath the seabed in a Party; or
  - (f) goods of sea-fishing, or other marine goods, taken from the high seas, in accordance with international law, by any vessel

- that is registered or recorded with a Party and is entitled to fly the flag of that Party; or
- (g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered or recorded with a Party and is entitled to fly the flag of that Party; or
  - (h) goods taken by a Party, or a person of a Party, from the seabed, or beneath the seabed, beyond the outer limits of:
    - (i) the exclusive economic zone of that Party; and
    - (ii) the continental shelf of that Party; and
    - (iii) an area over which a third party exercises jurisdiction; and taken under exploitation rights granted in accordance with international law; or
  - (i) either of the following:
    - (i) waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials;
    - (ii) used goods that are collected in a Party and that are fit only for the recovery of raw materials; or
  - (j) goods produced or obtained in a Party solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

### **Subdivision C—Goods produced from originating materials**

#### **153ZKN Goods produced from originating materials**

Goods are *Pacific Islands originating goods* if:

- (a) they are produced entirely in one or more of the Parties, by one or more producers, from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.

**Subdivision D—Goods produced from non-originating materials**

**153ZKO Goods produced from non-originating materials**

- (1) Goods are *Pacific Islands originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-B to Chapter 3 of the Agreement; and
  - (b) they are produced entirely in the territory of one or more of the Parties, by one or more producers, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-B to Chapter 3 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

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- (7) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
  - (d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
  - (e) the accessories, spare parts, tools or instructional or other information materials are non-originating materials;
- the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKL(2).

- (8) For the purposes of subsection (7), disregard section 153ZKQ in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.
- (9) If the goods are claimed to be Pacific Islands originating goods on the basis that the goods have a regional value content of not less than a particular percentage worked out in a particular way, the following are to be disregarded in determining whether the goods are Pacific Islands originating goods:
- (a) operations to preserve the goods in good condition for the purpose of transport or storage of the goods;
  - (b) operations or processes to facilitate the shipment or transportation of the goods;

- (c) packaging or presenting the goods for sale;
- (d) affixing of marks, labels or other distinguishing signs on the goods or on their packaging;
- (e) disassembly of the goods;
- (f) any combination of things referred to in paragraphs (a) to (e).

### **153ZKP Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

#### *Regional value content*

- (2) However, if:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKL(2).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153ZKQ Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Pacific Islands originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are Pacific Islands originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and
- (e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

**Subdivision F—Consignment**

**153ZKR Consignment**

- (1) Goods are not Pacific Islands originating goods under this Division if the goods are transported through a non-party and the goods undergo subsequent production or any other operation in the territory of a non-party other than:
  - (a) unloading, reloading, storing, repacking, relabelling or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia; or
  - (b) showing the goods in, or utilising the goods at, an exhibition.
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Regulations**

### **153ZKS Regulations**

The regulations may make provision for and in relation to determining whether goods are Pacific Islands originating goods under this Division.

## Division 1GB—Trans-Pacific Partnership originating goods

### Subdivision A—Preliminary

#### 153ZKT Simplified outline of this Division

- This Division defines Trans-Pacific Partnership originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Trans-Pacific Partnership originating goods if they are wholly obtained or produced entirely in the territory of one or more of the Parties.
- Subdivision C provides that goods are Trans-Pacific Partnership originating goods if they are produced entirely in the territory of one or more of the Parties from originating materials only.
- Subdivision D sets out when goods are Trans-Pacific Partnership originating goods because they are produced entirely in the territory of one or more of the Parties from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Trans-Pacific Partnership originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Trans-Pacific Partnership originating goods.

- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Trans-Pacific Partnership originating goods.

## 153ZKU Interpretation

### *Definitions*

(1) In this Division:

***Agreement*** means the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile on 8 March 2018, as amended and in force for Australia from time to time.

Note 1: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 2: Under Article 1 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the ***Santiago Agreement***), most of the provisions of the Trans-Pacific Partnership Agreement (the ***Auckland Agreement***), done at Auckland on 4 February 2016, are incorporated, by reference, into and made part of the Santiago Agreement. This means, for example, that Chapters 1 and 3 of the Auckland Agreement are, because of that Article, Chapters 1 and 3 of the Santiago Agreement.

***aquaculture*** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

***certification of origin*** means a certification that is in force and that complies with the requirements of Article 3.20 of Chapter 3 of the Agreement.

***Convention*** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***customs value*** of goods has the meaning given by section 159.

***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

***Harmonized System*** means:

- (a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or
- (b) if the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***indirect materials*** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

***Interpretation Rules*** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

***non-originating materials*** means goods that are not originating materials.

**non-Party** has the same meaning as it has in Chapter 3 of the Agreement.

**originating materials** means:

- (a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or
- (b) recovered goods derived in the territory of one or more of the Parties and used in the production of, and incorporated into, remanufactured goods; or
- (c) indirect materials.

**Party** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

Note: See also subsection (6).

**person of a Party** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

**production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**recovered goods** means goods in the form of one or more individual parts that:

- (a) have resulted from the disassembly of used goods; and
- (b) have been cleaned, inspected, tested or processed as necessary for improvement to sound working condition.

**remanufactured goods** means goods that:

- (a) are classified to any of Chapters 84 to 90 (other than heading 84.18, 85.09, 85.10, 85.16 or 87.03 or subheading 8414.51, 8450.11, 8450.12, 8508.11 or 8517.11), or to heading 94.02, of the Harmonized System; and
- (b) are entirely or partially composed of recovered goods; and
- (c) have a similar life expectancy to, and perform the same as or similar to, new goods:
  - (i) that are so classified; and
  - (ii) that are not composed of any recovered goods; and

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(d) have a factory warranty similar to that applicable to such new goods.

**territory**, for a Party, has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

**textile or apparel good** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

**Trans-Pacific Partnership originating goods** means goods that, under this Division, are Trans-Pacific Partnership originating goods.

**wholly formed**, in relation to elastomeric yarn, has the same meaning as it has in the Agreement.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

*Notification of entry into force of Agreement for a Party*

- (6) The Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

**Subdivision B—Goods wholly obtained or produced entirely in the territory of one or more of the Parties**

**153ZKV Goods wholly obtained or produced entirely in the territory of one or more of the Parties**

- (1) Goods are *Trans-Pacific Partnership originating goods* if:
- (a) they are wholly obtained or produced entirely in the territory of one or more of the Parties; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a certification of origin for the goods.
- (2) Goods are *wholly obtained or produced entirely in the territory of one or more of the Parties* if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the territory of one or more of the Parties; or
  - (b) live animals born and raised in the territory of one or more of the Parties; or
  - (c) goods obtained from live animals in the territory of one or more of the Parties; or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of one or more of the Parties; or
  - (e) goods obtained from aquaculture conducted in the territory of one or more of the Parties; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the territory of one or more of the Parties; or

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- (g) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:
  - (i) outside the territories of the Parties; and
  - (ii) in accordance with international law, outside the territorial sea of non-Parties;by vessels that are registered, listed or recorded with a Party and are entitled to fly the flag of that Party; or
- (h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered, listed or recorded with a Party and is entitled to fly the flag of that Party; or
- (i) goods, other than fish, shellfish or other marine life, taken by a Party, or a person of a Party, from the seabed, or subsoil beneath the seabed, outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction, but only if that Party or person has the right to exploit that seabed or subsoil in accordance with international law; or
- (j) waste or scrap that:
  - (i) has been derived from production in the territory of one or more of the Parties; or
  - (ii) has been derived from used goods that are collected in the territory of one or more of the Parties and that are fit only for the recovery of raw materials; or
- (k) goods produced in the territory of one or more of the Parties, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

**Subdivision C—Goods produced from originating materials**

**153ZKW Goods produced from originating materials**

Goods are *Trans-Pacific Partnership originating goods* if:

- (a) they are produced entirely in the territory of one or more of the Parties from originating materials only; and

- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a certification of origin for the goods.

### **Subdivision D—Goods produced from non-originating materials**

#### **153ZKX Goods produced from non-originating materials**

- (1) Goods are *Trans-Pacific Partnership originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement; and
  - (b) they are produced entirely in the territory of one or more of the Parties from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a certification of origin for the goods.

Note: Subsection (12) sets out a limitation for goods that are put up in a set for retail sale.

- (2) Without limiting paragraph (1)(c), if the goods are a textile or apparel good, paragraphs 7 and 9 of Article 4.2 of Chapter 4, and Appendix 1 to Annex 4-A to Chapter 4, of the Agreement have effect for the purposes of determining whether paragraph (1)(c) is met.

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Note: Most of the requirements applicable to goods are set out in the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

*Rules for goods that are not a textile or apparel good*

- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are not a textile or apparel good; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (c) does not exceed 10% of the customs value of the goods.

Note: See subsections (6) and (7) for goods that are a textile or apparel good.

- (5) In applying subsection (4), disregard non-originating materials covered by paragraph (a), (b), (c), (d) or (e) of Annex 3-C to Chapter 3 of the Agreement.

*Rules for goods that are a textile or apparel good*

- (6) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods

must have undergone a particular change in tariff classification; and

- (b) the goods are a textile or apparel good; and
- (c) the goods are classified other than to Chapter 61, 62 or 63 of the Harmonized System; and
- (d) if the goods contain elastomeric yarn—the yarn is wholly formed in the territory of one or more of the Parties; and
- (e) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (e) does not exceed 10% of the total weight of the goods.

(7) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) the goods are a textile or apparel good; and
- (c) the goods are classified to Chapter 61, 62 or 63 of the Harmonized System; and
- (d) if the component of the goods, that determines the tariff classification of the goods, contains elastomeric yarn—the yarn is wholly formed in the territory of one or more of the Parties; and
- (e) the component of the goods, that determines the tariff classification of the goods, contains fibres or yarns that are non-originating materials and that do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the fibres or yarns covered by paragraph (e) does not exceed 10% of the total weight of that component.

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*Regional value content*

- (8) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (9) Without limiting paragraph (8)(b), Appendix 1 to Annex 3-D to Chapter 3 of the Agreement has effect in working out if materials used in the production of goods are originating materials or non-originating materials.
- (10) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
  - (d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKU(2).

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- (11) For the purposes of subsection (10), disregard section 153ZKZ in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

*Goods put up in a set for retail sale*

- (12) If:
- (a) goods are put up in a set for retail sale; and
  - (b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;
- the goods are Trans-Pacific Partnership originating goods under this section only if:
- (c) all of the goods in the set, when considered separately, are Trans-Pacific Partnership originating goods; or
  - (d) the total customs value of the goods (if any) in the set that are not Trans-Pacific Partnership originating goods does not exceed 10% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

**153ZKY Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

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*Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKU(2).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153ZKZ Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Trans-Pacific Partnership originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are Trans-Pacific Partnership originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- (e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

## **Subdivision F—Consignment**

### **153ZKZA Consignment**

- (1) Goods are not Trans-Pacific Partnership originating goods under this Division if the goods are transported through the territory of one or more non-Parties and either or both of the following apply:
  - (a) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);
  - (b) while the goods are in the territory of a non-Party, the goods do not remain under the control of the customs administration of the non-Party at all times.
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Regulations**

### **153ZKZB Regulations**

The regulations may make provision for and in relation to determining whether goods are Trans-Pacific Partnership originating goods under this Division.

## Division 1H—Malaysian originating goods

### Subdivision A—Preliminary

#### 153ZLA Simplified outline

The following is a simplified outline of this Division:

- This Division defines Malaysian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Malaysian originating goods that are imported into Australia.
- Subdivision B provides that goods are Malaysian originating goods if they are wholly obtained or produced in Malaysia or in Malaysia and Australia.
- Subdivision C provides that goods are Malaysian originating goods if they are produced entirely in Malaysia, or in Malaysia and Australia, from originating materials only.
- Subdivision D sets out when goods are Malaysian originating goods because they are produced entirely in Malaysia, or in Malaysia and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Malaysian originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Malaysian originating goods.

- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Malaysian originating goods.

## 153ZLB Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the Malaysia-Australia Free Trade Agreement, done at Kuala Lumpur on 22 May 2012, as amended from time to time.

Note: In 2012, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**aquaculture** has the meaning given by Article 3.1 of the Agreement.

**Australian originating goods** means goods that are Australian originating goods under a law of Malaysia that implements the Agreement.

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Articles 3.15 and 3.16, and Rule 7 of the Annex to Chapter 3, of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30 ([1988] ATS 30). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**customs value** of goods has the meaning given by section 159.

***Declaration of Origin*** means a declaration that is in force and that complies with the requirements of Article 3.15, and Rule 7 of the Annex to Chapter 3, of the Agreement.

***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

***Harmonized System*** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2013; or
- (b) if the table in Annex 2 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***indirect materials*** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

***Interpretation Rules*** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**juridical person** has the meaning given by Article 1.2 of the Agreement.

**Malaysian originating goods** means goods that, under this Division, are Malaysian originating goods.

**non-originating materials** means goods that are not originating materials.

**originating materials** means:

- (a) Malaysian originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

**person of Malaysia** means:

- (a) a natural person of a Party within the meaning, so far as it relates to Malaysia, of Article 1.2 of the Agreement; or
- (b) a juridical person of Malaysia.

**planted** has the meaning given by Article 3.1 of the Agreement.

**produce** means grow, plant, mine, harvest, farm, raise, breed, extract, gather, collect, capture, fish, trap, hunt, manufacture, process or assemble.

**territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.2 of the Agreement.

**territory of Malaysia** means territory within the meaning, so far as it relates to Malaysia, of Article 1.2 of the Agreement.

*Value of goods*

- (3) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

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*Tariff classifications*

- (4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced in Malaysia or in Malaysia and Australia**

**153ZLC Goods wholly obtained or produced in Malaysia or in Malaysia and Australia**

- (1) Goods are *Malaysian originating goods* if:
  - (a) they are wholly obtained or produced in Malaysia or in Malaysia and Australia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Declaration of Origin or a Certificate of Origin for the goods.
- (2) Goods are *wholly obtained or produced in Malaysia or in Malaysia and Australia* if, and only if, the goods are:
  - (a) minerals, or other naturally occurring substances, extracted or taken in the territory of Malaysia; or
  - (b) plants formed, naturally grown or planted in the territory of Malaysia or in the territory of Malaysia and the territory of

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- Australia, or products obtained in the territory of Malaysia from such plants; or
- (c) live animals born and raised in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia; or
  - (d) goods obtained from live animals in the territory of Malaysia; or
  - (e) goods obtained directly from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Malaysia; or
  - (f) fish, shellfish or plant or other marine life taken from the high seas by ships that are registered in Malaysia and are flying the flag of Malaysia; or
  - (g) goods obtained or produced from goods referred to in paragraph (f) on board factory ships that are registered in Malaysia and are flying the flag of Malaysia; or
  - (h) goods taken by Malaysia, or a person of Malaysia, from the seabed, or beneath the seabed, outside:
    - (i) the exclusive economic zone of Malaysia; and
    - (ii) the continental shelf of Malaysia; and
    - (iii) an area over which a third party exercises jurisdiction; and taken under exploitation rights granted in accordance with international law; or
  - (i) waste and scrap that has been derived from production or consumption in the territory of Malaysia and that is fit only for the recovery of raw materials; or
  - (j) used goods that are collected in the territory of Malaysia and that are fit only for the recovery of raw materials; or
  - (k) goods produced or obtained entirely in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

**Subdivision C—Goods produced in Malaysia, or in Malaysia and Australia, from originating materials**

**153ZLD Goods produced in Malaysia, or in Malaysia and Australia, from originating materials**

Goods are *Malaysian originating goods* if:

- (a) they are produced entirely in the territory of Malaysia, or entirely in the territory of Malaysia and the territory of Australia, from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Declaration of Origin or a Certificate of Origin for the goods.

**Subdivision D—Goods produced in Malaysia, or in Malaysia and Australia, from non-originating materials**

**153ZLE Goods produced in Malaysia, or in Malaysia and Australia, from non-originating materials**

- (1) Goods are *Malaysian originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 2 of the Agreement; and
  - (b) they are produced entirely in the territory of Malaysia, or entirely in the territory of Malaysia and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and

- (d) either:
- (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Declaration of Origin or a Certificate of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 2 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.
- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

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- (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
- (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
  - (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (7) If:
  - (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
  - (d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts,

tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZLB(3).

- (8) For the purposes of subsection (7), disregard section 153ZLH in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

### **153ZLF Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

#### *Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).
- (3) If the packaging material or container is not customary for the goods, the regulations must provide for the packaging material or container to be taken into account as a non-originating material for the purposes of working out the regional value content of the goods.

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Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZLB(3).

**153ZLG Non-qualifying operations**

Goods are not Malaysian originating goods under this Subdivision merely because of the following:

- (a) operations to preserve goods in good condition for the purpose of transport or storage of the goods;
- (b) operations to facilitate the shipment or transportation of goods;
- (c) disassembly of goods;
- (d) affixing of marks, labels or other distinguishing signs on goods or on their packaging;
- (e) placing goods in bottles, cases or boxes or other simple packaging operations;
- (f) changing of packaging or the breaking up or assembly of packages;
- (g) the reclassification of goods without any physical change in the goods;
- (h) any combination of things referred to in paragraphs (a) to (g).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153ZLH Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Malaysian originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are Malaysian originating goods; and

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- (d) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and
- (e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

**Subdivision F—Consignment**

**153ZLI Consignment**

- (1) Goods are not Malaysian originating goods under this Division if:
  - (a) they are transported through a country or place other than Malaysia or Australia; and
  - (b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling, exhibition or any operation that is necessary to preserve them in good condition or to transport them to Australia).
- (2) This section applies despite any other provision of this Division.

**Subdivision G—Regulations**

**153ZLJ Regulations**

The regulations may make provision for and in relation to determining whether goods are Malaysian originating goods under this Division.

## Division 1HA—Indonesian originating goods

### Subdivision A—Preliminary

#### 153ZLJA Simplified outline of this Division

- This Division defines Indonesian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Indonesian originating goods that are imported into Australia.
- Subdivision B provides that goods are Indonesian originating goods if they are wholly obtained or produced in Indonesia.
- Subdivision C provides that goods are Indonesian originating goods if they are produced entirely in the territory of Indonesia from originating materials only.
- Subdivision D sets out when goods are Indonesian originating goods because they are produced entirely in the territory of Indonesia, or entirely in the territory of Indonesia and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the consignment or exhibition of goods affects whether the goods are Indonesian originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Indonesian originating goods.

## 153ZLK Interpretation

### *Definitions*

(1) In this Division:

***Agreement*** means the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***aquaculture*** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

***Australian originating goods*** means goods that are Australian originating goods under a law of Indonesia that implements the Agreement.

***Certificate of Origin*** means a certificate that is in force and that complies with the requirements of Article 4.20 of Chapter 4 of the Agreement.

***Convention*** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***customs value*** of goods has the meaning given by section 159.

***Declaration of Origin*** means a declaration that is in force and that complies with the requirements of Article 4.20 of Chapter 4 of the Agreement.

***enterprise*** has the meaning given by Article 1.4 of Chapter 1 of the Agreement.

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***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

***Harmonized System*** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or
- (b) if the table in Annex 4-C of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***indirect materials*** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

***Indonesian originating goods*** means goods that, under this Division, are Indonesian originating goods.

***Interpretation Rules*** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

***non-originating materials*** means goods that are not originating materials.

**non-party** has the same meaning as it has in Chapter 4 of the Agreement.

**originating materials** means:

- (a) Indonesian originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

**person of Indonesia** means:

- (a) a natural person of a Party within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 of the Agreement; or
- (b) an enterprise of Indonesia.

**production** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

**sea-fishing** has the same meaning as it has in Chapter 4 of the Agreement.

**territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.4 of Chapter 1 of the Agreement.

**territory of Indonesia** means territory within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 of the Agreement.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

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- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced in Indonesia**

**153ZLL Goods wholly obtained or produced in Indonesia**

- (1) Goods are *Indonesian originating goods* if:
- (a) they are wholly obtained or produced in Indonesia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.
- (2) Goods are *wholly obtained or produced in Indonesia* if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in the territory of Indonesia (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  - (b) live animals born and raised in the territory of Indonesia; or
  - (c) goods obtained from live animals in the territory of Indonesia; or
  - (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in the territory of Indonesia; or

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- (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or beneath the seabed in the territory of Indonesia; or
- (f) goods of sea-fishing, or other marine goods, taken from the high seas, in accordance with international law, by any vessel that is registered or recorded with Indonesia and is entitled to fly the flag of Indonesia; or
- (g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered or recorded with Indonesia and is entitled to fly the flag of Indonesia; or
- (h) goods taken by Indonesia, or a person of Indonesia, from the seabed, or beneath the seabed, outside:
  - (i) the exclusive economic zone of Indonesia; and
  - (ii) the continental shelf of Indonesia; and
  - (iii) an area over which a non-party exercises jurisdiction; and taken under exploitation rights granted in accordance with international law; or
- (i) either of the following:
  - (i) waste and scrap that has been derived from production or consumption in the territory of Indonesia and that is fit only for the recovery of raw materials;
  - (ii) used goods that are collected in the territory of Indonesia and that are fit only for the recovery of raw materials; or
- (j) goods obtained or produced in the territory of Indonesia solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

**Subdivision C—Goods produced in Indonesia from originating materials**

**153ZLM Goods produced in Indonesia from originating materials**

Goods are *Indonesian originating goods* if:

- (a) they are produced entirely in the territory of Indonesia from originating materials only; and

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- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

**Subdivision D—Goods produced in Indonesia, or in Indonesia and Australia, from non-originating materials**

**153ZLN Goods produced in Indonesia, or in Indonesia and Australia, from non-originating materials**

- (1) Goods are *Indonesian originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4-C of the Agreement; and
  - (b) they are produced entirely in the territory of Indonesia, or entirely in the territory of Indonesia and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4-C of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.
- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Qualifying value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:
- (a) the qualifying value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.
- (7) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
  - (d) the accessories, spare parts, tools or instructional or other information materials are included in the price of the goods; and
  - (e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZLK(2).

- (8) If the goods are claimed to be Indonesian originating goods on the basis that the goods have a qualifying value content of not less than a particular percentage worked out in a particular way, the following are to be disregarded in determining whether the goods are Indonesian originating goods:
- (a) operations or processes to preserve the goods in good condition for the purpose of transport or storage of the goods;
  - (b) operations or processes to facilitate the shipment or transportation of the goods;
  - (c) packaging or presenting the goods for transportation or sale;
  - (d) simple processes of sifting, classifying, washing or other similar simple processes;
  - (e) affixing of marks, labels or other distinguishing signs on the goods or on their packaging;
  - (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
  - (g) any combination of things referred to in paragraphs (a) to (f).

### **153ZLO Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

#### *Qualifying value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods (whether the packaging

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material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZLK(2).

**Subdivision E—Consignment and exhibition**

**153ZLP Consignment**

- (1) Goods are not Indonesian originating goods under this Division if the goods are transported through a non-party, the goods are not exhibited in the non-party and one or more of the following apply:
  - (a) the goods undergo any operation in the non-party (other than unloading, reloading, unpacking and repacking, labelling or any other operation that is necessary to preserve the goods in good condition);
  - (b) the goods enter the commerce of the non-party;
  - (c) the transport through that non-party is not justified by geographical, economic or logistical reasons.
- (2) This section applies despite any other provision of this Division.

**153ZLQ Exhibition**

- (1) Goods are not Indonesian originating goods under this Division if:
  - (a) the goods are imported into Australia after being exhibited in a non-party; and
  - (b) one or more of subparagraphs (a), (b), (c), (d) and (e) of paragraph 1 of Article 4.16 of Chapter 4 of the Agreement are not satisfied.
- (2) This section applies despite any other provision of this Division.

## **Subdivision F—Regulations**

### **153ZLR Regulations**

The regulations may make provision for and in relation to determining whether goods are Indonesian originating goods under this Division.

## Division 1J—Korean originating goods

### Subdivision A—Preliminary

#### 153ZMA Simplified outline of this Division

- This Division defines Korean originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Korean originating goods that are imported into Australia.
- Subdivision B provides that goods are Korean originating goods if they are wholly obtained in Korea or in Korea and Australia.
- Subdivision C provides that goods are Korean originating goods if they are produced entirely in Korea, or in Korea and Australia, from originating materials only.
- Subdivision D sets out when goods are Korean originating goods because they are produced entirely in Korea, or in Korea and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E provides that goods are not Korean originating goods under this Division merely because of certain operations.
- Subdivision F deals with other matters, such as how the consignment of goods affects whether the goods are Korean originating goods.

#### 153ZMB Interpretation

##### *Definitions*

- (1) In this Division:
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**Agreement** means the Korea-Australia Free Trade Agreement, done at Seoul on 8 April 2014, as amended from time to time.

Note: The Agreement could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**aquaculture** has the meaning given by Article 3.30 of the Agreement.

**Australian originating goods** means goods that are Australian originating goods under a law of Korea that implements the Agreement.

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 3.15 of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**enterprise** has the meaning given by Article 1.4 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 12 December 2014; or
- (b) if the table in Annex 3-A of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***indirect materials*** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

***Interpretation Rules*** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

***Korea*** means the Republic of Korea.

***Korean originating goods*** means goods that, under this Division, are Korean originating goods.

***non-originating materials*** means goods that are not originating materials.

***originating materials*** means:

- (a) Korean originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

***person of Korea*** means:

- (a) a national within the meaning, so far as it relates to Korea, of Article 1.4 of the Agreement; or

(b) an enterprise of Korea.

**produce** means grow, mine, harvest, fish, breed, raise, trap, hunt, manufacture, process, assemble or disassemble.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.4 of the Agreement.

**territory of Korea** means territory within the meaning, so far as it relates to Korea, of Article 1.4 of the Agreement.

**vegetable goods** has the same meaning as it has in the Agreement.

*Value of goods*

- (3) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained in Korea or in Korea and Australia**

**153ZMC Goods wholly obtained in Korea or in Korea and Australia**

- (1) Goods are *Korean originating goods* if:
  - (a) they are wholly obtained in Korea or in Korea and Australia;  
and
  - (b) either:
    - (i) the importer of the goods has, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are *wholly obtained in Korea or in Korea and Australia* if, and only if, the goods are:
  - (a) minerals, or other natural resources, taken or extracted from the territory of Korea; or
  - (b) vegetable goods grown, harvested, picked or gathered in the territory of Korea, or in the territory of Korea and the territory of Australia; or
  - (c) live animals born and raised in the territory of Korea, or in the territory of Korea and the territory of Australia; or
  - (d) goods obtained from live animals referred to in paragraph (c);  
or
  - (e) goods obtained from hunting, trapping, gathering, capturing, aquaculture or fishing conducted in Korea or the territorial sea of Korea; or
  - (f) fish, shellfish or other marine life taken from the sea, seabed, ocean floor or subsoil outside the territorial sea of Korea by ships that are registered or recorded in Korea and are entitled to fly the flag of Korea; or
  - (g) goods produced, from goods referred to in paragraph (f), on board factory ships that are registered or recorded in Korea and are entitled to fly the flag of Korea; or

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- (h) goods, other than fish, shellfish or other marine life, taken or extracted from the seabed, ocean floor or subsoil outside the territory of Korea by Korea, or a person of Korea, but only if Korea, or the person of Korea, has the right to exploit that part of the seabed, ocean floor or subsoil; or
- (i) goods taken from outer space by Korea, or a person of Korea, and that are not processed in a country other than Korea or Australia; or
- (j) waste and scrap that:
  - (i) has been derived from production in the territory of Korea; or
  - (ii) has been derived from used goods that are collected in the territory of Korea and that are fit only for the recovery of raw materials; or
- (k) goods that are collected in the territory of Korea, that can no longer perform their original purpose and that are fit only for the recovery of raw materials; or
- (l) goods produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (k) or from their derivatives.

**Subdivision C—Goods produced in Korea, or in Korea and Australia, from originating materials**

**153ZMD Goods produced in Korea, or in Korea and Australia, from originating materials**

Goods are *Korean originating goods* if:

- (a) they are produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods; or

- (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

**Subdivision D—Goods produced in Korea, or in Korea and Australia, from non-originating materials**

**153ZME Goods produced in Korea, or in Korea and Australia, from non-originating materials**

- (1) Goods are *Korean originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-A of the Agreement; and
  - (b) they are produced entirely in the territory of Korea, or entirely in the territory of Korea and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time for working out the rate of import duty on the goods, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-A of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in

the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) Subsection (4) does not apply in relation to goods covered by paragraph 3 of Article 3.6 of Chapter 3 of the Agreement.

(6) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
- (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

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*Regional value content*

- (7) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (8) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts or tools; and
  - (c) the accessories, spare parts or tools are not invoiced separately from the goods; and
  - (d) the quantities and value of the accessories, spare parts or tools are customary for the goods;

the regulations must provide for the value of the accessories, spare parts or tools to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts or tools are originating materials or non-originating materials).

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZMB(3).

**153ZMF Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZMB(3).

## **Subdivision E—Non-qualifying operations**

### **153ZMG Non-qualifying operations**

- (1) Goods are not Korean originating goods under this Division merely because of the following operations or processes:
- (a) operations to preserve goods in good condition for the purpose of transport or storage of the goods;
  - (b) changing of packaging or the breaking up or assembly of packages;
  - (c) washing, cleaning or removal of dust, oxide, oil, paint or other coverings;
  - (d) sharpening or simple processes of grinding, crushing or cutting;
  - (e) simple placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards or other simple packaging operations;
  - (f) affixing or printing marks, labels, logos or other distinguishing signs on goods or on their packaging;
  - (g) disassembly of goods;

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- (h) the reclassification of goods without any physical change in the goods;
  - (i) any combination of things referred to in paragraphs (a) to (h).
- (2) This section applies despite any other provision of this Division.

**Subdivision F—Other matters**

**153ZMH Consignment**

- (1) Goods are not Korean originating goods under this Division if they are transported through a country other than Korea or Australia and either or both of the following apply:
- (a) they undergo subsequent production or any other operation in that country (other than unloading, reloading, storing, repacking, relabelling, splitting up of loads for transport or any operation that is necessary to preserve them in good condition or to transport them to Australia);
  - (b) they do not remain under customs control at all times while they are in that country.
- (2) This section applies despite any other provision of this Division.

**153ZMI Outward processing zones on the Korean Peninsula**

Goods are not prevented from being Korean originating goods under this Division if they contain materials that:

- (a) have been exported from Korea; and
- (b) have undergone processing in an area designated as an outward processing zone in accordance with Annex 3-B to Chapter 3 of the Agreement; and
- (c) have been re-imported to Korea after that processing.

**153ZMJ Regulations**

The regulations may make provision for and in relation to determining whether goods are Korean originating goods under this Division.

## **Division 1JA—Indian originating goods**

### **Subdivision A—Preliminary**

#### **153ZMK Simplified outline of this Division**

- This Division defines Indian originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Indian originating goods that are imported into Australia.
- Subdivision B provides that goods are Indian originating goods if they are wholly obtained or produced in India or in India and Australia.
- Subdivision C sets out when goods are Indian originating goods because they are produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision D deals with how the packaging materials or containers in which goods are packaged affects whether the goods are Indian originating goods.
- Subdivision E deals with how the consignment of goods affects whether the goods are Indian originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Indian originating goods.

#### **153ZML Interpretation**

##### *Definitions*

- (1) In this Division:

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**Agreement** means the India-Australia Economic Cooperation and Trade Agreement, done on 2 April 2022, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**aquaculture** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

**Australian originating goods** means goods that are Australian originating goods under a law of India that implements the Agreement.

**certificate of origin** means a certificate that is in force and that complies with the requirements of Article 4.15 of Chapter 4 of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or
- (b) if the table in Annex 4B to Chapter 4 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

**Indian originating goods** means goods that, under this Division, are Indian originating goods.

**indirect materials** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning), catalysts and solvents; and
- (d) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (e) tools, dies and moulds; and
- (f) spare parts and materials; and
- (g) lubricants, greases, compounding materials and other similar goods.

**Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**non-originating materials** means goods that are not originating materials.

**non-party** has the same meaning as it has in Chapter 4 of the Agreement.

**originating materials** means:

- (a) Indian originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

**production** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

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*territorial sea* has the same meaning as in the *Seas and Submerged Lands Act 1973*.

*territory of Australia* means territory within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

*territory of India* means territory within the meaning, so far as it relates to India, of Article 1.3 of Chapter 1 of the Agreement.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced in India or in India and Australia**

**153ZMM Goods wholly obtained or produced in India or in India and Australia**

- (1) Goods are *Indian originating goods* if:
- (a) they are wholly obtained or produced in India or in India and Australia; and

- (b) either:
- (i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a certificate of origin for the goods.
- (2) Goods are ***wholly obtained or produced in India or in India and Australia*** if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown and harvested, picked or gathered in the territory of India or in the territory of India and the territory of Australia (including fruit, flowers, vegetables, trees, seaweed, fungi, algae and live plants); or
  - (b) live animals born and raised in the territory of India or in the territory of India and the territory of Australia; or
  - (c) goods obtained from live animals referred to in paragraph (b); or
  - (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of India; or
  - (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or subsoil beneath the seabed in the territory of India; or
  - (f) fish, shellfish or other marine life extracted or taken from the sea, seabed or subsoil beneath the seabed:
    - (i) beyond the outer limits of the territory of India and the territory of Australia; and
    - (ii) in accordance with international law, outside the territorial sea of non-parties;by vessels that are registered, listed or recorded with India and are entitled to fly the flag of India; or
  - (g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered, listed or recorded with India and is entitled to fly the flag of India; or
  - (h) goods, other than fish, shellfish or other marine life, extracted or taken from the seabed or subsoil beneath the seabed

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outside the territorial sea of India, by India, but only if India has the right to exploit that seabed or subsoil in accordance with international law; or

- (i) waste and scrap that has been derived from production or consumption in the territory of India and that is fit only for the recovery of raw materials or for recycling purposes; or
- (j) goods produced in the territory of India, or in the territory of India and the territory of Australia, exclusively from the following:
  - (i) goods referred to in paragraphs (a) to (i) or their derivatives;
  - (ii) Australian originating goods of a kind covered by subparagraph (a) of Article 4.2 of Chapter 4 of the Agreement or their derivatives.

**Subdivision C—Goods produced in India, or in India and Australia, from non-originating materials**

**153ZMN Goods produced in India, or in India and Australia, from non-originating materials**

- (1) Goods are *Indian originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4B to Chapter 4 of the Agreement; and
  - (b) they are produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) either:
    - (i) the goods satisfy the requirements applicable to the goods in that Annex; or
    - (ii) the goods satisfy the requirements under subsection (3); and

- (d) either:
- (i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a certificate of origin for the goods.
- (2) Without limiting subparagraph (1)(c)(i), a requirement may be specified in the table in Annex 4B to Chapter 4 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.
- (3) Goods satisfy the requirements under this subsection if:
- (a) all non-originating materials used in the production of the goods have undergone a change in tariff classification at the tariff subheading level; and
  - (b) the goods satisfy the qualifying value content requirements prescribed by regulations made for the purposes of this paragraph; and
  - (c) the final production process of the manufacture of the goods is performed in the territory of India.

*Change in tariff classification*

- (4) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and

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- (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if:

- (c) in the case of goods classified to any of Chapters 50 to 63 of the Harmonized System—the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or
- (d) otherwise—the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

*Qualifying value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:
  - (a) the qualifying value content of the goods is to be worked out in accordance with the Agreement, unless paragraph (b) applies; or
  - (b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.
- (7) If:
  - (a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and

- (d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

the regulations must provide for the following:

- (e) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods;
- (f) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZML(2).

### **153ZMO Non-qualifying operations**

- (1) Goods are not Indian originating goods under this Subdivision merely because of the following operations:
  - (a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods;
  - (b) packaging or presenting the goods for transportation or sale;
  - (c) simple processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling or uncoiling;
  - (d) for goods that are textiles—attaching accessory articles (including straps, beads, cords, rings and eyelets) to the goods or ironing or pressing the goods;
  - (e) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;
  - (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
  - (g) disassembly of products into parts;
  - (h) slaughtering (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of animals;
  - (i) simple painting or polishing operations;

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- (j) simple peeling, stoning or shelling;
  - (k) simple mixing (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of goods, whether or not of different kinds;
  - (l) any combination of things referred to in paragraphs (a) to (k).
- (2) For the purposes of this section, *simple* has the same meaning as it has in Article 4.7 of Chapter 4 of the Agreement.

**Subdivision D—Packaging materials and containers**

**153ZMP Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Division.

*Qualifying value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:
- (a) the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods;
  - (b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZML(2).

## **Subdivision E—Consignment**

### **153ZMQ Consignment**

- (1) Goods are not Indian originating goods under this Division if the goods are transported through a non-party and either or both of the following apply:
  - (a) the goods undergo further production or any other operation in the non-party (other than unloading, reloading, storing, repacking, relabelling for the purpose of satisfying the requirements of Australia, splitting up or consolidating loads or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);
  - (b) while the goods are in the non-party, the goods do not remain under customs control at all times.
- (2) This section applies despite any other provision of this Division.

## **Subdivision F—Regulations**

### **153ZMR Regulations**

The regulations may make provision for and in relation to determining whether goods are Indian originating goods under this Division.

## Division 1K—Japanese originating goods

### Subdivision A—Preliminary

#### 153ZNA Simplified outline of this Division

- This Division defines Japanese originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Japanese originating goods that are imported into Australia.
- Subdivision B provides that goods are Japanese originating goods if they are wholly obtained in Japan.
- Subdivision C provides that goods are Japanese originating goods if they are produced entirely in Japan from originating materials only.
- Subdivision D sets out when goods are Japanese originating goods because they are produced entirely in Japan, or in Japan and Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the consignment of goods affects whether the goods are Japanese originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Japanese originating goods.

#### 153ZNB Interpretation

##### *Definitions*

- (1) In this Division:

**Agreement** means the Japan-Australia Economic Partnership Agreement, done at Canberra on 8 July 2014, as amended from time to time.

Note 1: The Agreement is in Australian Treaty Series 2015 No. 2 ([2015] ATS 2) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Note 2: There is also a separate agreement (known as the Implementing Agreement) that sets out the details and procedures for the implementation of the Japan-Australia Economic Partnership Agreement. The Implementing Agreement is in that same Australian Treaty Series.

**Area of Japan** means Area within the meaning, so far as it relates to Japan, of Article 1.2 of the Agreement.

**Australian originating goods** means goods that are Australian originating goods under a law of Japan that implements the Agreement.

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 3.15 of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**enterprise** has the meaning given by Article 1.2 of the Agreement.

**factory ships of Japan** means factory ships of the Party within the meaning, so far as it relates to Japan, of Article 3.1 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

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**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or
- (b) if the table in Annex 2 to the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

**indirect materials** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

**Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**Japanese originating goods** means goods that, under this Division, are Japanese originating goods.

**non-originating materials** means goods that are not originating materials.

**originating materials** means:

- (a) Japanese originating goods that are used in the production of other goods; or

- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

***origin certification document*** means a document that is in force and that complies with the requirements of Article 3.16 of the Agreement.

***person of Japan*** means:

- (a) a natural person of a Party within the meaning, so far as it relates to Japan, of Article 1.2 of the Agreement; or
- (b) an enterprise of Japan.

***produce*** means manufacture, assemble, process, raise, grow, breed, mine, extract, harvest, fish, trap, gather, collect, hunt or capture.

***sea-fishing*** has the same meaning as it has in the Agreement.

***territorial sea*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

***vessels of Japan*** means vessels of the Party within the meaning, so far as it relates to Japan, of Article 3.1 of the Agreement.

*Value of goods*

- (3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in

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relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained in Japan**

**153ZNC Goods wholly obtained in Japan**

- (1) Goods are *Japanese originating goods* if:
  - (a) they are wholly obtained in Japan; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.
- (2) Goods are *wholly obtained in Japan* if, and only if, the goods are:
  - (a) live animals born and raised in the Area of Japan, other than the sea outside the territorial sea of Japan; or
  - (b) animals obtained from hunting, trapping, fishing, gathering or capturing in the Area of Japan, other than the sea outside the territorial sea of Japan; or
  - (c) goods obtained from live animals in the Area of Japan; or
  - (d) plants, fungi or algae harvested, picked or gathered in the Area of Japan; or
  - (e) minerals, or other naturally occurring substances, extracted or taken from the Area of Japan, other than the seabed, or subsoil beneath the seabed, outside the territorial sea of Japan; or
  - (f) goods of sea-fishing, or other goods, taken by vessels of Japan from the sea outside the territorial sea of Japan and the territorial sea of Australia; or
  - (g) goods produced on board factory ships of Japan from goods referred to in paragraph (f); or

- (h) goods taken by Japan, or a person of Japan, from the seabed, or subsoil beneath the seabed, outside the territorial sea of Japan, but only if Japan has rights to exploit that part of the seabed or subsoil in accordance with international law; or
- (i) goods that are collected in Japan, that can no longer perform their original purpose, that are not capable of being restored or repaired and that are fit only for disposal or for the recovery of raw materials; or
- (j) waste and scrap that has been derived from production or consumption in Japan and that is fit only for disposal or for the recovery of raw materials; or
- (k) raw materials recovered in Japan from goods that can no longer perform their original purpose and that are not capable of being restored or repaired; or
- (l) goods produced in the Area of Japan exclusively from goods referred to in paragraphs (a) to (k).

### **Subdivision C—Goods produced in Japan from originating materials**

#### **153ZND Goods produced in Japan from originating materials**

Goods are *Japanese originating goods* if:

- (a) they are produced entirely in Japan from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.

**Subdivision D—Goods produced in Japan, or in Japan and Australia, from non-originating materials**

**153ZNE Goods produced in Japan, or in Japan and Australia, from non-originating materials**

- (1) Goods are *Japanese originating goods* if:
- (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 2 to the Agreement; and
  - (b) they are produced entirely in Japan, or entirely in Japan and Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 2 to the Agreement by using an abbreviation or other code that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

(5) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
- (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Qualifying value content*

(6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

- (a) the qualifying value content of the goods is to be worked out in accordance with the Agreement; or
- (b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.

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- (7) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts or tools; and
  - (c) the accessories, spare parts or tools are not invoiced separately from the goods; and
  - (d) the quantities and value of the accessories, spare parts or tools are customary for the goods; and
  - (e) the accessories, spare parts or tools are non-originating materials;

the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (e) to be taken into account for the purposes of working out the qualifying value content of the goods.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZNB(3).

**153ZNF Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Qualifying value content*

- (2) However, if:
- (a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and
  - (b) the packaging material or container is a non-originating material;

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the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZNB(3).

**153ZNG Non-qualifying operations**

Goods are not Japanese originating goods under this Subdivision merely because of the following operations or processes:

- (a) operations to preserve goods in good condition for the purpose of transport or storage of the goods (such as drying, freezing and keeping goods in brine);
- (b) changing of packaging or the breaking up or assembly of packages;
- (c) disassembly of goods;
- (d) placing in bottles, cases or boxes or other simple packaging operations;
- (e) collecting of parts or components for unassembled goods (where the unassembled goods would be classified to a heading of the Harmonized System in accordance with Rule 2(a) of the Interpretation Rules);
- (f) making-up of sets of goods;
- (g) the reclassification of goods without any physical change in the goods;
- (h) any combination of things referred to in paragraphs (a) to (g).

**Subdivision E—Consignment**

**153ZNH Consignment**

- (1) Goods are not Japanese originating goods under this Division if the goods are transported through a country other than Japan or Australia and either or both of the following apply:
  - (a) the goods undergo subsequent production or any other operation in that country (other than repacking, relabelling, splitting up of the goods, unloading, reloading, storing or any

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operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);

(b) the goods do not remain under customs control at all times while the goods are in that country.

(2) This section applies despite any other provision of this Division.

**Subdivision F—Regulations**

**153ZNI Regulations**

The regulations may make provision for and in relation to determining whether goods are Japanese originating goods under this Division.

## **Division 1L—Chinese originating goods**

### **Subdivision A—Preliminary**

#### **153ZOA Simplified outline of this Division**

- This Division defines Chinese originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Chinese originating goods that are imported into Australia.
- Subdivision B provides that goods are Chinese originating goods if they are wholly obtained or produced in the territory of China.
- Subdivision C provides that goods are Chinese originating goods if they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are Chinese originating goods because they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Chinese originating goods because they are accessories, spare parts or tools imported with other goods.
- Subdivision F provides that goods are not Chinese originating goods under this Division merely because of certain operations.
- Subdivision G deals with how the consignment of goods affects whether the goods are Chinese originating goods.

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- Subdivision H allows regulations to make provision for and in relation to determining whether goods are Chinese originating goods.

## 153ZOB Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the China-Australia Free Trade Agreement, done at Canberra on 17 June 2015, as amended from time to time.

Note: The Agreement could in 2015 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**Australian originating goods** means goods that are Australian originating goods under a law of China that implements the Agreement.

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 3.14 of the Agreement.

**Chinese originating goods** means goods that, under this Division, are Chinese originating goods.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**Declaration of Origin** means a declaration that is in force and that complies with the requirements of Article 3.15 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or
- (b) if the table in Annex II to the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

**indirect materials** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

**Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**non-originating materials** means goods that are not originating materials.

**originating materials** means:

- (a) Chinese originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or

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(c) indirect materials.

**plant** has the same meaning as it has in the Agreement.

**produce** means grow, raise, mine, harvest, fish, farm, trap, hunt, capture, gather, collect, breed, extract, manufacture, process or assemble.

**territory of a non-party** has the same meaning as it has in the Agreement, and includes the customs territory of the following members of the World Trade Organization established by the World Trade Organization Agreement:

- (a) Hong Kong, China;
- (b) Macao, China;
- (c) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

**territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.3 of the Agreement.

**territory of China** means territory within the meaning, so far as it relates to China, of Article 1.3 of the Agreement, and does not include the customs territory of the following members of the World Trade Organization established by the World Trade Organization Agreement:

- (a) Hong Kong, China;
- (b) Macao, China;
- (c) Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

**World Trade Organization Agreement** means the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

*Value of goods*

- (3) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (6) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced in the territory of China**

**153ZOC Goods wholly obtained or produced in the territory of China**

- (1) Goods are **Chinese originating goods** if:
- (a) they are wholly obtained or produced in the territory of China; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

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- (2) Goods are *wholly obtained or produced in the territory of China* if, and only if, the goods are:
- (a) live animals born and raised in the territory of China; or
  - (b) goods obtained in the territory of China from live animals referred to in paragraph (a); or
  - (c) goods obtained directly from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of China; or
  - (d) plants, or plant products, harvested, picked or gathered in the territory of China; or
  - (e) minerals, or other naturally occurring substances, extracted or taken in the territory of China; or
  - (f) goods, other than fish, shellfish, plant or other marine life, extracted or taken from the waters, seabed or subsoil beneath the seabed outside the territory of China, but only if China has the right to exploit such waters, seabed or subsoil in accordance with international law and the law of China; or
  - (g) fish, shellfish, plant or other marine life taken from the high seas by a vessel registered with China and flying the flag of China; or
  - (h) goods obtained or produced from goods referred to in paragraph (g) on board factory ships that are registered with China and flying the flag of China; or
  - (i) waste and scrap that:
    - (i) has been derived from production in the territory of China; or
    - (ii) has been derived from used goods that are collected in the territory of China and that are fit only for the recovery of raw materials; or
  - (j) goods produced entirely in the territory of China exclusively from goods referred to in paragraphs (a) to (i).

**Subdivision C—Goods produced in China, or in China and Australia, from originating materials**

**153ZOD Goods produced in China, or in China and Australia, from originating materials**

Goods are *Chinese originating goods* if:

- (a) they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.

**Subdivision D—Goods produced in China, or in China and Australia, from non-originating materials**

**153ZOE Goods produced in China, or in China and Australia, from non-originating materials**

- (1) Goods are *Chinese originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex II to the Agreement; and
  - (b) they are produced entirely in the territory of China, or entirely in the territory of China and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and

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- (d) either:
- (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex II to the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

*Regional value content*

- (5) If a requirement that applies in relation to the goods is that the goods must have a minimum requirement of regional value content worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (6) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a minimum requirement of regional value content worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts or tools; and
  - (c) the accessories, spare parts or tools are classified and invoiced with the goods and are included in the price of the goods; and
  - (d) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the goods; and
  - (e) the quantities and value of the accessories, spare parts or tools are customary for the goods; and
  - (f) the accessories, spare parts or tools are non-originating materials;
- the regulations must provide for the value of the accessories, spare parts or tools covered by paragraph (f) to be taken into account for the purposes of working out the regional value content of the goods.
- Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZOB(3).
- (7) For the purposes of subsection (6), disregard section 153ZOG in working out whether the accessories, spare parts or tools are non-originating materials.

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**153ZOF Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Regional value content*

- (2) However, if:
- (a) a requirement that applies in relation to the goods is that the goods must have a minimum requirement of regional value content worked out in a particular way; and
  - (b) the packaging material or container is a non-originating material;
- the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZOB(3).

**Subdivision E—Goods that are accessories, spare parts or tools**

**153ZOG Goods that are accessories, spare parts or tools**

Goods are *Chinese originating goods* if:

- (a) they are accessories, spare parts or tools in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts or tools; and
- (c) the other goods are Chinese originating goods; and
- (d) the accessories, spare parts or tools are classified and invoiced with the other goods and are included in the price of the other goods; and

- (e) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
- (f) the quantities and value of the accessories, spare parts or tools are customary for the other goods.

## **Subdivision F—Non-qualifying operations**

### **153ZOH Non-qualifying operations**

- (1) Goods are not Chinese originating goods under this Division merely because of the following operations or processes:
  - (a) operations or processes to preserve goods in good condition for the purpose of transport or storage of the goods;
  - (b) packaging or repackaging;
  - (c) sifting, screening, sorting, classifying, grading or matching (including the making up of sets of goods);
  - (d) placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards or other simple packaging operations;
  - (e) affixing or printing marks, labels, logos or other like distinguishing signs on goods or on their packaging;
  - (f) disassembly of goods.
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Consignment**

### **153ZOI Consignment**

- (1) Goods are not Chinese originating goods under this Division if the goods are transported through the territory of a non-party and one or more of the following apply:
  - (a) the goods undergo any operation in the territory of the non-party (other than unloading, reloading, repacking, relabelling for the purpose of satisfying the requirements of Australia, splitting up of the goods for further transport,

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temporary storage or any operation that is necessary to preserve the goods in good condition);

- (b) if the goods undergo temporary storage in the territory of the non-party—the goods remain in the territory of the non-party for a period exceeding 12 months;
  - (c) the goods do not remain under customs control at all times while the goods are in the territory of the non-party.
- (2) Without limiting paragraph (1)(c), the regulations may make provision for the circumstances in which goods are under customs control while the goods are in the territory of a non-party.
- (3) This section applies despite any other provision of this Division.

**Subdivision H—Regulations**

**153ZOJ Regulations**

The regulations may make provision for and in relation to determining whether goods are Chinese originating goods under this Division.

## **Division 1M—Hong Kong originating goods**

### **Subdivision A—Preliminary**

#### **153ZPA Simplified outline of this Division**

- This Division defines Hong Kong originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Hong Kong originating goods that are imported into Australia.
- Subdivision B provides that goods are Hong Kong originating goods if they are wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia.
- Subdivision C provides that goods are Hong Kong originating goods if they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from originating materials only.
- Subdivision D sets out when goods are Hong Kong originating goods because they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are Hong Kong originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Hong Kong originating goods.

- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Hong Kong originating goods.

## 153ZPB Interpretation

### *Definitions*

(1) In this Division:

***Agreement*** means the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***aquaculture*** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

***Area of Australia*** means Area within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

***Area of Hong Kong, China*** means Area within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement, as affected by the following letters related to the geographical application of the Agreement for Hong Kong, China:

- (a) a letter to the Minister for Trade, Tourism, and Investment from the Secretary for Commerce and Economic Development, Hong Kong Special Administrative Region, The People's Republic of China dated 26 March 2019;
- (b) a letter to that Secretary from that Minister dated 26 March 2019.

Note: The letters could in 2019 be viewed on the website of the Department of Foreign Affairs and Trade.

***Australian originating goods*** means goods that are Australian originating goods under a law of Hong Kong, China that implements the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs value** of goods has the meaning given by section 159.

**Declaration of Origin** means a declaration that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of the Agreement.

**enterprise** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or
- (b) if the table in Annex 3-B of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

**Hong Kong originating goods** means goods that, under this Division, are Hong Kong originating goods.

**indirect materials** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

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- (c) fuel (within its ordinary meaning); and
- (d) catalysts and solvents; and
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (f) tools, dies and moulds; and
- (g) spare parts and materials; and
- (h) lubricants, greases, compounding materials and other similar goods.

**Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**non-originating materials** means goods that are not originating materials.

**non-Party** has the same meaning as it has in Chapter 3 of the Agreement.

**originating materials** means:

- (a) Hong Kong originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

**person of Hong Kong, China** means:

- (a) a natural person of a Party within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement; or
- (b) an enterprise of Hong Kong, China.

**production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**sea-fishing** has the same meaning as it has in Chapter 3 of the Agreement.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia**

**153ZPC Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia**

- (1) Goods are ***Hong Kong originating goods*** if:
- (a) they are wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.

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- (2) Goods are ***wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia*** if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or
  - (b) live animals born and raised in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or
  - (c) goods obtained from live animals in the Area of Hong Kong, China; or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the Area of Hong Kong, China; or
  - (e) goods obtained from aquaculture conducted in the Area of Hong Kong, China; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the Area of Hong Kong, China; or
  - (g) goods of sea-fishing, or other marine goods, taken from the high seas, by any vessel that is entitled to fly the flag of Hong Kong, China; or
  - (h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered, listed or recorded with Hong Kong, China and is entitled to fly the flag of Hong Kong, China; or
  - (i) goods, other than fish, shellfish or other marine life, taken by Hong Kong, China, or a person of Hong Kong, China, from the seabed, or subsoil beneath the seabed, outside the Area of Hong Kong, China and the Area of Australia, and beyond territories over which non-Parties exercise jurisdiction, but only if Hong Kong, China, or the person of Hong Kong, China, has the right to exploit that seabed or subsoil in accordance with international law; or

- (j) waste or scrap that:
  - (i) has been derived from production or consumption in the Area of Hong Kong, China and that is fit only for the recovery of raw materials; or
  - (ii) has been derived from used goods that are collected in the Area of Hong Kong, China and that are fit only for the recovery of raw materials; or
- (k) goods produced in the Area of Hong Kong, China, or in the Area of Hong Kong, China and the Area of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

**Subdivision C—Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials**

**153ZPD Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials**

Goods are *Hong Kong originating goods* if:

- (a) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.

**Subdivision D—Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials**

**153ZPE Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials**

- (1) Goods are *Hong Kong originating goods* if:
- (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-B of the Agreement; and
  - (b) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-B of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

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(7) If:

- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
- (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
- (c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
- (d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
- (e) the accessories, spare parts, tools or instructional or other information materials are non-originating materials;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZPB(2).

(8) For the purposes of subsection (7), disregard section 153ZPG in working out whether the accessories, spare parts, tools or instructional or other information materials are non-originating materials.

**153ZPF Packaging materials and containers**

(1) If:

- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Regional value content*

- (2) However, if:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the packaging material or container is a non-originating material;

the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZPB(2).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153ZPG Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Hong Kong originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are Hong Kong originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- (e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

## **Subdivision F—Consignment**

### **153ZPH Consignment**

- (1) Goods are not Hong Kong originating goods under this Division if:
  - (a) the goods are transported through the territory of one or more non-Parties; and
  - (b) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, repacking, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the Area of Australia).
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Regulations**

### **153ZPI Regulations**

The regulations may make provision for and in relation to determining whether goods are Hong Kong originating goods under this Division.

## **Division 1N—Regional Comprehensive Economic Partnership (RCEP) originating goods**

### **Subdivision A—Preliminary**

#### **153ZQA Simplified outline of this Division**

- This Division defines RCEP originating goods (short for Regional Comprehensive Economic Partnership originating goods). Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are RCEP originating goods if they are wholly obtained or produced in a Party.
- Subdivision C provides that goods are RCEP originating goods if they are produced entirely in a Party from originating materials only.
- Subdivision D sets out when goods are RCEP originating goods because they are produced entirely in a Party from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the consignment of goods affects whether the goods are RCEP originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are RCEP originating goods.

## 153ZQB Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the Regional Comprehensive Economic Partnership Agreement, done on 15 November 2020, as amended and in force for Australia from time to time.

Note: The Agreement could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**aquaculture** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**customs authority** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

**customs value** of goods has the meaning given by section 159.

**factory ship of a Party** has the same meaning as it has in Chapter 3 of the Agreement.

**Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or
- (b) if the table in Annex 3A to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity

Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

***indirect materials*** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

***Interpretation Rules*** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

***non-originating materials*** means goods that are not originating materials.

***non-Party*** has the same meaning as it has in Chapter 3 of the Agreement.

***originating materials*** means:

- (a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or
- (b) indirect materials.

***Party*** has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

Note: See also subsection (6).

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**person of a Party** has the same meaning as it has in Chapter 3 of the Agreement.

**production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**Proof of Origin** means a document that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of the Agreement.

**RCEP originating goods** means goods that, under this Division, are RCEP originating goods.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**vessels of a Party** has the same meaning as it has in Chapter 3 of the Agreement.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

*Notification of entry into force of Agreement for a Party*

- (6) The Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

**Subdivision B—Goods wholly obtained or produced in a Party**

**153ZQC Goods wholly obtained or produced in a Party**

- (1) Goods are *RCEP originating goods* if:
- (a) they are wholly obtained or produced in a Party; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Proof of Origin for the goods.
- (2) Goods are *wholly obtained or produced* in a Party if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown and harvested, picked or gathered in that Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  - (b) live animals born and raised in that Party; or
  - (c) goods obtained from live animals raised in that Party; or
  - (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in that Party; or
  - (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or subsoil beneath the seabed in that Party; or

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- (f) goods of sea-fishing or other marine life taken by vessels of that Party, or other goods taken by that Party or a person of that Party, from the waters, seabed or subsoil beneath the seabed outside the territorial sea of the Parties and non-Parties provided that:
  - (i) for goods of sea-fishing or other marine life taken by vessels of that Party (the *relevant Party*) from the exclusive economic zone of any Party or non-Party—the relevant Party has the rights to exploit that exclusive economic zone in accordance with international law; or
  - (ii) for other goods taken by that Party or a person of that Party—that Party or person has the rights to exploit the waters, seabed or subsoil beneath the seabed in accordance with international law; or
- (g) goods of sea-fishing or other marine life taken by vessels of that Party from the high seas in accordance with international law; or
- (h) goods processed or made on board a factory ship of that Party, exclusively from goods covered by paragraph (f) or (g); or
- (i) either of the following:
  - (i) waste and scrap that has been derived from production or consumption in that Party and that is fit only for disposal, for the recovery of raw materials or for recycling purposes;
  - (ii) used goods that are collected in that Party and that are fit only for disposal, for the recovery of raw materials or for recycling purposes; or
- (j) goods obtained or produced in that Party solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

### **Subdivision C—Goods produced from originating materials**

#### **153ZQD Goods produced from originating materials**

Goods are *RCEP originating goods* if:

- (a) they are produced entirely in a Party from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Proof of Origin for the goods.

### **Subdivision D—Goods produced from non-originating materials**

#### **153ZQE Goods produced from non-originating materials**

- (1) Goods are *RCEP originating goods* if:
  - (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3A to Chapter 3 of the Agreement; and
  - (b) they are produced entirely in a Party from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Proof of Origin for the goods.

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- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3A to Chapter 3 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

- (4) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) the goods are classified to any of Chapters 1 to 97 of the Harmonized System; and
- (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (c) does not exceed 10% of the customs value of the goods.

- (5) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
- (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.

**153ZQF Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:
- (a) the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods;
  - (b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

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Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZQB(2).

**153ZQG Accessories, spare parts, tools or instructional or other information materials**

(1) If:

- (a) goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
- (b) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and
- (c) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the accessories, spare parts, tools or instructional or other information materials are to be disregarded for the purposes of this Subdivision.

*Regional value content*

(2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:

- (a) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods;
- (b) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZQB(2).

### **153ZQH Non-qualifying operations or processes**

- (1) Goods are not RCEP originating goods under this Subdivision merely because of the following operations or processes:
  - (a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods;
  - (b) packaging or presenting the goods for transportation or sale;
  - (c) simple processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling or uncoiling;
  - (d) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;
  - (e) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
  - (f) disassembly of products into parts;
  - (g) slaughtering (within the meaning of Article 3.6 of Chapter 3 of the Agreement) of animals;
  - (h) simple painting or polishing operations;
  - (i) simple peeling, stoning or shelling;
  - (j) simple mixing of goods, whether or not of different kinds;
  - (k) any combination of things referred to in paragraphs (a) to (j).
- (2) For the purposes of this section, *simple* has the same meaning as it has in Article 3.6 of Chapter 3 of the Agreement.

### **Subdivision E—Consignment**

#### **153ZQI Consignment**

- (1) Goods are not RCEP originating goods under this Division if the goods are transported through one or more Parties (other than the Party from which the goods are exported or Australia) or non-Parties and either or both of the following apply:
  - (a) the goods undergo further processing in those Parties or non-Parties (other than logistics activities such as unloading, reloading, storing or any other operation that is necessary to

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preserve the goods in good condition or to transport the goods to Australia);

- (b) while the goods are in those Parties or non-Parties, the goods do not remain under the control of the customs authorities of those Parties or non-Parties at all times.

- (2) This section applies despite any other provision of this Division.

**Subdivision F—Regulations**

**153ZQJ Regulations**

The regulations may make provision for and in relation to determining whether goods are RCEP originating goods under this Division.

## **Division 1P—UK originating goods**

### **Subdivision A—Preliminary**

#### **153ZRA Simplified outline of this Division**

- This Division defines UK originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to UK originating goods that are imported into Australia.
- Subdivision B provides that goods are UK originating goods if they are wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia.
- Subdivision C provides that goods are UK originating goods if they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are UK originating goods because they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are UK originating goods because they are accessories, spare parts, tools or instructional or other information materials imported with other goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are UK originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are UK originating goods.

## 153ZRB Interpretation

### *Definitions*

(1) In this Division:

***Agreement*** means the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***aquaculture*** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

***Australian originating goods*** means goods that are Australian originating goods under a law of the United Kingdom that implements the Agreement.

***Convention*** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***customs value*** of goods has the meaning given by section 159.

***declaration of origin*** means a declaration that is in force and that complies with the requirements of Article 4.18 of Chapter 4 of the Agreement.

***enterprise*** has the meaning given by Article 1.4 of Chapter 1 of the Agreement.

***Harmonized Commodity Description and Coding System*** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

**Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or
- (b) if the table in Annex 4B to Chapter 4 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

**indirect materials** means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning), catalysts and solvents; and
- (d) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (e) tools, dies and moulds; and
- (f) spare parts and materials; and
- (g) lubricants, greases, compounding materials and other similar goods.

**Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

**non-originating materials** means goods that are not originating materials.

**non-party** has the same meaning as it has in Chapter 4 of the Agreement.

**originating materials** means:

- (a) UK originating goods that are used in the production of other goods; or

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- (b) Australian originating goods that are used in the production of other goods; or
- (c) recovered materials derived in the territory of Australia, or in the territory of the United Kingdom, and used in the production of, and incorporated into, remanufactured goods; or
- (d) indirect materials.

***person of the United Kingdom*** means:

- (a) a national within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement; or
- (b) an enterprise of the United Kingdom.

***production*** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

***production value*** of goods has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

***recovered materials*** means materials comprising one or more individual parts that:

- (a) have resulted from the disassembly of used goods; and
- (b) have been cleaned, tested or processed as necessary for improvement to sound working condition.

***remanufactured goods*** means goods that:

- (a) are classified to any of Chapters 84 to 90 (other than heading 87.02, 87.03, 87.04 or 87.05, 87.11 or 87.16 or subheading 8701.20), or to heading 94.02, of the Harmonized System; and
- (b) are entirely or partially comprised of recovered materials; and
- (c) have a similar life expectancy, working condition and performance to new goods:
  - (i) that are so classified; and
  - (ii) that are not composed of any recovered materials; and

- (d) have been given a warranty that in substance is the same as that applicable to such new goods.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.4 of Chapter 1 of the Agreement.

**territory of the United Kingdom** means territory within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement.

**UK originating goods** means goods that, under this Division, are UK originating goods.

*Value of goods*

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

**Subdivision B—Goods wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia**

**153ZRC Goods wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia**

- (1) Goods are *UK originating goods* if:
  - (a) they are wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia; and
  - (b) one or more of the following applies:
    - (i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;
    - (ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;
    - (iii) Australia has waived the requirement for a declaration of origin for the goods.
- (2) Goods are *wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia* if, and only if, the goods are:
  - (a) plants, plant goods or fungus grown, cultivated, harvested, picked or gathered in the territory of the United Kingdom or in the territory of the United Kingdom and the territory of Australia; or
  - (b) live animals born and raised in the territory of the United Kingdom or in the territory of the United Kingdom and the territory of Australia; or
  - (c) goods obtained from live animals in the territory of the United Kingdom; or
  - (d) animals obtained by hunting, trapping, fishing, gathering, or capturing in the territory of the United Kingdom, but not beyond the outer limits of the territorial sea of the United Kingdom; or

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- (e) goods obtained from aquaculture conducted in the territory of the United Kingdom, but not beyond the outer limits of the territorial sea of the United Kingdom; or
- (f) minerals, or other naturally occurring substances, extracted or taken from the territory of the United Kingdom; or
- (g) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:
  - (i) beyond the outer limits of the territorial sea of the United Kingdom; and
  - (ii) within the territory of the United Kingdom;by vessels that are registered in the United Kingdom and are entitled to fly the flag of the United Kingdom; or
- (h) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:
  - (i) beyond the outer limits of the territory of the United Kingdom and the territory of Australia; and
  - (ii) in accordance with international law, outside the territorial sea of non-parties;by vessels that are registered in the United Kingdom and are entitled to fly the flag of the United Kingdom; or
- (i) goods produced, from goods referred to in paragraph (g) or (h), on board a factory ship that is registered in the United Kingdom and is entitled to fly the flag of the United Kingdom; or
- (j) goods, other than fish, shellfish or other marine life, taken or extracted by the United Kingdom, or a person of the United Kingdom, from the seabed or subsoil beneath the seabed:
  - (i) outside the territory of the United Kingdom and the territory of Australia; and
  - (ii) beyond areas over which non-parties exercise jurisdiction;but only if the United Kingdom, or the person of the United Kingdom, has the right to exploit that seabed or subsoil in accordance with international law; or

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- (k) waste or scrap that:
  - (i) has been derived from production in the territory of the United Kingdom; or
  - (ii) has been derived from used goods that are collected in the territory of the United Kingdom and that are fit only for the recovery of raw materials; or
- (l) goods produced in the territory of the United Kingdom, or in the territory of the United Kingdom and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (k) or from their derivatives.

**Subdivision C—Goods produced in the United Kingdom, or in the United Kingdom and Australia, from originating materials**

**153ZRD Goods produced in the United Kingdom, or in the United Kingdom and Australia, from originating materials**

Goods are *UK originating goods* if:

- (a) they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from originating materials only; and
- (b) one or more of the following applies:
  - (i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;
  - (ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;
  - (iii) Australia has waived the requirement for a declaration of origin for the goods.

**Subdivision D—Goods produced in the United Kingdom, or in the United Kingdom and Australia, from non-originating materials**

**153ZRE Goods produced in the United Kingdom, or in the United Kingdom and Australia, from non-originating materials**

- (1) Goods are *UK originating goods* if:
- (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 4B to Chapter 4 of the Agreement; and
  - (b) they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) one or more of the following applies:
    - (i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;
    - (ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;
    - (iii) Australia has waived the requirement for a declaration of origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4B to Chapter 4 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

*Change in tariff classification*

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must

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have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if:

- (c) in the case of goods classified to any of Chapters 1 to 24 or 50 to 63 of the Harmonized System:
  - (i) the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or
  - (ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or
  - (iii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the production value of the goods; or
- (d) in the case of goods classified to any of Chapters 25 to 49 or 64 to 97 of the Harmonized System:
  - (i) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or
  - (ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the production value of the goods.

*Regional value content*

- (5) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement, unless paragraph (b) applies; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (6) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with, and not invoiced separately from, the goods; and
  - (d) the quantities, value and type of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;
- the regulations must provide for the following:
- (e) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods;
  - (f) the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZRB(2).

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- (7) For the purposes of subsection (6), disregard section 153ZRG in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

*Goods put up in a set for retail sale*

- (8) If:
- (a) goods are put up in a set for retail sale; and
  - (b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;
- the goods are UK originating goods under this section only if:
- (c) all of the goods in the set, when considered separately, are UK originating goods; or
  - (d) the total customs value of the goods (if any) in the set that are not UK originating goods does not exceed 20% of the customs value of the set of goods; or
  - (e) the total production value of the goods (if any) in the set that are not UK originating goods does not exceed 20% of the production value of the set of goods.

**Example:** A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

**153ZRF Packaging materials and containers**

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

*Regional value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:
- (a) the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods;
  - (b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZRB(2).

**Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials**

**153ZRG Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *UK originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are UK originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with, and not invoiced separately from, the other goods; and
- (e) the quantities, value and type of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

## **Subdivision F—Consignment**

### **153ZRH Consignment**

- (1) Goods are not UK originating goods under this Division if the goods are transported through the territory of one or more non-parties and either or both of the following apply:
  - (a) the goods undergo further production or any other operation in the territory of a non-party (other than unloading, reloading, separation from a bulk shipment or splitting of a consignment, storing, repacking, labelling or marking required by Australia or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);
  - (b) the goods are released to free circulation in the territory of a non-party.
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Regulations**

### **153ZRI Regulations**

The regulations may make provision for and in relation to determining whether goods are UK originating goods under this Division.

## Division 2—Valuation of imported goods

### 154 Interpretation

(1) In this Division, unless the contrary intention appears:

*about the same time* has the meaning given by subsection (2).

*acquire*, in relation to goods, includes purchase, receive in exchange for other goods, take on lease, take on hire, take on hire-purchase and take under licence.

*Australian inland freight*, in relation to imported goods, means:

(a) if any amount (other than an amount of an Australian inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of:

- (i) the transportation of the goods on or after their importation into Australia; or
- (ii) the obtaining of any commercial or other documentation required in respect of the transportation referred to in subparagraph (i) or in respect of the importation of the goods;

and a Collector is satisfied of the correctness of that amount—that amount;

(b) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of a service referred to in subparagraph (a)(i) or (ii) and a Collector:

(i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and

(ii) is satisfied of the correctness of that amount;  
that amount; or

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- (c) if any amount (other than an amount of Australian inland insurance) was paid or is payable by a trader in respect of the provision of a service referred to in subparagraph (a)(i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not related to a trader of goods of that class, on or after their importation into Australia;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs.

***Australian inland insurance***, in relation to imported goods, means:

- (a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods on or after importation into Australia and a Collector is satisfied of the correctness of that amount—that amount;
- (b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector:
  - (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and
  - (ii) is satisfied of the correctness of that amount;that amount; or
- (c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same

kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions, where the insurer is not related to a trader of goods of that class;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs.

**buying commission** has the meaning given by section 155.

**comparable goods**, in relation to imported goods, means:

- (a) the imported goods;
- (b) identical goods; or
- (c) similar goods.

**computed value**, in relation to imported goods, has the meaning given by section 161F.

**computed valued goods** means exporter's goods:

- (a) whose owner has, before the payment of duty in respect of the goods (whether before or after any determination of a value of the goods) requested a Collector to take their customs value to be their computed value in preference to their deductive value; and
- (b) whose computed value can be determined by the Collector.

**customs value**, in relation to imported goods, has the meaning given by section 159.

**deductible administrative costs**, in relation to goods in a sale, means any costs that are payable on or after the importation of the goods into Australia in relation to the activities of, or services performed by, any local, State or Commonwealth public authorities or officers, any licensed Customs broker, or any other person in Australia, in connection with the importation and subsequent delivery of the goods.

**deductible financing costs**, in relation to goods in a sale, means any interest payable under a written contract, agreement or

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arrangement under which the purchaser is permitted to delay the payment of the price in return for the payment of that interest (whether or not also in return for an increase in the price or for the payment of an additional amount), being a contract, agreement or arrangement entered into between the purchaser and the vendor or another person in relation to the purchase of the goods, where:

- (a) the interest is distinguished to the satisfaction of a Collector from the price actually paid or payable for the goods;
- (b) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that identical or similar goods are actually sold at the last-mentioned price—the purchaser so demonstrates; and
- (c) if a Collector requires the purchaser to demonstrate to the satisfaction of a Collector that the rate of the interest does not exceed the rate of interest in similar contracts, agreements or arrangements entered into in the country where, and at the time when, finance under the first-mentioned contract, agreement or arrangement was provided—the purchaser so demonstrates.

***deductive (contemporary sales) value***, in relation to imported goods, has the meaning given by section 161C.

***deductive (derived goods sales) value***, in relation to imported goods, has the meaning given by section 161E.

***deductive (later sales) value***, in relation to imported goods, has the meaning given by section 161D.

***deductive value***, in relation to imported goods, means their:

- (a) deductive (contemporary sales) value;
- (b) deductive (later sales) value; or
- (c) deductive (derived goods sales) value.

***exempted container*** means a container that:

- (a) is not a pallet; and
- (b) is or has been permitted to be temporarily imported into Australia free of Customs duty under section 162A.

***exempted pallet*** means a pallet that is or has been permitted to be temporarily imported into Australia free of Customs duty under either section 162A or 162B.

***exporter's goods*** means imported goods exported to Australia by their producer.

***fall-back value***, in relation to imported goods, has the meaning given by section 161G.

***foreign inland freight***, in relation to imported goods, means:

- (a) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of:
  - (i) the transportation of the goods within a foreign country before they left their place of export; or
  - (ii) the obtaining of any commercial or other documentation (other than documentation required in respect of overseas freight or overseas insurance) required in respect of the transportation referred to in subparagraph (i) or in respect of the transportation of the goods from the foreign country concerned;and a Collector is satisfied of the correctness of that amount—that amount;
- (b) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the provision of service referred to in subparagraph (a)(i) or (ii) and a Collector:
  - (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and
  - (ii) is satisfied of the correctness of that amount;that amount; or
- (c) if any amount (other than an amount of foreign inland insurance) was paid or is payable by a trader in respect of the

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provision of a service referred to in subparagraph (a)(i) or (ii) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary costs payable in respect of the provision of the same service to a trader, in respect of the same class of goods as the imported goods, under the same conditions, by a person who is not related to a trader of goods of that class, before leaving the same place of export;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs.

***foreign inland insurance***, in relation to imported goods, means:

- (a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods within a foreign country before they left their place of export and a Collector is satisfied of the correctness of that amount—that amount;
- (b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a) and a Collector:
  - (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and
  - (ii) is satisfied of the correctness of that amount;that amount; or
- (c) if any amount was paid or is payable by a trader in respect of insurance of a kind referred to in paragraph (a) but a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of the same kind of insurance to a trader in respect of the same class of goods as the imported goods, under the same conditions,

where the insurer is not related to a trader of goods of that class;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs.

**identical goods**, in relation to imported goods, has the meaning given by section 156.

**identical goods value**, in relation to imported goods, has the meaning given by section 161A.

**import sales transaction**, in relation to imported goods, means:

- (a) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to customs control and it was also a contract for their exportation from a foreign country—that contract;
- (b) where there was one, and only one, contract of sale for the importation of the goods into Australia entered into before they became subject to customs control and it was not also a contract for their exportation from a foreign country—that contract; or
- (c) where there were 2 or more contracts of sale for the importation of the goods into Australia entered into before they became subject to customs control—whichever of the contracts was made last;

and includes:

- (d) any contract, agreement or arrangement, whether formal or informal, to which the vendor, the purchaser or an agent of, or a person related to, the vendor or purchaser is a party that provides for an increase in the value of the goods the subject of the contract of sale referred to in paragraph (a), (b) or (c) prior to their importation; and
- (e) any other contract, agreement or arrangement relating to the contract of sale referred to in paragraph (a), (b) or (c) that a Collector determines is so closely connected with that

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contract and to the goods the subject of that contract that together they form a single transaction.

*overseas freight*, in relation to imported goods, means:

- (a) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a Collector is satisfied of the correctness of that amount—that amount;
- (b) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of the transportation referred to in paragraph (a), the goods concerned are not self transported goods and a Collector:
  - (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and
  - (ii) is satisfied of the correctness of that amount;that amount; or
- (c) if any amount (other than an amount of overseas insurance) was paid or is payable by a trader in respect of the transportation referred to in paragraph (a) but the goods concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b), whichever is applicable—such an amount, as a Collector determines, having regard to the ordinary costs of the transportation of goods of the same class as the imported goods:
  - (i) if the imported goods are self transported goods—under the most commercially viable conditions; or
  - (ii) if the imported goods are not self transported goods—under the same conditions as the imported goods;by a person who is not related to a trader of goods of that class, between the same foreign country and Australia;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs.

*overseas insurance*, in relation to imported goods, means:

- (a) if any amount was paid or is payable by a trader of the goods to a person other than a person related to a trader of the goods in respect of insurance in relation to the transportation of the goods from their place of export to Australia, the goods are not self transported goods and a Collector is satisfied of the correctness of that amount—that amount;
- (b) if any amount was paid or is payable by a trader of the goods to a person related to a trader of the goods in respect of insurance of the kind referred to in paragraph (a), the goods concerned are not self transported goods, and a Collector:
  - (i) is satisfied that the amount is the same, or substantially the same, as the amount that would be payable to a person not so related; and
  - (ii) is satisfied of the correctness of that amount;that amount; or
- (c) if any amount was paid or is payable in respect of insurance of a kind referred to in paragraph (a) but the goods concerned are self transported goods or a Collector is not satisfied as required by paragraph (a) or (b) whichever is applicable—such an amount as a Collector determines, having regard to the ordinary cost of insurance in relation to the transportation of goods of the same class as the imported goods:
  - (i) if the imported goods are self transported goods—under the most commercially viable conditions; or
  - (ii) if the imported goods are not self transported goods—under the same conditions as the imported goods;where the insurer is not related to a trader of the transported goods;

or, if more than one of paragraphs (a), (b) and (c) is applicable to the goods, the sum of the amounts ascertained in accordance with the applicable paragraphs.

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**place of export**, in relation to imported goods, means:

- (a) where, while in the country from which they were exported the goods were posted to Australia—the place where they were so posted;
- (b) where, while in the country from which they were exported, the goods, not being goods referred to in paragraph (a), were packed in a container—the place where they were so packed;
- (c) where the goods, being self transported goods, were exported from a country by sea or air—the place, or last place, in that country from which the goods departed for Australia;
- (d) where the goods, not being goods referred to in paragraph (a), (b) or (c), were exported from a country by sea or air—the place, or first place, in that country where the goods were placed on board a ship or aircraft for export from that country;
- (e) where the goods, not being goods referred to in paragraph (a), (b), (c) or (d), were exported from a country by land, or by river, canal or other inland waterway—the place at which the goods finally crossed the border from that country into another country in the course of their transportation to Australia; or
- (f) in any other case—a place determined by a Collector.

**price**, in relation to goods the subject of a contract of sale, means an amount determined by a Collector, after disregarding rebates in relation to those goods, to be the sum of:

- (a) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:
    - (i) to the vendor;
    - (ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment; or
    - (iii) to any other person for the direct or indirect benefit of the vendor;
- in accordance with the contract of sale; and

(b) all payments that have been made, or are to be made, directly or indirectly, in relation to such goods, by or on behalf of the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless a Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment;  
or

(iii) to any other person for the direct or indirect benefit of the vendor;

under any other contract, agreement or arrangement, whether formal or informal, being a contract, agreement or arrangement for the doing of anything to increase the value of the goods or that a Collector is satisfied is so closely connected with the contract of sale referred to in paragraph (a) and to the goods the subject of that contract that together they form a single transaction;

whether the payment is made in money or by letter of credit, negotiable instrument or otherwise, and includes:

(c) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, by, or on behalf of, the purchaser as part of the consideration passing from the purchaser under the contract of sale referred to in paragraph (a); and

(d) the value, as determined by a Collector, of any goods or services supplied, or to be supplied, directly or indirectly, by, or on behalf of, the purchaser:

(i) to the vendor;

(ii) to any person related to the vendor unless the Collector is satisfied that the vendor has not derived and will not derive any direct or indirect benefit from the payment;  
or

(iii) to any other person for the direct or indirect benefit of the vendor;

under a contract, agreement or arrangement of the kind referred to in paragraph (b);

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but does not include the amount of any duty of Customs (including any dumping or countervailing duty imposed under the *Customs Tariff (Anti-Dumping) Act 1975*), any sales tax, or any other duty or tax, that is payable by law because of the importation into, or subsequent use, sale or disposition in, Australia of the goods.

**price related costs**, in relation to imported goods, means:

- (a) production assist costs in respect of the goods;
- (b) packing costs for materials and labour paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in which they are imported into Australia, but not including the cost of any exempted pallet or exempted container concerned in their exportation);
- (c) foreign inland freight and foreign inland insurance in relation to the goods paid or payable, directly or indirectly, by or on behalf of the purchaser;
- (d) commission, other than a buying commission, or brokerage, paid or payable, directly or indirectly, by or on behalf of the purchaser in respect of the goods; or
- (e) all royalties or licence fees paid or payable, directly or indirectly, by or on behalf of the purchaser to the vendor or to another person under the import sales transaction, not being royalties or licence fees:
  - (i) that do not relate to the imported goods in the condition, or substantially in the condition, in which they are imported into Australia;
  - (ii) whose only relationship to the imported goods in the condition in which they are imported into Australia is insubstantial or incidental;
  - (iii) that are merely for the right to reproduce the imported goods within Australia; or

- (iv) that are payable for the assembly, erection, construction or maintenance of imported goods after their importation into Australia or for any technical assistance in respect of the goods after their importation; and
- (f) the whole or any part of the proceeds of any subsequent use, resale or disposal of the goods, by or on behalf of the purchaser, that have accrued, or will accrue, to the vendor.

**produce** includes grow, manufacture, mine, process and treat.

**production assist costs**, in relation to imported goods (including imported goods that are comparable goods or derived goods in relation to other imported goods), means the sum of:

- (a) the purchaser's material costs;
- (b) the purchaser's tooling costs;
- (c) the purchaser's work costs; and
- (d) the purchaser's subsidiary costs;

in relation to those first-mentioned imported goods.

**production materials**, in relation to the imported goods, means:

- (a) materials, components or other goods that form part of the imported goods; and
- (b) materials consumed in the production of the imported goods.

**production tooling**, in relation to imported goods, means tools, dies, moulds or other machinery or equipment used in the production of the imported goods.

**production work** means art work, design work, development work and engineering work and includes models, plans and sketches.

**purchaser**, in relation to imported goods, means the purchaser under the import sales transaction for the goods.

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***purchaser's material costs***, in relation to imported goods, means the sum of the following amounts relating to production materials supplied, directly or indirectly, by the purchaser free of charge or at a reduced cost:

- (a) an amount equal to:
  - (i) where the materials were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the value of the materials at the time of acquisition by the purchaser;
  - (ii) where the materials were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the materials—the value of the materials at the time of acquisition by the purchaser; or
  - (iii) where the materials were produced by the purchaser or by a person who was related to the purchaser at the time of production of the goods—the cost of production;
- (b) the cost of transporting the materials after their acquisition or production by the purchaser to the place of production of the imported goods;
- (c) the cost of repairs and modifications of the materials after their acquisition or production by the purchaser.

***purchaser's subsidiary costs***, in relation to imported goods, means such part of the sum of the following amounts relating to subsidiary goods, or subsidiary services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods:

- (a) an amount equal to:
  - (i) where the subsidiary goods relate to work goods and were available generally to the public in Australia or elsewhere at the time of acquisition by the purchaser (in this definition called ***available goods***)—the cost to the public of acquiring the available goods;
  - (ii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was

- not related to the purchaser at the time of acquisition—the value of the subsidiary goods at the time of acquisition by the purchaser;
- (iii) where the subsidiary goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the goods—the value of the subsidiary goods at the time of acquisition by the purchaser; or
  - (iv) where the subsidiary goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the goods—the cost of that production;
- (b) the cost of transporting the subsidiary goods (other than goods that relate to work goods) after their acquisition or production by the purchaser to the place of production of the production materials or production tooling, as the case requires;
  - (c) the cost of repairs and modifications of subsidiary goods, (other than goods that relate to work goods), after their acquisition or production by the purchaser;
  - (d) the cost of repairs and modifications outside Australia of subsidiary goods that relate to work goods after the acquisition or production of the subsidiary goods by the purchaser;
  - (e) an amount equal to:
    - (i) where the subsidiary services were supplied by a person who was not related to the purchaser at the time of the supply—the value of the subsidiary services at the time of that supply; or
    - (ii) in any other case—such amount as the Collector determines to be the value of the subsidiary services;
  - (f) the cost of the supply of any further services in relation to the subsidiary services (other than services that relate to work services);

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- (g) the cost of the supply outside Australia of any further services in relation to the subsidiary services that relate to work services.

***purchaser's tooling costs***, in relation to imported goods, means such part of the sum of the following amounts relating to production tooling supplied, directly or indirectly, by the purchaser free of charge or at a reduced price as a Collector considers should be apportioned to the production of the imported goods:

- (a) an amount equal to:
  - (i) where the tooling was acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the value of the tooling at the time of acquisition by the purchaser;
  - (ii) where the tooling was acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the tooling—the value of the tooling at the time of acquisition by the purchaser; or
  - (iii) where the tooling was produced by the purchaser or by a person who was related to the purchaser at the time of production of the tools—the cost of production;
- (b) the cost of transporting the tooling after its acquisition or production by the purchaser to the place of production of the imported goods;
- (c) the cost of repairs and modifications of the tooling after its acquisition or production by the purchaser.

***purchaser's work costs***, in relation to imported goods, means such part of the sum of the following amounts relating to work goods, or work services, supplied, directly or indirectly, by the purchaser free of charge or at a reduced price, as a Collector considers should be apportioned to the production of the imported goods:

- (a) an amount equal to:
  - (i) where the work goods were available generally to the public in Australia or elsewhere at the time of acquisition by the purchaser (in this definition called

- available goods**)—the cost to the public of acquiring the goods;
- (ii) where the work goods (other than available goods) were acquired by the purchaser from a person who was not related to the purchaser at the time of acquisition—the value of the work goods at the time of acquisition by the purchaser;
  - (iii) where the work goods (other than available goods) were acquired by the purchaser from a person who was related to the purchaser at the time of acquisition and who did not produce the work goods—the value of the work goods at the time of acquisition by the purchaser; or
  - (iv) where the work goods (other than available goods) were produced by the purchaser or by a person who was related to the purchaser at the time of the production of the work goods—the cost of that production;
- (b) the cost of transporting the work goods, after their acquisition or production by the purchaser to the place of production of the imported goods;
  - (c) the cost of repairs and modifications outside Australia of the work goods after their acquisition by the purchaser;
  - (d) an amount equal to:
    - (i) where the work services were supplied by a person who was not related to the purchaser at the time of the supply—the value of the work services at the time of that supply; or
    - (ii) in any other case—such amount as the Collector determines to be the value of the work services;
  - (e) the cost of the supply outside Australia of any further services in relation to the work services.

**rebate**, in relation to goods the subject of a contract for sale, means any rebate of, or other decrease in, the amount that would constitute the price of the goods other than such a rebate or decrease the benefit of which has been received when that amount is being determined.

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**related**, in relation to persons, has the meaning given by subsection (3).

**request goods** means goods whose owner has requested a Collector to determine their deductive (derived goods sales) value.

**royalty**, in relation to imported goods, means royalty within the meaning given by section 157.

**self transported goods** means:

- (a) a ship imported otherwise than in another ship or an aircraft;  
or
- (b) an aircraft imported otherwise than in a ship or another aircraft.

**similar goods**, in relation to imported goods, has the meaning given by section 156.

**similar goods value**, in relation to imported goods, has the meaning given by section 161B.

**subsidiary goods**, in relation to imported goods, means goods supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods.

**subsidiary services**, in relation to imported goods, means services supplied, directly or indirectly, by the purchaser in relation to the production of production materials, production tooling, work goods, or work services, supplied, directly or indirectly by the purchaser (whether or not free of charge or at a reduced cost) in relation to the production of the imported goods.

**trade mark** means a mark of a kind capable of registration under the *Trade Marks Act 1955*, whether or not it is registered under that Act or any other law, but does not include a mark that relates to a service.

**trader**, in relation to goods, means a vendor, exporter, purchaser or importer of the goods.

**transaction value**, in relation to imported goods, has the meaning given by section 161.

**transportation** includes transportation by post and storage or handling incidental to transportation.

**value unrelated amount**, in relation to goods in a sale, means:

- (a) where the sale is on commission—the amount of commission usually earned in connection with the sale of other goods of the same class and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;
- (b) where the sale is not on commission—the amount usually added for profit and general expenses (including all costs, direct or indirect, of marketing), taken as a whole, in connection with the sale of other goods of the same class or kind and in the same quantity as the goods in the sale, being a sale of other goods in Australia at the same trade level as the first-mentioned goods;
- (c) Australian inland freight and Australian inland insurance in respect of the goods in the sale or of the goods from which the goods in the sale were derived;
- (d) the amount of any duties of Customs and other taxes payable because of the importation into, or the sale in, Australia of the goods in the sale or of goods from which the goods in the sale were derived; and
- (e) overseas freight and overseas insurance in relation to the goods in the sale or of the goods from which the goods in the sale were derived.

**vendor**, in relation to imported goods, means the vendor under the import sales transaction for the goods.

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**work goods**, in relation to imported goods, means goods relating to production work that was:

- (a) required for the production of the imported goods; and
- (b) undertaken outside Australia.

**work services**, in relation to imported goods, means services relating to production work that was:

- (a) required for the production of the imported goods; and
- (b) undertaken outside Australia.

- (2) For the purposes of this Division, an event occurs about the same time as another event if the first event occurs:
  - (a) on the same day as the other event; or
  - (b) within the 45 days immediately before, or the 45 days immediately after, the day on which the other event occurs.
- (3) For the purposes of this Division, 2 persons shall be deemed to be related to each other if, and only if:
  - (a) both being natural persons:
    - (i) they are members of the same family; or
    - (ii) one of them is an officer or director of a body corporate controlled, directly or indirectly, by the other;
  - (b) both being bodies corporate:
    - (i) both of them are controlled, directly or indirectly, by a third person (whether or not a body corporate);
    - (ii) both of them together control, directly or indirectly, a third body corporate;
    - (iii) the same person (whether or not a body corporate) is in a position to cast, or control the casting of, 5% or more of the maximum number of votes that might be cast at a general meeting of each of them;
  - (c) one of them, being a body corporate, is, directly or indirectly, controlled by the other (whether or not a body corporate);
  - (d) one of them, being a natural person, is an employee, officer or director of the other (whether or not a body corporate); or

(e) they are members of the same partnership.

Note: In relation to the reference to member of a family in subparagraph (3)(a)(i), see also section 4AAA.

- (4) A person, whether or not a body corporate, shall be taken to control another body corporate for the purposes of subsection (3) if that person has the capacity to impose any restraint or restrictions upon, or to exercise any direction over, that other body corporate.
- (5) Without, by implication, affecting the meaning of any reference to an owner of goods in any other provision of this Act, a reference in this Division to the owner of goods, being a ship or aircraft, shall not be taken to include a person acting as agent for the owner or receiving freight or other charges payable in respect of the ship or aircraft.

### **155 Interpretation—Buying commission**

- (1) Subject to subsection (2), a reference in this Division to a buying commission in relation to imported goods is a reference to an amount paid or payable by or on behalf of the purchaser of the goods directly or indirectly to a person who, as an agent of the purchaser, represented the purchaser in the purchase of the goods in the import sales transaction.
- (2) An amount paid by a purchaser of imported goods to another person in the circumstances referred to in subsection (1) shall be taken not to be a buying commission unless a Collector is satisfied that that other person did not and does not:
- (a) produce, in whole or in part, or control the production, in whole or in part of:
- (i) the imported goods, or any other goods whose value would be taken into account in determining, or attempting to determine, the transaction value of the imported goods; or
- (ii) any other goods of the same class as goods referred to in subparagraph (i);

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- (b) supply, or control the supply of, any services:
  - (i) whose value would be taken into account in determining, or attempting to determine, the price of the imported goods; or
  - (ii) any other services of the same class as the services referred to in subparagraph (i);
- (c) transport the imported goods, or any other goods referred to in subparagraph (a)(i), within any foreign country, between a foreign country and Australia, or within Australia, for any purpose associated with the manufacture or importation of those imported goods;
- (d) purchase, exchange, sell, or otherwise trade any of the goods referred to in subparagraph (a)(i) or supply any of the services referred to in subparagraph (b)(i) other than in the capacity of an agent of the purchaser;
- (e) in relation to any of the goods referred to in subparagraph (a)(i) or any of the services referred to in subparagraph (b)(i):
  - (i) act as an agent for, or in any other way represent, the producer, supplier, or vendor of the goods or services; or
  - (ii) otherwise be associated with any such person except as the agent of the purchaser; or
- (f) claim or receive, directly or indirectly, the benefit of any commission, fee or other payment, in the form of money, letter of credit, negotiable instruments, or any goods or services, from any person as a consequence of the import sales transaction, other than commission received from the purchaser for the services rendered by that person in that transaction.

**156 Interpretation—Identical goods and similar goods**

- (1) Subject to subsection (2), a reference in this Division to identical goods, in relation to imported goods is a reference to goods that a Collector is prepared, or is required by their owner, to treat as

identical goods in relation to the imported goods, being goods that the Collector is satisfied:

- (a) are the same in all material respects, including physical characteristics, quality and reputation, as the imported goods;
- (b) were produced in the same country as the imported goods; and
- (c) were produced by or on behalf of the producer of the imported goods;

but not being goods in relation to which:

- (d) art work, design work, development work, engineering work undertaken, or substantially undertaken, in Australia; or
- (e) models, plans or sketches prepared, or substantially prepared, in Australia;

was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.

- (2) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (1) as identical goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (1)(c) for the purpose of treating goods as identical goods in relation to the imported goods.
- (3) Subject to subsection (4), a reference in this Division to similar goods, in relation to imported goods, is a reference to goods that a Collector is prepared, or is required by their owner, to treat as similar goods in relation to the imported goods, being goods that the Collector is satisfied:
  - (a) closely resemble the imported goods in respect of component materials and parts and in respect of physical characteristics;
  - (b) are functionally and commercially interchangeable with the imported goods having regard to the quality and reputation (including any relevant trade marks) of each lot of goods;
  - (c) were produced in the same country as the imported goods; and

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- (d) were produced by or on behalf of the producer of the imported goods;  
but not being goods in relation to which:
    - (e) art work, design work, development work or engineering work undertaken, or substantially undertaken, in Australia; or
    - (f) models, plans or sketches prepared, or substantially prepared, in Australia;
- was or were supplied directly or indirectly by or on behalf of the purchaser free of charge or at a reduced cost for use in relation to their production.
- (4) Where a Collector, after reasonable inquiry, is not aware of any goods that may be treated under subsection (3) as similar goods in relation to the goods to be valued, the Collector shall disregard the requirement in paragraph (3)(d) for the purpose of treating goods as similar goods in relation to the imported goods.

**157 Interpretation—Royalties**

- (1) A reference in this Division to a royalty includes a reference to an amount paid or credited (however described or computed and whether the payment or credit is periodical or not) to the extent to which the amount is paid or credited as consideration for:
  - (a) the making, use, exercise or vending of an invention or the right to make, use, exercise or vend an invention;
  - (b) the use of, or the right to use:
    - (i) a design or trade mark;
    - (ii) confidential information; or
    - (iii) machinery, implements, apparatus or other equipment;
  - (c) the supply of scientific, technical, industrial, commercial or other knowledge or information;
  - (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any matter falling within any of the foregoing paragraphs; or

- (e) a total or partial forbearance in respect of any matter falling within any of the foregoing paragraphs (including paragraph (d)).
- (2) Where:
- (a) a person pays an amount of royalty in respect of goods at a time when the goods are not imported goods;
  - (b) the goods are imported goods before or after the payment; and
  - (c) the payment is made in connection with a scheme entered into or carried out for the purpose of the payment not being royalty for the purposes of this Division;
- the payment shall be deemed, for the purposes of this Division, to have been made at a time when the goods were imported goods.
- (3) In this section:
- design** means a design of a kind capable of being registered under the *Designs Act 2003*, whether or not it is registered under that Act or any other law.
- payment**, in relation to an amount, includes the incurring of a liability to pay, and the crediting of, the amount.
- scheme** means:
- (a) an agreement, arrangement, understanding, promise or undertaking, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
  - (b) a plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.
- use**, includes hire-out, lease-out, rent-out, sell, market, distribute or otherwise trade in or dispose of.
- (4) For the purposes of this section, a scheme shall be taken to be entered into or carried out for a particular purpose if the person who has, or one or more of the persons who have, entered into or

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carried out the scheme or a part of the scheme did so for that purpose or for purposes including that purpose.

**158 Interpretation—Transportation costs**

Where the purchaser of imported goods:

- (a) has supplied any production material, production tooling or work goods in relation to those imported goods to a person in a foreign country for the purposes related to the production of those imported goods; or
- (b) has supplied any subsidiary goods to a person in a foreign country for purposes related to the production of production materials, production tooling, work goods or work services in relation to those imported goods;

references in this Division to the cost of transporting that production material or production tooling or those work goods or subsidiary goods, after its or their acquisition or production by the purchaser, to the place of production in that foreign country shall be taken to include:

- (c) the packing costs for materials and labour paid or payable by or on behalf of the purchaser in relation to that production material, or production tooling or those work goods or subsidiary goods including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the material tooling or goods for transportation to the place of production of the imported goods;
- (d) any amount paid or payable by or on behalf of the purchaser in relation to that production material or production tooling or those work goods or subsidiary goods that would:
  - (i) if that foreign country were Australia;
  - (ii) if any other country from which that material or tooling or those goods were exported were a foreign country; and
  - (iii) if that material or tooling or those goods were imported goods;

- be an amount of foreign inland freight or foreign inland insurance, overseas freight or overseas insurance, or Australian inland freight or Australian inland insurance; and
- (e) all duties of Customs, sales tax, or other duties or taxes paid or payable in consequence of the importation of that production tooling or those work goods or subsidiary goods or in consequence of any other use, sale or disposition in that foreign country.

### **159 Value of imported goods**

- (1) Unless the contrary intention appears in this Act or in another Act, the value of imported goods for the purposes of an Act imposing duty is their customs value and the Collector shall determine that customs value in accordance with this section.
- (2) Where a Collector can determine the transaction value of imported goods, their customs value is their transaction value.
- (3) Where a Collector cannot determine the transaction value of imported goods but can determine their identical goods value, their customs value is their identical goods value.
- (4) Where a Collector:
- (a) cannot determine the transaction value of imported goods; and
  - (b) cannot determine their identical goods value;
- but can determine their similar goods value, their customs value is their similar goods value.
- (5) Where a Collector:
- (a) cannot determine the transaction value of imported goods, not being computed valued goods;
  - (b) cannot determine their identical goods value; and
  - (c) cannot determine their similar goods value;
- but can determine their deductive (contemporary sales) value, their customs value is their deductive (contemporary sales) value.

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- (6) Where a Collector:
- (a) cannot determine the transaction value of imported goods, not being computed valued goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value; and
  - (d) cannot determine their deductive (contemporary sales) value;
- but can determine their deductive (later sales) value, their customs value is their deductive (later sales) value.
- (7) Where a Collector:
- (a) cannot determine the transaction value of imported goods, not being computed valued goods but being request goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
  - (d) cannot determine their deductive (contemporary sales) value; and
  - (e) cannot determine their deductive (later sales) value;
- but can determine their deductive (derived goods sales) value, their customs value is their deductive (derived goods sales) value.
- (8) Where a Collector:
- (a) cannot determine the transaction value of exporter's goods, not being computed valued goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
  - (d) where they are request goods, cannot determine any of their deductive values; and
  - (e) where they are not request goods:
    - (i) cannot determine their deductive (contemporary sales) value; and
    - (ii) cannot determine their deductive (later sales) value;
- but can determine their computed value, their customs value is their computed value.

- (9) Where a Collector:
- (a) cannot determine the transaction value of imported goods, being computed valued goods;
  - (b) cannot determine their identical goods value; and
  - (c) cannot determine their similar goods value;
- their customs value is their computed value.
- (10) Where a Collector:
- (a) cannot determine the transaction value of imported goods;
  - (b) cannot determine their identical goods value;
  - (c) cannot determine their similar goods value;
  - (d) where they are request goods, cannot determine any of their deductive values;
  - (e) where they are not request goods:
    - (i) cannot determine their deductive (contemporary sales) value; and
    - (ii) cannot determine their deductive (later sales) value; and
  - (f) where they are exporter's goods, cannot determine their computed value;
- their customs value is their fall-back value.

### **160 Inability to determine a value of imported goods by reason of insufficient or unreliable information**

- (1) Where a Collector is not satisfied that there is sufficient reliable information available to the Collector, being information of a kind referred to in subsection (2), to enable him or her to determine a value of imported goods in accordance with a provision of this Division for determining their customs value, the Collector may determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to determine that first-mentioned value.
- (2) Where a Collector is not satisfied that there is sufficient reliable information available to the Collector to enable him or her to determine the quantity and correctness of any amount that is required to be taken into account in determining a value of those

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goods in accordance with a provision of this Division for determining the customs value of imported goods, then:

- (a) where that amount would ordinarily form part of their customs value under the particular valuation method set out in that provision—the Collector shall determine, in writing, that he or she is not so satisfied and the Collector shall thereupon be taken to be unable to use that method;
- (b) where that amount would ordinarily be deducted from the amount that would otherwise be their customs value under the particular valuation method set out in that provision:
  - (i) if the Collector determines, in writing, that he or she is not so satisfied and that he or she does not desire to use the method—the Collector shall thereupon be taken to be unable to use that method; and
  - (ii) if the Collector determines, in writing, that he or she is not so satisfied but that he or she desires to use the method—the Collector may use the method but no deduction shall be allowed on account of that amount.

**161 Transaction value**

- (1) The transaction value of imported goods is an amount equal to the sum of their adjusted price in their import sales transaction and of their price related costs to the extent that those costs have not been taken into account in determining the price of the goods.

- (2) In this section:

*adjusted price*, in relation to imported goods, means the price of the goods determined by a Collector who deducts from the amount that, but for this subsection, would be the amount of that price, such amounts as the Collector considers necessary to take account of the following matters:

- (a) deductible financing costs in relation to the goods;
- (b) any costs that the Collector is satisfied:
  - (i) are payable for the assembly, erection, construction or maintenance of, or any technical assistance in respect of, the goods;

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- (ii) are incurred after importation of the goods into Australia; and
- (iii) are capable of being accurately quantified by reference to the import sales transaction relating to the goods;
- (c) Australian inland freight and Australian inland insurance in relation to the goods;
- (d) deductible administrative costs in relation to the goods;
- (e) overseas freight and overseas insurance in relation to the goods.

### 161A Identical goods value

- (1) The identical goods value of imported goods is their value calculated as if the value of each of their units were:
  - (a) the unit price of comparable identical goods; or
  - (b) if, because 2 or more lots of goods are treated as comparable identical goods, there are 2 or more such unit prices—the lower or lowest of those unit prices.

- (2) In this section:

**comparable identical goods**, in relation to imported goods, means identical goods that a Collector is satisfied:

- (a) were exported to Australia about the same time as the imported goods; and
- (b) either:
  - (i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or
  - (ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold.

**unit price**, in relation to comparable identical goods, means their transaction value:

- (a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:

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- (i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable identical goods were transported;
  - (ii) the trade levels of the import sales transactions of the comparable identical goods had been those of the import sales transaction of the imported goods; and
  - (iii) the comparable identical goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and
- (b) divided by the number of units of the comparable identical goods.

**161B Similar goods value**

- (1) The similar goods value of imported goods is their value calculated as if the value of each of their units were:
- (a) the unit price of comparable similar goods; or
  - (b) if, because 2 or more lots of goods are treated as comparable similar goods, there are 2 or more such unit prices—the lower or lowest of those unit prices.
- (2) In this section:

*comparable similar goods*, in relation to imported goods, means similar goods that a Collector is satisfied:

- (a) were exported to Australia about the same time as the imported goods; and
- (b) either:
  - (i) were sold in the same, or substantially the same, quantities, as the imported goods in an import sales transaction at the same trade level as the import sales transaction of the imported goods; or

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- (ii) are of a kind that reasonable inquiry by the Collector has not shown to be so sold.

**unit price**, in relation to comparable similar goods, means their transaction value:

- (a) adjusted to such extent as a Collector considers necessary so that that value is what it would have been if:
  - (i) their foreign inland freight and foreign inland insurance had been what that freight and insurance would have been if the goods had been transported, and only transported, over the distances over which, and in the modes in which, the imported goods with which they are comparable similar goods were transported;
  - (ii) the trade levels of the import sales transactions of the comparable similar goods had been those of the import sales transaction of the imported goods; and
  - (iii) the comparable similar goods had been sold in their import sales transactions in the quantity in which the imported goods were sold in their import sales transaction; and
- (b) divided by the number of units of the comparable similar goods.

### **161C Deductive (contemporary sales) value**

- (1) The deductive (contemporary sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of comparable goods sold in the reference sale or sales.
- (2) In this section:

**contemporary sale**, in relation to comparable goods comparable with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale:

- (a) at about the same time as the time of importation of the imported goods;

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- (b) at the first trade level at which the comparable goods were sold after their importation;
- (c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:
  - (i) was not, at the time of the sale, related to the vendor of the comparable goods; and
  - (ii) did not incur any production assist costs in relation to the comparable goods; and
- (d) that was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit.

*reference sale*, in relation to comparable goods, means:

- (a) where there was only one contemporary sale of the goods—that sale;
- (b) where:
  - (i) there were 2 or more such sales; and
  - (ii) the comparable goods were sold in those sales at the one unit price;each of those sales;
- (c) where:
  - (i) there were 2 or more such sales;
  - (ii) the comparable goods were sold in those sales at 2 or more unit prices; and
  - (iii) a higher number of units of comparable goods were sold in those sales at one of those unit price than were sold in those sales at any other single particular unit price;the sale, or each of the sales, in which comparable goods were sold at the particular unit price first-mentioned in subparagraph (iii);
- (d) where:
  - (i) there were 2 or more such sales;
  - (ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of comparable goods were sold in those sales at each of those unit prices; the sale or sales in which the comparable goods were sold at the lower or lowest of the unit prices; and

(e) where:

(i) there were 2 or more such sales;

(ii) the comparable goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of comparable goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of comparable goods sold in those sales at any other single particular unit price;

the sale, or sales, at which comparable goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii).

**unit price**, in relation to comparable goods sold in a contemporary sale, means the price of the goods in that sale:

(a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and

(b) divided by the number of units of the comparable goods.

(3) The following example illustrates the operation of paragraph (c) of the definition of **reference sale** in subsection (2):

*Facts:*

There were 2 contemporary sales of 5 units of comparable goods at a unit price of \$100.

There were 6 contemporary sales of 3 units of comparable goods at a unit price of \$40.

There was one contemporary sale of 4 units of comparable goods at a unit price of \$40.

There was one contemporary sale of 7 units of comparable goods at a unit price of \$60.

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There were 3 contemporary sales of 2 units of comparable goods at a unit price of \$60.

This means that:

10 units of comparable goods were sold in contemporary sales at \$100.

22 units of comparable goods were sold in contemporary sales at \$40.

13 units of comparable goods were sold in contemporary sales at \$60.

*Result:*

More units of comparable goods were sold in contemporary sales at \$40 than were sold in such sales at any other unit price.

Therefore, the reference sales are the sales at the unit price of \$40.

- (4) The following example illustrates the operation of paragraph (e) of the definition of *reference sale* in subsection (2):

*Facts:*

There was one contemporary sale of 10 units of comparable goods at a unit price of \$60.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of \$20.

There was one contemporary sale of 6 units of comparable goods at a unit price of \$20.

There were 8 contemporary sales of 1 unit of comparable goods at a unit price of \$80.

There was one contemporary sale of 5 units of comparable goods at a unit price of \$70.

There were 2 contemporary sales of 2 units of comparable goods at a unit price of \$70.

There were 2 contemporary sales of 1 unit of comparable goods at a unit price of \$50.

There were 2 contemporary sales of 4 units of comparable goods at a unit price of \$50.

*Result:*

An equal number of units of comparable goods (10) were sold in contemporary sales at 3 unit prices (\$60, \$20, \$50).

This number is not exceeded by 8 units of comparable goods sold in contemporary sales at \$80 or by 9 units of comparable goods sold in contemporary sales at \$70.

Therefore, reference sales are the sales at the unit price of \$20.

### **161D Deductive (later sales) value**

(1) The deductive (later sales) value of imported goods is their value calculated as if the value of each of the units were the unit price of comparable goods sold in the reference sale or sales.

(2) In this section:

**later sale**, in relation to comparable goods compared with imported goods, means a sale known to a Collector of the comparable goods in Australia in the condition in which they were imported, being a sale:

- (a) during the 90 days that began on the day of importation of the imported goods;
- (b) at the first trade level at which the comparable goods were sold after their importation;
- (c) in circumstances where, in the opinion of the Collector, the purchaser of the comparable goods:
  - (i) was not, at the time of the sale, related to the vendor of the comparable goods; and
  - (ii) did not incur any production assist costs in relation to the comparable goods; and
- (d) was, in the opinion of the Collector, a sale of a sufficient number of units of comparable goods as to permit an appropriate determination of their price per unit.

**reference sale**, in relation to comparable goods, means:

- (a) where there was only one later sale of the goods—that sale;
- (b) where there were 2 or more such sales and one of them was on an earlier day than the other or others—that sale; or

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- (c) where there were 2 or more such sales on a common day and no such sale occurred on an earlier day:
  - (i) if one of the sales on the common day was of a higher number of units of the comparable goods than the other or others on the common day—that sale of a higher number; or
  - (ii) if 2 or more of the sales on the common day were of the same number of units of comparable goods and no other sale on the common day was of a higher number of such units—whichever of those 2 or more sales of the same number of units was the sale in which comparable goods were sold at the lower or lowest unit price.

**unit price**, in relation to comparable goods sold in a later sale, means the price of the goods in that sale:

- (a) reduced by the sum of value unrelated amounts, deductible administrative costs, and deductible financing costs, in relation to the comparable goods; and
- (b) divided by the number of units of the comparable goods.

**161E Deductive (derived goods sales) value**

- (1) The deductive (derived goods sales) value of imported goods is their value calculated as if the value of each of their units were the unit price of derived goods derived from them sold in the reference sale or sales.
- (2) In this section:

**derived goods**, in relation to imported goods, means the imported goods after they have been assembled, packaged or further processed in Australia.

**derived goods sale**, in relation to derived goods derived from imported goods, means a sale known to a Collector of derived goods in Australia, being a sale:

- (a) during the 90 days that began on the day of importation of the imported goods;

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- (b) at the first trade level at which the derived goods were sold after that importation;
- (c) in circumstances where, in the opinion of the Collector, the purchaser of the derived goods:
  - (i) was not related to the vendor of the derived goods at the time of the sale; and
  - (ii) did not incur any production assist costs in relation to the derived goods; and
- (d) that was, in the opinion of the Collector, a sale of a sufficient number of units of derived goods as to permit an appropriate determination of the price per unit of the goods.

*reference sale*, in relation to derived goods, means:

- (a) where there was only one derived goods sale—that sale;
- (b) where:
  - (i) there were 2 or more such sales; and
  - (ii) derived goods were sold in those sales at the one unit price;each of those sales;
- (c) where:
  - (i) there were 2 or more such sales;
  - (ii) the derived goods were sold in those sales at 2 or more unit prices; and
  - (iii) a higher number of units of derived goods were sold in those sales at one of those unit prices than were sold in those sales at any other single particular unit price;the sale, or each of the sales, in which derived goods were sold at the particular unit price first-mentioned in subparagraph (iii);
- (d) where:
  - (i) there were 2 or more such sales;
  - (ii) derived goods were sold in those sales at 2 or more unit prices; and

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(iii) an equal number of units of derived goods were sold in those sales at each of those unit prices;

the sale or sales in which the derived goods were sold at the lower or lowest of the unit prices; and

(e) where:

(i) there were 2 or more such sales;

(ii) derived goods were sold in those sales at 2 or more unit prices; and

(iii) an equal number of units of derived goods were sold in those sales at 2 or more of those unit prices and that number was not exceeded by the number of units of derived goods sold in those sales at any other single particular unit price;

the sale, or sales, at which derived goods were sold at the lower or lowest of the unit prices first-mentioned in subparagraph (iii).

***unit price***, in relation to derived goods derived from imported goods and sold in a derived goods sale, means the price of the derived goods in that sale:

(a) reduced by the sum of:

(i) value unrelated amounts, in relation to the derived goods;

(ii) deductible administrative costs in relation to the derived goods;

(iii) deductible financing costs in relation to the derived goods; and

(iv) the amount of the value added to the derived goods that is attributable to the assembly, packaging or further processing of the imported goods in Australia; and

(b) divided by the number of units of the derived goods.

### **161F Computed value**

- (1) The computed value of imported goods is such part of the sum of the following amounts as a Collector considers should be apportioned to their production:
- (a) Australian arranged material costs;
  - (b) Australian arranged subsidiary costs;
  - (c) Australian arranged tooling costs;
  - (d) Australian arranged work costs;
  - (e) the value of all other goods used in their production and not included in paragraphs (a) to (d), inclusive;
  - (f) the costs, charges and expenses incurred by their producer in relation to their production and not included in paragraphs (a) to (e), inclusive;
  - (g) the profit and expenses (including all costs, direct or indirect, of marketing but not including costs and expenses included in paragraphs (a) to (f), inclusive) that are usually added to the sale for export to Australia of goods of the same class as the imported goods from the country of export of the imported goods, being a sale of goods by their producer to a purchaser who is not, at the time of sale, related to the producer;
  - (h) packing costs for materials and labour incurred in respect of the goods (including, but without limiting the generality of the foregoing, costs of fumigating, cleaning, coating, wrapping or otherwise preparing the goods for their exportation from a foreign country or otherwise placing them in the condition in which they are imported into Australia but not including the costs of any exempted pallet or exempted container concerned in their exportation), being costs that are not included in paragraphs (a) to (g), inclusive;
  - (j) foreign inland freight and foreign inland insurance that is usually added to a sale referred to in paragraph (g) and that is not included in paragraphs (a) to (h), inclusive.
- (2) In this section, *Australian arrange material costs*, *Australian arranged subsidiary costs*, *Australian arranged tooling costs* and
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*Australian arranged work costs*, in relation to imported goods, have the meanings that *purchaser's material costs*, *purchaser's subsidiary costs*, *purchaser's tooling costs* and *purchaser's work costs* respectively, would have, in relation to imported goods, if the references in the 4 last-mentioned definitions to purchaser were references to a person in Australia.

**161G Fall-back value**

The fall-back value of imported goods is such value as a Collector determines, having regard to the other methods of valuation under this Division in the order in which those methods would ordinarily be considered under section 159 and of such other matters as the Collector considers relevant, but not having regard to any of the following matters:

- (a) the selling price in Australia of goods produced in Australia;
- (b) any system that provides for the acceptance for the purposes of this Act of the higher of 2 alternative values;
- (c) the price of goods on the domestic market of the country from which the imported goods were exported;
- (d) the cost of production of goods, other than the computed value of identical goods or similar goods;
- (e) the price of goods sold for export to a country other than Australia and not imported into Australia;
- (f) any system that provides for minimum values for the purposes of this Act;
- (g) arbitrary or fictitious values.

**161H When transaction value unable to be determined**

- (1) Without limiting section 160, a Collector cannot determine the transaction value of imported goods for the purposes of this Division, including, but without limiting the generality of the foregoing, section 161A or 161B, if the Collector:
  - (a) after reasonable inquiry, is not aware of any import sales transaction in relation to the goods;

- (b) has, in accordance with subsection (3), (5) or (7), decided that the transaction value of the goods cannot be determined; or
  - (c) is satisfied that the disposition or use of the goods by the purchaser is subject to restrictions, not being restrictions of the following kinds:
    - (i) restrictions imposed or required by, or by any public officer or authority acting in accordance with, any law in force in Australia;
    - (ii) restrictions that limit the geographical area in which the goods may be sold;
    - (iii) restrictions that do not substantially affect the commercial value of the goods.
- (2) Where, in relation to goods required to be valued, a Collector:
- (a) is satisfied that the purchaser and the vendor of imported goods were, at the time of the goods' import sales transaction, related persons; and
  - (b) considers that that relationship may have influenced the price of the goods;
- the Collector shall, by notice in writing served, personally or by post, on the purchaser of the goods:
- (c) advise the purchaser of:
    - (i) the view that the Collector has formed of the possible effect on the price of the goods of the relationship between the purchaser and the vendor;
    - (ii) the reasons for forming that view; and
    - (iii) the fact that, because of that view, the Collector may be required to decide under subsection (3) that the transaction value of the goods cannot be determined; and
  - (d) invite the purchaser to put before the Collector, within a period specified in the notice (not being a period of less than 28 days), such further information as the purchaser considers might serve to satisfy the Collector as to any of the matters set out in subsection (3).

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- (3) On the expiration of the period specified in a notice under subsection (2), the Collector shall, unless the purchaser of the imported goods has satisfied the Collector that:
- (a) a relationship between the purchaser and the vendor of the goods did not influence the price of the goods; or
  - (b) the amount of the transaction value that would be determined in respect of the goods if the purchaser and the vendor had not been related at the time of the import sales transaction for the goods divided by the number of the units of the goods closely approximates, having regard to all relevant factors:
    - (i) the unit price within the meaning of section 161A of identical goods that were exported to Australia about the same time as the imported goods;
    - (ii) the unit price within the meaning of section 161B of similar goods that were exported to Australia about the same time as the imported goods;
    - (iii) the unit price of identical goods or similar goods sold in a contemporary sale within the meaning of section 161C as determined in accordance with that section; or
    - (iv) the computed unit price of identical goods or similar goods that were imported into Australia about the same time as the imported goods being the computed value of those identical or similar goods determined in accordance with section 161F divided by the number of units of those identical or similar goods;
- be taken to be unable to determine the transaction value of the goods.
- (4) Where, in relation to goods required to be valued, a Collector is of the opinion that the price at which the goods were sold in their import sales transaction is different from the price at which goods that are identical goods or similar goods to the first-mentioned goods would normally be sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:
- (a) advise the purchaser of the Collector's opinion; and

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- (b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.
- (5) On the expiration of the period specified in a notice under subsection (4) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.
- (6) Where, in relation to services provided in respect of goods required to be valued, a Collector is of the opinion that the services were provided in relation to the goods under the terms of their import sales transaction at a price different from the price normally paid for the provision of identical or similar services in relation to goods that are identical goods or similar goods to the first-mentioned goods, sold in an import sales transaction similar to the first-mentioned import sales transaction, the Collector shall, by notice in writing served, personally or by post, on the purchaser:
  - (a) advise the purchaser of the Collector's opinion; and
  - (b) require the purchaser to satisfy the Collector, within the period specified in the notice, not being a period of less than 28 days, that the price difference was not designed to obtain a reduction of, or to avoid duty.
- (7) On the expiration of the period specified in a notice under subsection (6) in relation to imported goods, the Collector shall, unless the purchaser of the goods to whom the notice was given has satisfied the Collector as required by the notice, be taken to be unable to determine the transaction value of the goods.

**161J Value of goods to be in Australian currency**

- (1) Where an amount that is, in accordance with this Division, required to be taken into account for the purpose of ascertaining a value of any imported goods is an amount in a currency other than Australian currency, the amount to be so taken into account shall be the equivalent in Australian currency of that amount,

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ascertained according to the ruling rate of exchange in relation to that other currency in respect of the day of exportation of the goods.

- (2) For the purposes of this section, the Comptroller-General of Customs may specify, by notice published in the *Gazette*:
- (a) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of a day, or of each day occurring during a period, preceding the day of publication of the notice; or
  - (b) a rate that is to be deemed to be, or to have been, the ruling rate of exchange, in relation to any currency, in respect of each day occurring during a period commencing on the day of publication of the notice, or on an earlier day specified in the notice, and ending on the revocation of the notice;
- after having regard:
- (c) where the ruling rate of exchange is specified in respect of a day—to commercial rates of exchange that prevailed on or about that day;
  - (d) where the ruling rate of exchange is specified in respect of a period commencing before the day of publication of the notice—to commercial rates of exchange that prevailed during so much of that period as preceded the day of publication of the notice; and
  - (e) where the ruling rate of exchange is specified in respect of any other period—to commercial rates of exchange that last prevailed before the publication of that notice.
- (3) At any time, the ruling rate of exchange in relation to a particular foreign currency, in respect of a particular day, shall be:
- (a) if a rate of exchange has been specified at that time under subsection (2) as the ruling rate of exchange, in relation to that currency, in respect of that day, or in respect of a period that includes that day—the rate so specified; and
  - (b) if a rate of exchange has not been so specified at that time—such a rate of exchange as the Comptroller-General of Customs determines to be the ruling rate of exchange, in

relation to that currency, in respect of that day, after having regard to commercial rates of exchange prevailing on or about that day and to such other matters as the Comptroller-General of Customs considers relevant.

(4) In this section:

*day of exportation*, in relation to imported goods, means:

- (a) where the goods were exported by post from the place of export and a Collector is satisfied as to the day of posting—that day;
- (b) where the goods departed or were transported from their place of export in any other way and a Collector is satisfied as to the day of their departure or transportation—that day; and
- (c) in any other case—a day determined by the Collector.

### **161K Owner to be advised of value of goods**

- (1) Where the Comptroller-General of Customs or a Collector has determined the customs value of goods in accordance with this Division, the Comptroller-General of Customs or the Collector shall cause the value to be recorded on the entry in respect of them or otherwise advise their owner of the amount.
- (2) Where a Collector signifies, in a manner prescribed by the regulations, his or her acceptance of an estimate of the value of the goods, whether that estimate appears on the entry in respect of those goods or in any other statement of information provided in respect of those goods, the Collector shall, by so signifying, be taken for the purposes of subsection (1) to have determined the customs value of the goods and to have advised their owner of that amount.
- (3) If, within 28 days after being advised under subsection (1) of the customs value of goods determined in accordance with this Division, an owner of the goods requests a Collector, in writing, to give the owner particulars of the valuation, the Collector shall,

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within 28 days after the making of the request, give the owner a notice in writing setting out:

- (a) the method by which the customs value of the goods was determined;
  - (b) the findings of material questions of fact relating to that determination, the evidence or other material on which those findings were based and the reasons for that determination; and
  - (c) the calculations by which the determination of the value was made and the information on which those calculations were based.
- (4) Nothing in this section requires, or permits, the giving of information that:
- (a) relates to the personal affairs or business affairs of a person, other than the person making the request because of which information was given; and
  - (b) is information:
    - (i) that was supplied in confidence;
    - (ii) the publication of which would reveal a trade secret;
    - (iii) that was given in compliance with a duty imposed by an enactment; or
    - (iv) the giving of which in accordance with the request would be in contravention of an enactment, being an enactment that expressly imposes on the person to whom the information was given a duty not to divulge or communicate to any person, or to any person other than a person included in a prescribed class of persons, or except in prescribed circumstances, information of that kind.
- (5) In this section, **enactment** has the same meaning as in the *Administrative Decisions (Judicial Review) Act 1977*.

### **161L Review of determinations and other decisions**

- (1) At any time after the making of a determination or other decision by an officer under this Division in relation to goods, the Comptroller-General of Customs may review the determination or other decision and may:
  - (a) affirm the determination or other decision;
  - (b) vary the determination or other decision; or
  - (c) revoke the determination or other decision and make any other determination or decision that is required to be made for the purpose of determining the customs value of the goods in accordance with this Division.
  
- (2) Where, by reason that the Comptroller-General of Customs, under subsection (1), has varied or revoked a determination or other decision of an officer or has made a determination or other decision that is required to be made by reason of the revocation of a determination or other decision of an officer:
  - (a) an amount of duty that was levied is less than the amount that should have been levied; or
  - (b) an amount of duty that was refunded is greater than the amount that should have been refunded;section 165 applies in relation to any demand by the Comptroller-General of Customs for the payment of the amount of duty that is unpaid or the amount of refund that was overpaid.
  
- (3) In this section, *officer* means a Collector or a delegate of the Comptroller-General of Customs.

### **Division 3—Payment and recovery of deposits, refunds, unpaid duty etc.**

#### **162 Delivery of goods upon giving of security or undertaking for payment of duty, GST and luxury car tax**

- (1) Where goods the property of a person included in a prescribed class of persons are imported or a person imports goods included in a prescribed class or goods intended for a prescribed purpose and intends to export those goods, the Collector may grant to the person importing the goods permission to take delivery of those goods upon giving a security or an undertaking, to the satisfaction of the Collector, for the payment of:
  - (a) the duty, if any, on those goods; and
  - (b) the assessed GST payable on the taxable importation, if any, that is associated with the import of those goods; and
  - (c) if a taxable importation of a luxury car is associated with the import of those goods—the assessed luxury car tax payable on that taxable importation.
- (2) The regulations may prescribe provisions to be complied with in relation to goods in respect of which permission has been granted under the last preceding subsection.
- (2A) Without limiting the generality of subsection (2), regulations under that subsection may provide that conditions, restrictions or requirements specified in the permission granted under subsection (1) in relation to goods are to be complied with in relation to the goods.
- (3) Where the Collector has granted permission to a person to take delivery of goods upon giving a security or an undertaking referred to in subsection (1), the duty (if any) is not payable if:
  - (a) the provisions of the regulations are complied with; and

- (b) either:
- (i) the goods are exported within a period of 12 months after the date on which the goods were imported, or within such further period as the Comptroller-General of Customs, on the application of the person who imported the goods, allows; or
  - (ii) one or more of the circumstances or conditions specified in the regulations apply in relation to the goods;

and, if security was given by way of deposit of cash or of an instrument transferable by delivery, the amount deposited or the instrument shall be returned to the person by whom the security was given.

Note: In these circumstances, GST and luxury car tax are not payable. See section 171-5 of the GST Act and section 13-25 of the Luxury Car Tax Act.

- (4) If the circumstances described in paragraphs (3)(a) and (b) do not exist in relation to the goods:
- (a) the security may be enforced according to its tenor; or
  - (b) if an undertaking to pay the amount of the duty (if any), the GST (if any) and the luxury car tax (if any) has been given, that amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Collector.

### **162A Delivery of goods on the giving of a general security or undertaking for payment of duty, GST and luxury car tax**

- (1) The regulations may provide that:
- (a) goods of a specified class;
  - (b) goods imported by persons of a specified class;
  - (c) goods of a specified class imported by persons of a specified class; or
  - (d) goods imported for a specified purpose;
- may, in accordance with this section, be brought into Australia on a temporary basis without payment of duty, GST or luxury car tax.

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- (1A) Without limiting the generality of subsection (1), regulations under that subsection may be regulations that apply to goods if:
- (a) the goods are specified in an instrument authorised by the regulations; and
  - (b) conditions, restrictions or requirements specified in that instrument are complied with in respect of the goods.
- (1B) Without limiting the generality of paragraph (1A)(b), conditions, restrictions or requirements referred to in that paragraph that apply to goods may specify, or relate to:
- (a) the time during which the goods may remain in Australia; or
  - (b) the purposes for which the goods may be used while they are in Australia.
- (2) The Comptroller-General of Customs may accept a security given by a person for the payment of, or an undertaking by a person to pay, all of the following in relation to specified goods that are described in regulations made for the purposes of subsection (1) and that may be imported after a particular date or during a particular period:
- (a) the duty, if any, that may become payable on the goods;
  - (b) the assessed GST that may become payable on the taxable importation, if any, that is associated with the import of the goods;
  - (c) if a taxable importation of a luxury car is associated with the import of the goods—the assessed luxury car tax that may become payable on that taxable importation.
- If the Comptroller-General of Customs accepts the security or undertaking, a Collector may grant to a person who imports some or all of the specified goods permission to take delivery of the goods without payment of duty, GST or luxury car tax.
- (2A) However, the Collector may grant permission to take delivery of goods that:
- (a) are covered by a security or undertaking described in subsection (2); and

- (b) are not accompanied by, and described in, temporary admission papers issued in accordance with an agreement between Australia and one or more other countries that provides for the temporary importation of goods without payment of duty;  
only if the person importing the goods applies to the Collector for the permission in accordance with section 162AA.
- (3) Goods delivered under this section shall, for the purposes of this Act, be deemed to be entered for home consumption on being so delivered.
- (4) The regulations may prohibit a person to whom goods are delivered under this section from dealing with the goods in a manner, or in a manner other than a manner, specified in the regulations, or from so dealing with the goods except with the consent of the Comptroller-General of Customs.
- (5) Duty is not payable on goods delivered under this section unless:
- (a) the goods have been dealt with in contravention of the regulations; or
  - (b) the goods are not exported:
    - (i) within such period, not exceeding 12 months, after the date on which the goods were imported as is notified to the person who imported the goods by the Collector when he or she grants permission to take delivery of the goods; or
    - (ii) within such further period as the Comptroller-General of Customs, on the application of the person who imported the goods and of the person who gave the security or undertaking with respect to the goods, allows;
- and none of the circumstances or conditions specified in the regulations apply in relation to the goods.

Note: GST and luxury car tax are not payable if duty is not payable because of subsection (5) (or would not be payable because of that subsection if it were otherwise payable). See section 171-5 of the GST Act and section 13-25 of the Luxury Car Tax Act.

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- (6) A Collector may give permission for goods delivered under this section to be taken on board a ship or aircraft for export and, on permission being so given, the goods shall, for the purposes of this Act, be deemed to be entered for export.
- (6A) However, the Collector may give permission to take aboard a ship or aircraft for export goods that were delivered under this section as a result of an application described in subsection (2A) only if the person proposing to export the goods applies to the Collector for the permission in accordance with section 162AA.
- (7) Where security under this section is given by way of a payment of money or a deposit of an instrument transferable by delivery, the money shall not be repaid or the instrument shall not be returned, as the case may be, until:
- (a) no duty is, or may become, payable on goods to which the security relates that have been imported; and
  - (b) no GST is, or may become, payable on the taxable importation (as defined in the GST Act), if any, that is associated with the import of the goods; and
  - (c) no luxury car tax is, or may become, payable on the taxable importation of a luxury car (as defined the Luxury Car Tax Act), if any, that is associated with the import of the goods.
- (8) If the circumstances described in paragraph (5)(a) or (b) exist in relation to the goods:
- (a) a security relating to the goods may be enforced; and
  - (b) if an undertaking has been given to pay the amount of the duty (if any), GST (if any) and luxury car tax (if any) associated with the import of the goods—the amount may be recovered at any time in a court of competent jurisdiction by proceedings in the name of the Comptroller-General of Customs.

**162AA Applications to deal with goods imported temporarily without duty**

- (1) This section describes how to make an application that is:
  - (a) required by subsection 162A(2A) for a permission under subsection 162A(2) to take delivery of goods; or
  - (b) required by subsection 162A(6A) for a permission under subsection 162A(6) to take goods aboard a ship or aircraft for export.
- (2) An application may be communicated to the Collector by document or computer.
- (3) An application communicated by document must:
  - (a) be in an approved form; and
  - (b) include the information required by the approved form; and
  - (c) be signed in the way indicated by the approved form.
- (4) An application communicated by computer must:
  - (a) be communicated by computer in the manner indicated in an approved statement relating to the application; and
  - (b) include the information indicated in the approved statement; and
  - (c) identify the applicant in the way indicated in the approved statement.

**162B Pallets used in international transport**

- (1) Where pallets are delivered under section 162A and it would be a contravention of the Convention by the Commonwealth to collect duty on the pallets, duty is not payable on the pallets.
- (2) Where pallets are to be exported and it would be a contravention of the Convention by the Commonwealth to require the goods to be entered for export, the pallets may be exported without being entered for export.

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- (3) This section is in addition to, and not in derogation of, subsections 162A(5) and (6).
- (4) In this section:

**Convention** means the European Convention on Customs Treatment of Pallets used in International Transport signed in Geneva on 9 December 1960, as affected by any amendment that has come into force for Australia.

Note: The text of the Convention is set out in Australian Treaty Series 1969 No. 26.

**163 Refunds etc. of duty**

- (1) Refunds, rebates and remissions of duty may be made:
- (a) in respect of goods generally or in respect of the goods included in a class of goods; and
  - (b) in such circumstances, and subject to such conditions and restrictions (if any), as are prescribed, being circumstances, and conditions and restrictions, that relate to goods generally or to the goods included in the class of goods.
- (1A) The regulations may prescribe the amount, or the means of determining the amount, of any refund, rebate or remission of duty that may be made for the purposes of subsection (1).
- (1AA) Subject to subsection (1AD), the regulations may prescribe:
- (a) the manner of making application, either by document or by computer, for such refunds, rebates or remissions; and
  - (b) the procedure to be followed in dealing with such applications, including procedures for requesting further information in relation to issues raised in such applications.
- (1AB) Regulations made for the purposes of subsection (1AA) that provide for the making of an application for a refund, rebate or remission of duty by computer must indicate when that application is to be taken, for the purposes of this Act, to have been communicated to the Department.

- (1AC) Regulations made for the purposes of subsection (1AA) that provide for the making of applications for refund, rebate or remission of duty by computer may include contingency arrangements to deal with circumstances where the computer system employed in relation to such applications is down.
- (1AD) The regulations may identify circumstances where a person is entitled to a refund, rebate or remission of duty:
- (a) without making an application at all; or
  - (b) on making an application in respect of which a refund application fee is not payable.
- (1AE) For the avoidance of doubt, if, before or after the commencement of this subsection, a person has:
- (a) altered an electronic copy of an import entry or a self-assessed clearance declaration as a step in making an application for a refund or rebate of duty in respect of goods covered by the entry or declaration; or
  - (b) altered an electronic copy of an import entry or a self-assessed clearance declaration as such a step and paid the application fee (if any) associated with the making of such an application;
- but the person did not or does not, within the time prescribed for making that application, communicate the altered import entry or altered self-assessed clearance declaration to the Department, either manually or, after the commencement of this subsection, by computer, the person's actions in modifying that import entry or self-assessed clearance declaration and paying any such application fee are of no effect.
- (2) For the purposes of this section and of any regulations made for the purposes of this section, duty, in relation to goods that have been, or are proposed to be, imported into Australia under Schedule 3 to the Tariff includes an amount paid to a collector on account of the duty that will become payable on those goods.
- (3) For the purposes of this section and of any regulations made for the purposes of this section, the amount of duty in respect of which a

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**Section 164B**

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person may seek a refund, rebate or remission of duty on goods that are imported into Australia under item 41E of Schedule 4 to the Tariff is to be taken to be the sum of:

- (a) the amount of money (if any) paid as customs duty on the importation of those goods; and
- (b) to the extent that duty credit issued under the former *ACIS Administration Act 1999* has been offset against customs duty that would otherwise have been payable in respect of those goods—the amount of customs duty offset by the use of the credit.

**164B Refunds of export duty**

Whenever goods in respect of which an export duty of Customs has been paid are re-imported or brought back to Australia, the Comptroller-General of Customs may direct the refund of so much of the duty paid on those goods as he or she considers to be justified in the circumstances.

**165 Recovery of unpaid duty etc.**

- (1) An amount of duty that is due and payable in respect of goods:
  - (a) is a debt due to the Commonwealth; and
  - (b) is payable by the owner of the goods.
- (2) An amount of drawback, refund or rebate of duty that is overpaid to a person:
  - (a) is a debt due to the Commonwealth; and
  - (b) is payable by the person.

*Demand for payment*

- (3) The Comptroller-General of Customs may make, in writing, a demand for payment of an amount that is a debt due to the Commonwealth under subsection (1) or (2) or subsection 278(2).

- (4) A demand, under subsection (3), for payment of an amount must specify the amount and include an explanation of how it has been calculated.
- (5) A demand, under subsection (3), for payment of an amount must be made within 4 years from:
- (a) if the amount is a debt due to the Commonwealth under subsection (1)—the time the amount was to be paid by under this Act; or
  - (b) if the amount is a debt due to the Commonwealth under subsection (2) or subsection 278(2)—the time the amount was paid;
- unless the Comptroller-General of Customs is satisfied that the debt arose as the result of fraud or evasion.

*Recovery in court*

- (6) An amount that is a debt due to the Commonwealth under subsection (1) or (2) or subsection 278(2) may be sued for and recovered in a court of competent jurisdiction by proceedings in the name of the Collector if:
- (a) the Comptroller-General of Customs has made a demand for payment of the amount in accordance with this section; or
  - (b) the Comptroller-General of Customs is satisfied that the debt arose as the result of fraud or evasion.

**165A Refunds etc. may be applied against unpaid duty**

- (1) If:
- (a) an amount of duty is payable by a person in respect of goods that have been delivered into home consumption; and
  - (b) the person would be entitled to an amount of drawback, refund or rebate of duty in respect of the goods if the amount of duty payable were paid;
- then:

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- (c) the Comptroller-General of Customs may apply the amount of the drawback, refund or rebate against the amount of duty payable; and
  - (d) the person is taken to have paid, in respect of the goods, an amount of duty equal to the amount of drawback, refund or rebate applied; and
  - (e) the amount of drawback, refund or rebate applied is taken to have been paid to the person.
- (2) If the Comptroller-General of Customs applies an amount of drawback, refund or rebate against an amount of duty payable, the Comptroller-General of Customs must give the person who would have been entitled to receive the amount of drawback, refund or rebate written notice of:
- (a) the amount of drawback, refund or rebate applied; and
  - (b) if the amount of drawback, refund or rebate applied is less than the amount of duty payable—the amount of duty that is still payable by the person.

**166 No refund if duty altered**

If any practice of the Comptroller-General of Customs relating to classifying or enumerating any article for duty shall be altered so that less duty is charged upon such article, no person shall thereby become entitled to any refund on account of any duty paid before such alteration.

## Division 4—Disputes as to duty

### 167 Payments under protest

- (1) If any dispute arises as to the amount or rate of duty payable in respect of any goods, or as to the liability of any goods to duty, under any Customs Tariff, or under any Customs Tariff or Customs Tariff alteration proposed in the Parliament (not being duty imposed under the *Customs Tariff (Anti-Dumping) Act 1975*), the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined in an action brought in pursuance of this section.
- (2) The owner may, within the times limited in this section, bring an action against the Collector, in any Commonwealth or State Court of competent jurisdiction, for the recovery of the whole or any part of the sum so paid.
- (3) For the purposes of this section, a payment is taken to be made under protest if, and only if:
  - (a) the owner of the goods or the agent of the owner gives the Collector notice in accordance with subsection (3A), by document or electronically, that the payment is made under protest; and
  - (b) the Collector receives the notice no later than 7 days after the day the payment is made.
- (3A) A notice given by an owner or agent under subsection (3) must:
  - (a) contain the words ***paid under protest***; and
  - (b) identify the import declaration that covers the goods to which the protest relates; and
  - (c) if the protest does not relate to all the goods covered by the import declaration—describe the goods to which the protest relates; and

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- (d) include a statement of the grounds on which the protest is made; and
  - (e) be signed by the owner or the agent of the owner.
- (4) No action shall lie for the recovery of any sum paid to the Commonwealth as the duty payable in respect of any goods, unless the payment is made under protest in pursuance of this section and the action is commenced within the following times:
- (a) In case the sum is paid as the duty payable under any Customs Tariff, within 6 months after the date of the payment; or
  - (b) In case the sum is paid as the duty payable under a Customs Tariff or Customs Tariff alteration proposed in the Parliament, within 6 months after the Act, by which the Customs Tariff or Customs Tariff alteration proposed in the Parliament is made law, is assented to.
- (5) Nothing in this section shall affect any rights or powers under section 163.
- (6) In this section:

***import declaration*** includes an import entry, within the meaning of the unamended Customs Act, that was made under that Act.

***unamended Customs Act*** has the meaning given by section 4 of the *Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Act 2004*.

## **Part IX—Drawbacks**

### **168 Drawbacks of import duty**

- (1) The regulations may make provision for and in relation to allowing drawbacks of duty paid on goods imported into Australia.
- (2) For the purposes of this section and of any regulations made for the purposes of this section, the amount of duty paid on goods that are imported into Australia under item 41E of Schedule 4 to the Tariff is to be taken to be the sum of:
  - (a) the amount of money (if any) paid as customs duty on the importation of those goods; and
  - (b) to the extent that duty credit issued under the former *ACIS Administration Act 1999* has been offset against customs duty that would otherwise have been payable in respect of those goods—the amount of customs duty offset by the use of the credit.

## Part X—The coasting trade

### 175 Goods not to be transferred between certain vessels

- (1) In this section:

*Australian aircraft* has the same meaning as in the *Civil Aviation Act 1988*.

*coastal aircraft* means an aircraft that is not currently engaged in making:

- (a) an international flight; or
- (b) a prescribed flight.

*coastal ship* means a ship that is not currently engaged in making:

- (a) an international voyage; or
- (b) a prescribed voyage.

*international flight* and *international voyage* have the same respective meanings as they have in Part VII.

*prescribed flight* in relation to an aircraft, means a flight in the course of which the aircraft takes off from a place outside Australia and lands at a place outside Australia and does not land at a place in Australia.

*prescribed voyage*, in relation to a ship, means a voyage in the course of which the ship:

- (a) travels between places outside Australia; or
- (b) travels from a place outside Australia and returns to that place;

and does not call at a place in Australia.

- (2) The owner or master of a coastal ship must not allow any goods to be transferred between the coastal ship and:
- (a) a ship that is engaged in making an international voyage or a prescribed voyage; or

- (b) an aircraft that is engaged in making an international flight or a prescribed flight.

Penalty: 250 penalty units.

- (2A) Subsection (2) applies to a coastal ship that is an Australian ship if the ship is anywhere outside the territorial sea of a foreign country.
- (3) The owner or pilot of a coastal aircraft must not allow any goods to be transferred between the coastal aircraft and:
  - (a) an aircraft that is engaged in making an international flight or a prescribed flight; or
  - (b) a ship that is engaged in making an international voyage or a prescribed voyage.

Penalty: 250 penalty units.

- (3AA) Subsection (3) applies to a ship that is an Australian ship if the ship is anywhere outside the territorial sea of a foreign country.

- (3A) A person who is:

- (a) the owner or master of an Australian ship that is currently engaged in making an international voyage or a prescribed voyage; or
- (b) the owner or pilot of an Australian aircraft that is currently engaged in making an international flight or prescribed flight;

must not allow any goods to be transferred between that ship or aircraft and:

- (c) a coastal ship; or
- (d) a coastal aircraft.

Penalty: 250 penalty units.

- (3AAA) Subsection (3A) applies to an Australian ship described in paragraph (3A)(a) if the ship is anywhere outside the territorial sea of a foreign country.

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- (3B) A person who is:
- (a) the owner or master of a ship (other than an Australian ship) that is currently engaged in making an international voyage or a prescribed voyage; or
  - (b) the owner or pilot of an aircraft (other than an Australian aircraft) that is currently engaged in making an international flight or a prescribed flight;
- must not allow any goods to be transferred between that ship or aircraft and a coastal ship or coastal aircraft if the transfer takes place in, or in the airspace above (as the case may be), the waters of the sea within:
- (c) the outer limits of the territorial sea of Australia, including such waters within the limits of a State or an internal Territory; or
  - (d) 500 metres of:
    - (i) an Australian resources installation; or
    - (ii) an Australian sea installation; or
    - (iii) an Australian offshore electricity installation.

Penalty: 250 penalty units.

- (3BA) For the purposes of subsections (2), (3), (3A) and (3B), strict liability applies to such of the following physical elements of circumstance as are relevant to the offence:
- (a) that an aircraft is engaged in making an international flight or a prescribed flight; or
  - (b) that a ship is engaged in making an international voyage or a prescribed voyage.
- (3C) Subsection (2), (3), (3A) or (3B) does not apply if a Collector has given permission (for the transfer of the goods) to:
- (a) in the case of subsection (2)—the owner or master of the coastal ship referred to in that subsection; and
  - (b) in the case of subsection (3)—the owner or pilot of the coastal aircraft referred to in that subsection; and
  - (c) in the case of subsection (3A) or (3B)—the owner or master of the coastal ship referred to in that subsection or the owner

or pilot of the coastal aircraft referred to in that subsection (as the case requires).

- (3D) A permission under subsection (3C) may only be given on application under subsection (3E).
- (3E) The owner or master of a coastal ship, or the owner or pilot of a coastal aircraft, may apply for a permission under subsection (3C).
- (3F) An application under subsection (3E) must:
- (a) be in writing; and
  - (b) be in an approved form; and
  - (c) contain such information as the form requires; and
  - (d) be signed in the manner indicated in the form.
- (3G) The Comptroller-General of Customs may approve different forms for applications to be made under subsection (3E) in different circumstances, by different kinds of owners or masters of coastal ships or owners or pilots of coastal aircraft or in respect of different kinds of coastal ships or coastal aircraft.
- (4) A Collector may, when giving permission under subsection (3C) or at any time while the permission is in force, impose conditions in respect of the permission, being conditions that, in the opinion of the Collector, are necessary for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts, and may, at any time, revoke, suspend, or vary, or cancel a suspension of, a condition so imposed.
- (5) A condition imposed in respect of a permission or a revocation, suspension, or variation, or a cancellation of a suspension, of such a condition takes effect when a notice, in writing, of the condition or of the revocation, suspension or variation, or of the cancellation of the suspension, is served on the person to whom the permission has been given or at such later time (if any) as is specified in the notice.
- (6) The Collector may revoke a permission given under this section in relation to goods at any time before the goods are transferred.

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- (7) If, in relation to the transfer of any goods, a person required to comply with a condition imposed in respect of a permission fails to comply with the condition, he or she commits an offence against this Act punishable upon conviction by a penalty not exceeding 100 penalty units.
- (8) Subsection (7) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (9) Subsection (2), (3), (3A) or (3B) does not apply to allowing a transfer of goods for the purpose of securing the safety of a ship or an aircraft or saving life.

## **Part XA—Australian Trusted Trader Programme**

### **Division 1—Preliminary**

#### **176 Establishment of the Australian Trusted Trader Programme**

- (1) The Comptroller-General of Customs may, in accordance with this Part, establish a programme to provide trade facilitation benefits to entities.
- (2) The programme is to be known as the Australian Trusted Trader Programme.

## Division 2—Trusted trader agreement

### Subdivision A—Entry into trusted trader agreement

#### 176A Trusted trader agreement may be entered into

- (1) The Comptroller-General of Customs may enter into an agreement (a *trusted trader agreement*) with an entity if:
  - (a) the entity nominates itself to participate in the Australian Trusted Trader Programme; and
  - (b) the Comptroller-General of Customs is satisfied that the entity satisfies the qualification criteria set out in the rules.
- (2) In deciding whether to enter into a trusted trader agreement, the Comptroller-General of Customs must consider:
  - (a) any matter set out in the rules; and
  - (b) any other matter that he or she considers relevant.
- (3) If the Comptroller-General of Customs enters into a trusted trader agreement with an entity, the Comptroller-General of Customs may do either or both of the following:
  - (a) specify in the agreement one or more of the obligations covered by subparagraph 179(1)(d)(i);
  - (b) specify in the agreement:
    - (i) one or more of the obligations covered by subparagraph 179(1)(d)(ii); and
    - (ii) for each such obligation—the way in which the entity may satisfy the obligation.

Note 1: The effect of specifying an obligation under paragraph (3)(a) is that the entity will be released from the obligation under Part IV or VI: see sections 49C and 107.

Note 2: The effect of specifying an obligation under paragraph (3)(b) is that the entity will be able to satisfy the obligation under Part IV or VI in the way specified in the agreement: see sections 49C and 107.

Note 3: Parts IV and VI are about the importation and exportation of goods.

- (4) The entity may receive benefits of a kind that are covered by paragraph 179(1)(e) and are specified in the agreement.

### **176B Nomination process**

- (1) A nomination to participate in the Australian Trusted Trader Programme may be made by an entity by document or electronically.
- (2) A documentary nomination must:
- (a) be communicated to the Comptroller-General of Customs; and
  - (b) be in an approved form; and
  - (c) contain the information required by the approved form; and
  - (d) be signed in a manner indicated by the approved form.
- (3) An electronic nomination must communicate such information as is set out in an approved statement.

### **Subdivision C—General provisions relating to trusted trader agreements**

#### **178 Terms and conditions of trusted trader agreements**

A trusted trader agreement may be subject to:

- (a) conditions prescribed by the rules; and
- (b) terms and conditions specified in the agreement.

#### **178A Variation, suspension or termination of trusted trader agreements**

- (1) The Comptroller-General of Customs may vary, suspend or terminate a trusted trader agreement if the Comptroller-General of Customs reasonably believes that the entity to which the agreement relates has not complied, or is not complying, with:
- (a) any condition prescribed by the rules; or
  - (b) any term or condition specified in the agreement.

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- (2) In deciding whether to vary, suspend or terminate a trusted trader agreement, the Comptroller-General of Customs must consider:
  - (a) any matter set out in the rules; and
  - (b) any other matter that he or she considers relevant.
- (3) If subsection (1) applies, the trusted trader agreement must be varied, suspended or terminated in accordance with the procedure prescribed by the rules.

## **Division 3—Register of Trusted Trader Agreements**

### **178B Register of Trusted Trader Agreements**

- (1) The Comptroller-General of Customs may maintain a register, to be known as the Register of Trusted Trader Agreements, containing information of a kind prescribed by the rules in relation to each trusted trader agreement entered into under this Part.
- (2) The Register of Trusted Trader Agreements is to be made publicly available.
- (3) The Register of Trusted Trader Agreements is not a legislative instrument.

## Division 4—Rules

### 179 Rules

- (1) The Comptroller-General of Customs may, by legislative instrument, prescribe rules for and in relation to the following:
  - (a) the qualification criteria that an entity must satisfy in order for a trusted trader agreement to be entered into with the entity under section 176A;
  - (b) the matters that the Comptroller-General of Customs must consider when deciding whether to enter into a trusted trader agreement under section 176A;
  - (c) the conditions on which an entity participates in the Australian Trusted Trader Programme;
  - (d) the kind of obligation:
    - (i) that an entity may be released from under Part IV (other than Division 1) or Part VI (other than Division 1); or
    - (ii) that an entity may be required to satisfy under Part IV (other than Division 1) or Part VI (other than Division 1) in a way other than required by the relevant Part;
  - (e) the kind of benefits that an entity may receive under a trusted trader agreement;
  - (f) any criteria to be satisfied for an entity to receive benefits of a kind mentioned in paragraph (e);
  - (g) any other conditions to which a trusted trader agreement may be subject;
  - (h) the procedures that the Comptroller-General of Customs must follow when varying, suspending or terminating a trusted trader agreement under section 178A;
  - (i) the matters that the Comptroller-General of Customs must consider when deciding whether to vary, suspend or terminate a trusted trader agreement under section 178A;

- (j) the kinds of information that may be published on the Register of Trusted Trader Agreements, including:
  - (i) that an entity has entered into a trusted trader agreement; and
  - (iii) the kinds of benefits that the entity is receiving, or will receive, under the agreement; and
  - (iv) whether the agreement is in force; and
  - (v) whether the agreement is or has been suspended; and
  - (vi) whether the agreement has been terminated.
- (2) For the purpose of paragraph (1)(d):
  - (a) a rule prescribed for the purposes of subparagraph (1)(d)(i) must specify that the obligation is one from which an entity may be released; and
  - (b) a rule prescribed for the purposes of subparagraph (1)(d)(ii) must specify that the obligation is one that may be satisfied by an entity in a way other than required by Part IV (other than Division 1) or Part VI (other than Division 1).
- (3) The Comptroller-General of Customs may, by legislative instrument, also make rules prescribing matters:
  - (a) required or permitted by this Part to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (4) To avoid doubt, rules made under this section may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.

## Part XB—Controlled trials

### Division 1—Preliminary

#### 179A Simplified outline of this Part

The Comptroller-General of Customs may establish controlled trials. A controlled trial is for a period of up to 12 months, with a possible one-off extension of up to 6 months.

Entities may apply or be invited to participate in a controlled trial.

Entities participating in a controlled trial:

- (a) may be released from certain obligations under this Act;  
or
- (b) may be required to satisfy certain obligations under this Act in a different way to that required by this Act; or
- (c) may be required to comply with additional obligations;  
or
- (d) may receive benefits of a certain kind.

#### 179B Application of this Part

This Part applies in relation to the following entities:

- (a) individuals;
- (b) bodies corporate;
- (c) partnerships.

## **Division 2—Obligations and benefits under controlled trials**

### **179C Obligations under controlled trials**

#### *Entities released from obligations*

- (1) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity is released from an obligation that the entity would otherwise be required to satisfy under a controlled trial provision if the obligation is specified in the rules as an obligation in relation to that trial that entities are released from.

Note 1: Section 179L provides for the making of rules to establish a controlled trial. Division 3 deals with approving an entity's participation in a controlled trial.

Note 2: For **controlled trial provision**, see subsection 4(1).

#### *Entities must satisfy obligations in a different way*

- (2) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity cannot satisfy an obligation under a controlled trial provision in the way required by this Act if the obligation is specified in the rules as an obligation in relation to that trial that entities cannot satisfy in the way required by this Act.
- (3) Instead, the entity must satisfy the obligation in the way specified in the rules in relation to that trial.

Note: A failure to satisfy the obligation in this way is a ground for varying, suspending or revoking the entity's approval: see section 179J.

#### *Entities must comply with additional obligations*

- (4) If an entity holds an approval, that is in force, to participate in a controlled trial, the entity must comply with each obligation specified in the rules as an obligation in relation to that trial that entities must comply with.

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Note 1: The obligation must be in relation to a controlled trial provision: see paragraph 179L(3)(h).

Note 2: A failure to comply with the obligation is a ground for varying, suspending or revoking the entity's approval: see section 179J.

**179D Benefits under controlled trials**

If an entity holds an approval, that is in force, to participate in a controlled trial, the entity may receive benefits of a kind that are specified in the rules in relation to the trial.

## **Division 3—Participation in controlled trials**

### **179E Approval of participation in controlled trials**

- (1) The Comptroller-General of Customs may, in writing, approve an entity's participation in a controlled trial if:
  - (a) either:
    - (i) the entity makes an application to participate in that trial in accordance with section 179F; or
    - (ii) the Comptroller-General of Customs invites, in writing, the entity to participate in that trial and the entity makes an election to participate in that trial in accordance with section 179G; and
  - (b) the Comptroller-General of Customs is satisfied that the entity meets the qualification criteria (if any) determined in an instrument under section 179K; and
  - (c) the Comptroller-General of Customs is satisfied that the entity meets the eligibility criteria (if any) specified in the rules in relation to that trial.

Note: Section 179F deals with making applications and section 179G deals with making elections.

- (2) In deciding whether to approve an entity's participation in a controlled trial, the Comptroller-General of Customs must consider:
  - (a) any matter specified in the rules under paragraph 179L(3)(b) in relation to that trial; and
  - (b) any other matter that the Comptroller-General of Customs considers relevant.

*Period for which approval is in force*

- (3) An approval under subsection (1) must specify the period for which it is in force.

Note: See section 179J for variation, suspension or revocation of an approval.

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*Copy of approval to be given to entity*

- (4) The Comptroller-General of Customs must give a copy of an approval under subsection (1) to the entity.

*Notification of refusal to approve entity's participation in controlled trial*

- (5) If an entity makes an application or election to participate in a controlled trial and the Comptroller-General of Customs refuses to approve the entity's participation in the trial, the Comptroller-General of Customs must notify the entity of the refusal and of the reasons for the refusal.

*Approval not a legislative instrument*

- (6) An approval under subsection (1) is not a legislative instrument.

**179F Application to participate in controlled trial**

- (1) An application to participate in a controlled trial may be made by document or electronically.

*Documentary application*

- (2) A documentary application must:
- (a) be communicated to the Comptroller-General of Customs; and
  - (b) be in an approved form; and
  - (c) contain the information required by the approved form; and
  - (d) be signed in a manner indicated by the approved form.

*Electronic application*

- (3) An electronic application must:
- (a) be communicated to the Comptroller-General of Customs; and
  - (b) communicate such information as is set out in an approved statement.

### **179G Election to participate in controlled trial**

- (1) An election to participate in a controlled trial may be made by document or electronically.

*Documentary election*

- (2) A documentary election must:
- (a) be communicated to the Comptroller-General of Customs; and
  - (b) be in an approved form; and
  - (c) contain the information required by the approved form; and
  - (d) be signed in a manner indicated by the approved form.

*Electronic election*

- (3) An electronic election must:
- (a) be communicated to the Comptroller-General of Customs; and
  - (b) communicate such information as is set out in an approved statement.

### **179H Conditions of approvals**

An entity's approval under section 179E in relation to a controlled trial is subject to the conditions specified in the rules in relation to that trial.

### **179J Variation, suspension or revocation of approvals**

- (1) The Comptroller-General of Customs may, in writing, vary, suspend or revoke an entity's approval under section 179E in relation to a controlled trial if the Comptroller-General of Customs is satisfied that:
- (a) the entity no longer meets the qualification criteria (if any) determined in an instrument under section 179K; or
  - (b) the entity no longer meets the eligibility criteria (if any) specified in the rules in relation to that trial; or

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- (c) the entity has not complied, or is not complying, with any condition specified in the rules in relation to that trial; or
  - (d) in relation to that trial, the entity has not satisfied an obligation covered by subsection 179C(2) in the way covered by subsection 179C(3); or
  - (e) in relation to that trial, the entity has not complied with an obligation covered by subsection 179C(4).
- (2) In deciding whether to vary, suspend or revoke an approval, the Comptroller-General of Customs must consider:
- (a) any matter specified in the rules under paragraph 179L(3)(d) in relation to that trial; and
  - (b) any other matter that the Comptroller-General of Customs considers relevant.
- (3) A variation, suspension or revocation of an approval must be in accordance with the procedures specified in the rules in relation to that trial.
- (4) The Comptroller-General of Customs must give notice of a variation, suspension or revocation to the entity.
- (5) The notice must specify the day the variation, suspension or revocation takes effect (which must be at least 7 days after the day the notice is given).

*Consequences of suspension*

- (6) An approval has no effect while suspended, but the period for which it remains in force continues to run despite the suspension.
- (7) The Comptroller-General of Customs may, in writing, revoke a suspension under subsection (1).
- (8) The Comptroller-General of Customs must give notice of the revocation of the suspension to the entity. The notice must specify the day the revocation takes effect.
- (9) The Comptroller-General of Customs may, under subsection (1), vary or revoke an approval while it is suspended.

## **Division 4—Instruments**

### **179K General qualification criteria for any controlled trial**

The Comptroller-General of Customs may, by legislative instrument, determine qualification criteria that entities must meet in order to participate in any controlled trial.

### **179L Rules specific to a controlled trial**

- (1) The Comptroller-General of Customs may, by legislative instrument, make rules that make provision for and in relation to the following:
  - (a) establishing a controlled trial;
  - (b) the period of operation of a controlled trial;
  - (c) extending the period of operation of a controlled trial;
  - (d) revoking a controlled trial.
- (2) For the purposes of subsection (1):
  - (a) rules that establish a controlled trial must specify the purpose of the controlled trial; and
  - (b) the period of operation of a controlled trial must not be more than 12 months; and
  - (c) the period of operation of a controlled trial may begin after the day on which the controlled trial is established; and
  - (d) an extension of the period of operation of a controlled trial must not be more than 6 months; and
  - (e) the period of operation of a controlled trial must not be extended more than once.
- (3) The Comptroller-General of Customs may, by legislative instrument, make rules that make provision for and in relation to the following for a controlled trial:
  - (a) the eligibility criteria that an entity must meet in order for the Comptroller-General of Customs to approve an entity's participation in that trial;

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- (b) the matters that the Comptroller-General of Customs must consider in deciding whether to approve an entity's participation in that trial;
- (c) the conditions that approvals under section 179E in relation to that trial are subject to;
- (d) the matters that the Comptroller-General of Customs must consider when deciding whether to vary, suspend or revoke an approval under section 179E in relation to that trial;
- (e) the procedures that the Comptroller-General of Customs must follow when varying, suspending or revoking an approval under section 179E in relation to that trial;
- (f) each obligation under a controlled trial provision that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial are released from;
- (g) the following:
  - (i) each obligation under a controlled trial provision that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial cannot satisfy in the way required by this Act;
  - (ii) the way in which those entities must satisfy that obligation;
- (h) each obligation that, in relation to that trial, entities holding an approval, that is in force, to participate in that trial must comply with, being an obligation that is in relation to a controlled trial provision;
- (i) the kind of benefits that entities holding an approval, that is in force, to participate in that trial may receive and any criteria to be satisfied for entities to receive those benefits;
- (j) a matter that is incidental or ancillary to a matter covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i).

Note: For *controlled trial provision*, see subsection 4(1).

- (4) To avoid doubt, rules made under this section may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:

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- (i) arrest or detention; or
- (ii) entry, search or seizure;
- (c) impose a tax;
- (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- (e) directly amend the text of this Act.

## Part XI—Agents and customs brokers

### Division 1—Preliminary

#### 180 Interpretation

In this Part, unless the contrary intention appears:

**broker's licence** means a licence to act as a customs broker granted under section 183C (including such a licence renewed under section 183CJ).

**Committee** means the National Customs Brokers Licensing Advisory Committee continued in existence by subsection 183D(1).

**corporate customs broker** means a customs broker that is a company or a partnership.

**customs broker** means a person who holds a broker's licence that is in force, and in relation to a place, means a person who holds a broker's licence to act as a customs broker at the place.

**customs broker licence application charge** means the customs broker licence application charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 183CA.

**customs broker licence charge** means the customs broker licence charge imposed by the *Customs Licensing Charges Act 1997* and payable as set out in section 183CJA.

**nominee**, in relation to a customs broker, means another customs broker whose name is endorsed on the broker's licence held by the first-mentioned customs broker as a nominee of the first-mentioned customs broker.

**person** means a natural person, a company or a partnership.

***prescribed offence*** means:

- (a) an offence against this Act; or
- (b) an offence punishable under a law of the Commonwealth (other than this Act), or by a law of a State or of a Territory, by imprisonment for one year or longer.

## Division 2—Rights and liabilities of agents

### 181 Authorised agents

- (1) Subject to subsection (2), an owner of goods may, in writing, authorize a person to be his or her agent for the purposes of the Customs Acts at a place or places specified by the owner.
- (2) Where the Comptroller-General of Customs, by notice published in the *Gazette*, declares that a place specified in the notice is a place to which this subsection applies, an owner of goods shall not authorize a person to be his or her agent for the purposes of the Customs Acts at that place unless that person is:
  - (a) a natural person who is an employee of the owner and is not an employee of any other person; or
  - (b) a customs broker at that place.
- (3) Where an owner of goods authorizes a person to be his or her agent for the purposes of the Customs Acts at a place, the owner may comply with the provisions of, or requirements under, the Customs Acts at that place by:
  - (a) except where the agent is a corporate customs broker—that agent; or
  - (b) where the agent is a customs broker—a nominee of that agent who is a customs broker at that place.
- (4) A person, other than the owner of goods or a person who, in accordance with this section, may comply with the provisions of, or requirements under, the Customs Acts on behalf of the owner in relation to those goods, shall not:
  - (a) do any act or thing in relation to the goods that is required or permitted to be done by the owner of the goods under the Customs Acts; or
  - (b) represent that he or she is able to do, or able to arrange to be done, any act or thing in relation to the goods that is required or permitted to be done by the owner under the Customs Acts.

- (4A) Subsection (2) does not apply to the making of an export entry.
- (5) A person who contravenes subsection (4) commits an offence punishable upon conviction by a penalty not exceeding 30 penalty units.
- (6) Subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **182 Authority to be produced**

- (1) Where a person claims to be the agent of an owner of goods for the purposes of the Customs Acts at a place, an officer may require that person to produce written authority from the owner authorizing that person to be such an agent and, if that written authority is not produced, the officer may refuse to recognize the authority of that person to act on behalf of the owner at that place.
- (2) Where a nominee of a customs broker claims that that customs broker is the agent of an owner of goods for the purposes of the Customs Acts at a place, an officer may require the nominee to produce a copy of the written authority from the owner of the goods authorizing the customs broker to be such an agent and, if that written authority is not produced, the officer may refuse to recognize the authority of the nominee to act on behalf of the owner at that place.

### **183 Agents personally liable**

- (1) Where a person is, holds himself or herself out to be or acts as if he or she were the agent of an owner of goods for the purposes of the Customs Acts, that person shall, for the purposes of the Customs Acts (including liability to penalty), be deemed to be the owner of those goods.
- (2) Where a customs broker is the agent of an owner of goods for the purposes of the Customs Acts and a person who is, holds himself or herself out to be or acts as if he or she were a nominee of that customs broker acts in relation to those goods, that person shall, for

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the purposes of those Acts, (including liability to penalty), be deemed to be the owner of those goods.

- (3) Any act done, or representation made, by a nominee of a customs broker for the purposes of the Customs Acts shall be deemed to be an act done or, a representation made, by that customs broker.
- (4) Nothing in this section shall be taken to relieve any owner from liability.

**183A Principal liable for agents acting**

- (1) Where an agent of, or a nominee of a customs broker that is an agent of, an owner of goods makes a declaration for the purposes of this Act in relation to those goods, that declaration shall, for the purposes of this Act (including the prosecution of an offence against this Act), be deemed to be made with the knowledge and consent of the owner.
- (2) Notwithstanding any other provision of this Act, a person who is convicted of an offence by reason of the operation of subsection (1) shall not be subject to a penalty of imprisonment.

## **Division 3—Licensing of customs brokers**

### **183B Interpretation**

- (1) In this Division, unless the contrary intention appears, *application* means an application under section 183CA.
- (2) For the purposes of this Division, a person shall be taken to participate in the work of a customs broker if:
  - (a) he or she has authority as a nominee of, or as an agent, officer or employee of, the customs broker, to do any act or thing for the purposes of the Customs Acts on behalf of an owner of goods; or
  - (b) he or she has authority to direct a person who has authority referred to in paragraph (a) in the exercise of that authority.

### **183C Grant of licence**

- (1) Subject to this Part, the Comptroller-General of Customs may grant a person a licence in writing, to be known as a broker's licence, to act as a customs broker at a place or places specified in the licence.
- (2) A broker's licence granted to a corporate customs broker shall not specify a place as a place at which the corporate customs broker may act as a customs broker unless the licence specifies as a nominee of the corporate customs broker a customs broker at that place who, in accordance with section 183CD, is eligible to be its nominee.

### **183CA Application for licence**

- (1) An application for a broker's licence shall:
  - (a) be in writing; and
  - (b) specify the place or places at which the applicant proposes to act as a customs broker; and

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- (c) where the application is made by a company or a partnership—specify the person or each person who, if the licence is granted, is to be its nominee; and
  - (ca) where the application is made by a natural person—specify the person or each person (if any) who, if the licence is granted, is to be a nominee of the applicant; and
  - (d) set out the name and address of each person whom the Comptroller-General of Customs is required to consider for the purposes of subparagraph 183CC(1)(a)(i) or paragraph 183CC(1)(b) or (c); and
  - (e) set out such particulars of the persons and matters that the Comptroller-General of Customs is required to consider for the purposes of subparagraph 183CC(1)(a)(ii) and section 183CD as will enable him or her adequately to consider those matters; and
  - (f) contain such other information as is prescribed; and
  - (g) be accompanied by the customs broker licence application charge.
- (2) Where a person makes an application, he or she shall not propose a person as his or her nominee at a place unless, at the time the application is made, that person is eligible, or intends to take all necessary action to ensure that, if a broker's licence is granted to the applicant, he or she will be eligible, to be a nominee of the applicant at that place.
- (3) A person shall not be proposed under paragraph (1)(c) unless he or she has consented, in writing, to the proposal.

**183CB Reference of application to Committee**

- (1) Where the Comptroller-General of Customs receives an application, he or she shall refer the application to the Committee for a report relating to the application and shall not grant, or refuse to grant, a broker's licence to the applicant unless he or she has received and considered the report.

- (2) Where the Comptroller-General of Customs refers an application to the Committee under subsection (1), the Committee shall investigate the matters that the Comptroller-General of Customs is required to consider in relation to the application and, after its investigation, report to the Comptroller-General of Customs on those matters.

### **183CC Requirements for grant of licence**

- (1) Where an application is made, the Comptroller-General of Customs shall not grant a broker's licence if, in his or her opinion:
- (a) where the application is made by a natural person:
    - (i) the applicant is not a fit and proper person; or
    - (ii) the applicant is not qualified to be a customs broker; or
    - (iii) an employee of the applicant who would participate in the work of the applicant if he or she were a customs broker is not a fit and proper person; or
  - (b) where the application is made by a company:
    - (i) a director of the company who would participate in the work of the company if it were a customs broker is not a fit and proper person; or
    - (ii) an officer or employee of the company who would participate in the work of the company if it were a customs broker is not a fit and proper person; or
    - (iii) the company is not a fit and proper company to hold a broker's licence; or
  - (c) where the application is made by a partnership:
    - (i) a partner in the partnership is not a fit and proper person; or
    - (ii) an employee of the partnership who would participate in the work of the partnership if it were a customs broker is not a fit and proper person.

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- (2) For the purposes of subsection (1), an applicant shall be taken to be qualified to be a customs broker if, and only if:
- (a) except where the applicant has been exempted under subsection (3), the applicant has completed a course of study or instruction approved under subsection (5); and
  - (b) the applicant has acquired experience that, in the opinion of the Comptroller-General of Customs, fits the applicant to be a customs broker.
- (3) The Comptroller-General of Customs may, by writing signed by him or her, exempt an applicant from the requirements of paragraph (2)(a) where, having regard to the experience or training of the applicant, he or she considers that it is appropriate to do so.
- (4) The Comptroller-General of Customs shall, in determining whether a person is a fit and proper person for the purposes of subsection (1), have regard to:
- (a) any conviction of the person for a prescribed offence committed within the 10 years immediately preceding the making of the application; and
  - (aa) whether the person has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the making of the application; and
  - (b) whether the person is an undischarged bankrupt; and
  - (c) any misleading statement made in the application by or in relation to the person; and
  - (d) where any statement by the person in the application was false—whether the person knew that the statement was false.
- (4A) The Comptroller-General of Customs shall, in determining whether a company is a fit and proper company to hold a broker's licence for the purposes of subparagraph (1)(b)(iii), have regard to:
- (a) any conviction of the company for an offence against this Act committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;

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- (b) any conviction of the company for an offence under a law of the Commonwealth, of a State or of a Territory that is punishable by a fine of \$5,000 or more, being an offence committed within the 10 years immediately preceding the making of the application and at a time when a person who is a director, officer or shareholder of the company was a director, officer or shareholder of the company;
  - (c) whether a receiver of the property, or part of the property, of the company has been appointed;
  - (ca) whether the company is under administration within the meaning of the *Corporations Act 2001*;
  - (cb) whether the company has executed under Part 5.3A of that Act a deed of company arrangement that has not yet terminated;
  - (d) whether the company is under restructuring within the meaning of that Act;
  - (da) whether the company has made, under Division 3 of Part 5.3B of that Act, a restructuring plan that has not yet terminated;
  - (e) whether the company is being wound up.
- (5) The Comptroller-General of Customs may, after obtaining and considering the advice of the Committee, approve, in writing, a course or courses of study or instruction that fits or fit a person to be a customs broker.

**183CD Eligibility to be nominee**

A person is eligible to be the nominee of a customs broker if, and only if:

- (a) he or she is a natural person; and
- (b) he or she is a customs broker; and
- (c) he or she does not act as a customs broker in his or her own right; and
- (d) where the first-mentioned customs broker is a company—he or she is a director or an employee of the company; and

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- (e) where the first-mentioned customs broker is a partnership—  
he or she is a member or an employee of the partnership; and
- (g) he or she is not authorized to be an agent in accordance with  
subsection 181(1); and
- (h) he or she is a customs broker at a place at which the  
first-mentioned customs broker is a customs broker.

**183CE Original endorsement on licence**

- (1) Where the Comptroller-General of Customs grants a broker's  
licence, he or she shall:
  - (a) endorse on the licence the name of the place or of each place  
at which the holder of the licence may act as a customs  
broker; and
  - (b) endorse on the licence the name of each customs broker who  
is a nominee of the licensee and opposite to each such name  
the name of the place or of each place at which he or she acts  
as a customs broker.
- (2) The Comptroller-General of Customs shall not, in pursuance of  
subsection (1), endorse a licence so as to show a person as a  
nominee of a customs broker at a place if that person is not eligible  
to be a nominee of that customs broker at that place.

**183CF Variation of licences**

- (1) Subject to subsection (3), the Comptroller-General of Customs  
may, upon application in writing by a customs broker and the  
production of the broker's licence, vary the endorsements on the  
licence so that a place is specified, or ceases to be specified, in the  
licence as a place at which the holder of the licence may act as a  
customs broker.
- (2) Subject to subsection (3), the Comptroller-General of Customs  
may, upon application in writing by a customs broker and the  
production of its broker's licence, vary the endorsements on the  
licence so that a person is specified, or ceases to be specified, in  
the licence as a nominee of the customs broker.

- (3) The Comptroller-General of Customs shall not vary the endorsements on a licence so that the licence ceases to comply with subsection 183C(2).
- (4) A person shall not be endorsed under subsection (2) as a nominee of a customs broker unless he or she has consented, in writing, to the endorsement.

### **183CG Licence granted subject to conditions**

- (1) A broker's licence is subject to the condition that if:
    - (a) the holder of the licence is convicted of a prescribed offence;  
or
    - (b) in the case of a licence held by a natural person—the holder of the licence:
      - (i) becomes bankrupt; or
      - (ii) has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or
    - (c) in the case of a licence held by a company:
      - (i) a receiver of the property, or part of the property, of the company is appointed; or
      - (ii) an administrator of the company is appointed under section 436A, 436B or 436C of the *Corporations Act 2001*; or
      - (iii) the company executes a deed of company arrangement under Part 5.3A of that Act; or
      - (iiia) a small business restructuring practitioner for the company is appointed under section 453B of that Act; or
      - (iiib) the company makes a restructuring plan under Division 3 of Part 5.3B of that Act; or
      - (iv) the company begins to be wound up;
- the holder of the licence shall, within 30 days after the occurrence of the event referred to in paragraph (a), (b) or (c), give the

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Comptroller-General of Customs particulars in writing of that event.

- (2) A broker's licence held by a natural person is subject to the condition that the holder of the licence shall not act as a customs broker in his or her own right at any time at which he or she is a nominee of a customs broker.
- (3) A broker's licence held by a customs broker is subject to the condition that if:
- (a) a person not described in the application for the licence as participating in the work of the customs broker commences so to participate; or
  - (b) a nominee of the customs broker dies or ceases to act as nominee of the customs broker; or
  - (c) a person who participates in the work of the customs broker:
    - (i) is convicted of a prescribed offence; or
    - (ii) becomes bankrupt; or
    - (iii) has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or
  - (d) in the case of a licence held by a partnership:
    - (i) a member of the partnership is convicted of a prescribed offence or becomes bankrupt; or
    - (ia) a member of the partnership has been refused a transport security identification card, or has had such a card suspended or cancelled, after the licence was granted or last renewed, or within the 10 years immediately preceding that grant or renewal; or
    - (ii) there is a change in the membership of the partnership; the holder of the licence shall, within 30 days after the occurrence of the event referred to in whichever of the preceding paragraphs applies, give the Comptroller-General of Customs particulars in writing of that event.

- (4) A broker's licence held by a customs broker is subject to the condition that the broker shall do all things necessary to ensure that:
- (a) all persons who participate in the work of the customs broker are fit and proper persons; and
  - (b) in the case of a licence held by a partnership—all members of the partnership are fit and proper persons.
- (5) A broker's licence is subject to such other conditions (if any) as are prescribed.
- (6) A broker's licence is subject to such other conditions (if any) as are specified in the licence, being conditions considered by the Comptroller-General of Customs to be necessary or desirable:
- (a) for the protection of the revenue; or
  - (b) for the purpose of ensuring compliance with the Customs Acts; or
  - (c) for any other purpose.
- (7) The Comptroller-General of Customs may, upon application in writing by a customs broker and the production of the licence held by the customs broker, vary the conditions specified in the licence by making an alteration to, or an endorsement on, the licence.
- (7A) Subsection (7) does not limit section 183CGB.
- (8) Where a customs broker fails to comply with a condition of his or her licence the Comptroller-General of Customs may, by notice in writing served on the customs broker, require the customs broker to comply with that condition within the time specified in the notice.

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**183CGA Comptroller-General of Customs may impose additional conditions to which a broker's licence is subject**

- (1) The Comptroller-General of Customs may, at any time, impose additional conditions to which the licence is subject if the Comptroller-General of Customs considers the conditions to be necessary or desirable:
  - (a) for the protection of the revenue; or
  - (b) for the purpose of ensuring compliance with the Customs Acts; or
  - (c) for any other purpose.
- (2) If the Comptroller-General of Customs imposes conditions under subsection (1):
  - (a) the Comptroller-General of Customs must, by written notice to the holder of the broker's licence, notify the holder of the conditions; and
  - (b) the conditions cannot take effect before:
    - (i) the end of 30 days after the giving of the notice; or
    - (ii) if the Comptroller-General of Customs considers that it is necessary for the conditions to take effect earlier—the end of a shorter period specified in the notice.

**183CGB Comptroller-General of Customs may vary the conditions to which a broker's licence is subject**

- (1) The Comptroller-General of Customs may, by written notice to the holder of a broker's licence, vary:
  - (a) the conditions specified in the broker's licence under section 183CG; or
  - (b) the conditions imposed under section 183CGA to which the licence is subject.
- (2) A variation under subsection (1) cannot take effect before:
  - (a) the end of 30 days after the giving of the notice under that subsection; or

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- (b) if the Comptroller-General of Customs considers that it is necessary for the variation to take effect earlier—the end of a shorter period specified in the notice given under that subsection.
- (3) This section does not limit subsection 183CG(7).

**183CGC Breach of conditions of a broker's licence**

- (1) The holder of a broker's licence must not breach a condition to which the licence is subject under section 183CG or 183CGA (including a condition varied under subsection 183CG(7) or section 183CGB).

Penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**183CH Duration of licence**

- (1) A broker's licence:
  - (a) comes into force on a date specified in the licence or, if no date is so specified, the date on which it is granted; and
  - (b) subject to this Part, remains in force until the end of the licence expiry day next following the grant of the licence but may be renewed in accordance with section 183CJ.
- (1A) For the purposes of this section:
  - (a) the first *licence expiry day* is 31 December 2000; and
  - (b) the next *licence expiry day* is 30 June 2003; and
  - (c) later *licence expiry days* occur at intervals of 3 years after the last licence expiry day.
- (2) A licence granted to a natural person ceases to have effect on the death of that person.

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**183CJ Renewal of licence**

- (1) If a customs broker, within 2 months before the date on which his or her broker's licence is due to expire, applies in writing to the Comptroller-General of Customs for the renewal of the licence, the Comptroller-General of Customs must, by writing, renew the licence unless:
  - (a) the Comptroller-General of Customs has given an order under paragraph 183CS(1)(d) in relation to the licence; or
  - (b) the customs broker is, because of section 183CK, not entitled to hold a broker's licence.
- (2) A renewal of a licence shall not take effect if, on or before the date on which the licence would, apart from the renewal, expire, the licence is revoked.
- (3) Where the licence held by a customs broker has been suspended, subsection (1) applies as if the licence had not been suspended, but the renewal of the licence does not have any force or effect until the licence ceases to be suspended.
- (5) Subject to this Part, a licence that has been renewed continues in force until the first licence expiry day (as defined in section 183CH) after the day on which the licence would have expired apart from the renewal, but may be further renewed.

Note: Additional conditions may be imposed on the licence under section 183CGA, and the conditions to which the licence is subject may be varied under subsection 183CG(7) or section 183CGB.

**183CJA Licence charges**

*Grant of licence*

- (1) A customs broker licence charge is payable in respect of the grant of a broker's licence by the person seeking the grant.
- (2) A person liable to pay a customs broker licence charge in respect of the grant of a broker's licence must pay the charge before the end of the day the licence comes into force.

*Renewal of licence*

- (3) A customs broker licence charge is payable in respect of the renewal of a broker's licence by the holder of the licence.
- (4) The holder of a broker's licence liable to pay a customs broker licence charge in respect of the renewal of the broker's licence must pay the charge before the end of the day the renewal of the licence comes into force.

**183CK Security**

- (1) The Comptroller-General of Customs may, by notice in writing served on a person making an application for a broker's licence or a person who holds a broker's licence, require that person to give, within the time specified in the notice, security in an amount determined by the Comptroller-General of Customs, not being an amount exceeding the amount prescribed in respect of the prescribed class of applicants or customs brokers to which the person belongs, by bond, guarantee or cash deposit, or by any or all of those methods, for compliance by him or her with the Customs Acts, for compliance with the conditions or requirements to which the importation or exportation of goods is subject and generally for the protection of the revenue and that person is not entitled to be granted or to hold a broker's licence, as the case may be, unless he or she gives security accordingly.
- (2) Where the amount of the security in force in respect of a customs broker is less than the amount prescribed in respect of the prescribed class of customs brokers to which the customs broker belongs, the Comptroller-General of Customs may, by notice in writing to the customs broker, require the customs broker to give, within such period as is specified in the notice, a fresh security in lieu of the security in force under subsection (1) in an amount specified in the notice, being an amount not exceeding the amount so prescribed, and, if the customs broker fails to comply with the notice, the customs broker shall not be entitled to hold a broker's licence.

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- (3) Where, by virtue of subsection (1), an applicant for a broker's licence is not entitled to be granted the licence, the Comptroller-General of Customs may refuse to grant the licence to the applicant.
- (4) Where, by virtue of subsection (1) or (2), a customs broker is not entitled to hold a broker's licence, the Comptroller-General of Customs may cancel the broker's licence held by the customs broker.
- (5) Regulations made for the purposes of this section may prescribe different amounts in respect of different classes of applicants or customs brokers and, without limiting the generality of the foregoing, may prescribe different amounts in respect of applicants who are natural persons and applicants that are partnerships or companies and in respect of customs brokers who are natural persons and corporate customs brokers.

**183CM Nominees**

For the purposes of this Part, a person shall be taken to be a nominee of a customs broker from the time when the name of the nominee is endorsed, in pursuance of paragraph 183CE(1)(b) or of section 183CF, on the licence of the customs broker until the nominee dies or until the Comptroller-General of Customs deletes the name of the nominee from that licence under section 183CP, whichever occurs first.

**183CN Removal of nominee**

- (1) The Comptroller-General of Customs shall delete the name of a nominee of a customs broker from the broker's licence of that customs broker if:
  - (a) the nominee dies; or
  - (b) the nominee ceases to hold a broker's licence; or
  - (c) the nominee ceases to act as nominee of the customs broker;or

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- (d) the nominee requests the Comptroller-General of Customs, in writing, to delete his or her name from the licence; or
  - (e) the name of the nominee is found to have been endorsed on the licence in circumstances where the endorsement should not have been made.
- (2) Where the deletion of the name of a nominee from a licence of a customs broker is required under subsection (1), the customs broker shall forthwith deliver the licence to the Comptroller-General of Customs for the purpose of having the deletion effected.

**183CP Notice to nominate new nominee**

If the broker's licence of a customs broker ceases to comply with subsection 183C(2), the Comptroller-General of Customs may, by notice in writing served on the customs broker, require the customs broker to apply within such period as is specified in the notice, for such variation of the endorsements on the licence as would result in the licence complying with that subsection.

## **Division 4—Suspension, revocation and non-renewal of licences**

### **183CQ Investigation of matters relating to a broker's licence**

- (1) The Comptroller-General of Customs may give notice in accordance with this section to a customs broker if the Comptroller-General of Customs has reasonable grounds to believe that:
  - (a) the customs broker has been convicted of a prescribed offence; or
  - (b) the customs broker, being a natural person, is an undischarged bankrupt; or
  - (ba) the customs broker, being a natural person, has been refused a transport security identification card, or has had such a card suspended or cancelled, within the 10 years immediately preceding the giving of the notice; or
  - (c) the customs broker, being a company, is in liquidation; or
  - (d) the customs broker has ceased to perform the duties of a customs broker in a satisfactory and responsible manner; or
  - (e) the customs broker is guilty of conduct that is an abuse of the rights and privileges arising from his or her licence; or
  - (f) a customs broker licence charge payable in respect of the licence remains unpaid more than 28 days after the day the charge was due to be paid; or
  - (g) the customs broker made a false or misleading statement in the application for the licence; or
  - (h) the customs broker has not complied with a condition imposed on the grant or renewal of the licence and, having been served with a notice under subsection 183CG(8) in relation to the non-compliance with that condition, the customs broker has not, within the time specified in the notice, complied with that condition; or
  - (j) the customs broker has not, within the time specified in a notice under section 183CP, complied with that notice;

or it otherwise appears to the Comptroller-General of Customs to be necessary for the protection of the revenue or otherwise in the public interest to give the notice.

- (2) Without limiting the generality of paragraph (1)(d), a customs broker shall be taken, for the purposes of that paragraph, to have ceased to perform the duties of a customs broker in a satisfactory and responsible manner if the documents prepared by the customs broker for the purposes of this Act contain errors that are unreasonable having regard to the nature or frequency of those errors.
- (3) Notice in accordance with this section to a customs broker shall be in writing and shall be served, either personally or by post, on the customs broker.
- (4) A notice in accordance with this section to a customs broker shall state:
  - (a) the grounds on which the notice is given;
  - (b) that the person who gave the notice intends forthwith to refer to the Committee, for investigation and report to the Comptroller-General of Customs, the question whether the Comptroller-General of Customs should take action in relation to the licence under subsection 183CS(1);
  - (c) the powers that the Comptroller-General of Customs may exercise in relation to a licence under subsection 183CS(1); and
  - (d) the rights of the customs broker under sections 183J and 183S to take part in the proceedings before the Committee.
- (5) If the Comptroller-General of Customs gives notice in accordance with this section to a customs broker, the Comptroller-General of Customs must refer the question whether the Comptroller-General of Customs should take action in relation to the licence under subsection 183CS(1) to the Committee, for investigation and report to the Comptroller-General of Customs.
- (6) Where the Comptroller-General of Customs refers a question to the Committee under subsection (5), the Comptroller-General of

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Customs shall give particulars to the Committee of all the information in his or her possession that is relevant to the question so referred.

- (7) Where a question is referred to the Committee under subsection (5), the Committee shall, as soon as practicable, conduct an investigation and make a report on the question to the Comptroller-General of Customs.

**183CR Interim suspension by Comptroller-General of Customs**

- (1) Where the Comptroller-General of Customs gives notice in accordance with section 183CQ to a customs broker, the Comptroller-General of Customs may, if the Comptroller-General of Customs considers it necessary for the protection of the revenue or otherwise in the public interest to do so, suspend the licence of the customs broker pending the investigation and report of the Committee.
- (2) The Comptroller-General of Customs may suspend the broker's licence of a customs broker in pursuance of subsection (1) by:
- (a) including in the notice to the customs broker in accordance with section 183CQ a statement to the effect that the licence is suspended under that subsection; or
  - (b) giving further notice in writing to the customs broker to the effect that the licence is suspended under that subsection.
- (3) A suspension of a licence by the Comptroller-General of Customs under subsection (1) has effect until the suspension is revoked by the Comptroller-General of Customs, or the Comptroller-General of Customs has dealt with the matter in accordance with section 183CS, whichever occurs first.
- (4) Where a broker's licence is suspended under this section, the Comptroller-General of Customs may at any time revoke the suspension.

### **183CS Powers of Comptroller-General of Customs**

- (1) Where the Comptroller-General of Customs, after considering a report under subsection 183CQ(7) in relation to a broker's licence, is:
  - (a) satisfied in relation to the licence as to any of the matters mentioned in paragraphs (a) to (j) (inclusive) of subsection 183CQ(1); or
  - (b) satisfied on any other grounds that it is necessary to do so for the protection of the revenue or for the purpose of ensuring compliance with the Customs Acts;he or she may, by notice to the customs broker:
  - (c) cancel the licence; or
  - (d) if the licence is about to expire—order that the licence not be renewed; or
  - (e) reprimand the customs broker; or
  - (f) in a case where the licence is not already suspended—suspend the licence for a period specified in the notice; or
  - (g) in a case where the licence is already suspended—further suspend the licence for a period specified in the notice.
- (2) Where the Comptroller-General of Customs, after considering a report under subsection 183CQ(7) in relation to a broker's licence, decides not to take any further action in the matter, he or she shall, by notice in writing to the customs broker, inform the customs broker accordingly, and, if the licence of the customs broker is suspended, he or she shall revoke the suspension.
- (3) A notice under subsection (1) shall:
  - (a) be in writing; and
  - (b) be served, either personally or by post, on the holder of the licence.
- (4) The period for which the Comptroller-General of Customs may suspend or further suspend a licence under subsection (1) may be a period expiring after the date on which the licence, if not renewed, would expire.

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- (5) Where the Comptroller-General of Customs orders under paragraph (1)(d) that a licence not be renewed, he or she shall notify the appropriate Collector accordingly.

**183CT Effect of suspension**

- (1) During a period in which a broker's licence held by a natural person is suspended under this Division:
- (a) the person shall not act as a customs broker;
  - (b) the person shall not act as a nominee of a customs broker; and
  - (c) a nominee of the person shall not act as such a nominee.
- (2) During a period in which a broker's licence held by a corporate customs broker is suspended under this Division:
- (a) the corporate customs agent shall not act as a customs broker; and
  - (b) a nominee of the corporate customs broker shall not act as such a nominee.

**183CU Service of notices**

For the purposes of the application of section 29 of the *Acts Interpretation Act 1901* to the service by post of a notice under this Division on a person who holds or held a broker's licence, such a notice posted as a letter addressed to that person at the last address of that person known to the sender shall be deemed to be properly addressed.

## **Division 5—National Customs Brokers Licensing Advisory Committee**

### **183D National Customs Brokers Licensing Advisory Committee**

- (1) The National Customs Agents Licensing Advisory Committee in existence immediately before the commencement of this subsection continues in existence as the National Customs Brokers Licensing Advisory Committee.
- (2) The functions of the Committee are:
  - (a) to investigate and report on applications referred to it by the Comptroller-General of Customs under section 183CB;
  - (b) to investigate and report on questions referred to it by the Comptroller-General of Customs under section 183CQ;
  - (c) to advise the Comptroller-General of Customs in relation to the approval of courses of study under section 183CC; and
  - (d) where the Comptroller-General of Customs requests the Committee to advise him or her on the standards that customs brokers should meet in the performance of their duties and obligations as customs brokers—to advise the Comptroller-General of Customs accordingly.

### **183DA Constitution of Committee**

- (1) The Committee shall consist of the following members:
  - (a) the Chair;
  - (b) a member to represent customs brokers;
  - (c) a member to represent the Commonwealth.
- (2) The Chair shall be a person who:
  - (a) is or has been a Stipendiary, Police, Special or Resident Magistrate of a State or Territory; or
  - (b) in the opinion of the Comptroller-General of Customs, possesses special knowledge or skill in relation to matters that the Committee is to advise or report on.

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- (3) A member referred to in paragraph (1)(a) or (b) shall be appointed by the Comptroller-General of Customs for a period not exceeding 2 years but is eligible for re-appointment.
- (4) The member referred to in paragraph (1)(b) shall be appointed on the nomination of an organization that, in the opinion of the Comptroller-General of Customs, represents customs brokers.
- (5) The member referred to in paragraph (1)(c) shall be the person for the time being holding, or performing the duties of, the office in the Department that the Comptroller-General of Customs specifies, in writing signed by him or her, to be the office for the purposes of this subsection.
- (6) The appointment of a member is not invalidated, and shall not be called in question, by reason of a deficiency or irregularity in, or in connection with, his or her nomination or appointment.

**183DB Remuneration and allowances**

- (1) A member referred to in paragraph 183DA(1)(a) or (b) shall be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) A member referred to in paragraph 183DA(1)(a) or (b) shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**183DC Acting Chair**

- (1) Subject to subsection (2), the Comptroller-General of Customs may appoint a person to act as Chair:
  - (a) during a vacancy in the office of Chair; or

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- (b) during any period, or during all periods, when the Chair is absent from duty or from Australia or is for any other reason, unable to perform the functions of his or her office.
- (2) A person shall not be appointed to act as Chair unless he or she is qualified, in accordance with subsection 183DA(2), to be appointed as Chair.
- (3) A person appointed to act as Chair shall be paid such fees, allowances and expenses as the Comptroller-General of Customs determines.

**183DD Deputy member**

- (1) The Comptroller-General of Customs may appoint a person, on the nomination of an organization referred to in subsection 183DA(4), to be the deputy of the member referred to in paragraph 183DA(1)(b) during the pleasure of the Comptroller-General of Customs and the person so appointed shall, in the event of the absence of the member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.
- (2) Where the Comptroller-General of Customs specifies an office in the Department for the purposes of this subsection, the person for the time being holding, or performing the duties of, that office shall be the deputy of the member referred to in paragraph 183DA(1)(c) and that person shall, in the event of the absence of that member from a meeting of the Committee, be entitled to attend that meeting and, when so attending, shall be deemed to be a member of the Committee.
- (3) A deputy of the member referred to in paragraph 183DA(1)(b) shall be paid such fees, allowances and expenses as the Comptroller-General of Customs determines.

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**183E Procedure of Committees**

The regulations may make provision for and in relation to the procedure of the Committee.

**183F Evidence**

The Committee is not bound by legal rules of evidence but may inform itself on a matter referred to it under this Part in such manner as it thinks fit.

**183G Proceedings in private**

The proceedings of the Committee shall be held in private.

**183H Determination of questions before a Committee**

All questions before the Committee shall be decided according to the opinion of the majority of its members.

**183J Customs broker affected by investigations to be given notice**

- (1) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chair of the Committee shall cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on the person making the application or holding the licence to which the question relates, as the case may be, at least ten days before the date of the inquiry.
- (2) Subject to subsection (3), the Committee shall afford the person on whom a notice has been served in pursuance of subsection (1) an opportunity of examining witnesses, of giving evidence and calling witnesses on his or her behalf and of addressing the Committee.
- (3) Where the person on whom notice has been served in pursuance of subsection (1) fails to attend at the time and place specified in the

notice, the Committee may, unless it is satisfied that the person is prevented by illness or other unavoidable cause from so attending, proceed to hold the inquiry in his or her absence.

- (4) Where an application is referred to the Committee under section 183CB or a question is referred to the Committee under section 183CQ, the Chair of the Committee may cause a notice in writing of the reference of the application or question to the Committee, and of the time and place at which the Committee intends to hold an inquiry into the application or question, to be served on such other persons who, in the opinion of the Chair, have a special interest in, or are specially affected by, the inquiry.

### **183K Summoning of witnesses**

- (1) The Chair of the Committee may, by writing under his or her hand, summon a person to attend before the Committee at a time and place specified in the summons and then and there to give evidence and to produce any books, documents and writings in the person's custody or control which the person is required by the summons to produce.
- (2) A person who has been summoned to attend before the Committee as a witness shall appear and report himself or herself from day to day, unless excused by the Committee.
- (3) The Committee may inspect books, documents or writings before it, and may retain them for such reasonable period as it thinks fit, and may make copies of such portions of them as are relevant to the inquiry.

### **183L Service of notices and summonses**

A notice or summons under this Part shall be served by delivering it personally to the person to be served or by sending it by prepaid registered letter addressed to the person at his or her last known place of abode or business or by leaving it:

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- (a) at his or her last known place of abode with some person apparently an inmate of that place and apparently not less than 16 years of age; or
- (b) at his or her last known place of business with some person apparently employed at that place and apparently not less than 16 years of age.

**183N Committee may examine upon oath or affirmation**

- (1) The Committee may examine on oath a person appearing as a witness before the Committee, whether the witness has been summoned or appears without being summoned, and for that purpose a member of the Committee may administer an oath to a witness.
- (2) Where a witness conscientiously objects to take an oath, the witness may make an affirmation that he or she conscientiously objects to take an oath and that he or she will state the truth, the whole truth and nothing but the truth to all questions that are asked of him or her.
- (3) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

**183P Offences by witness**

- (1) A person summoned to attend before the Committee as a witness shall not:
  - (a) fail to attend, after payment or tender to him or her of a reasonable sum for his or her expenses of attendance; or
  - (b) refuse to be sworn or to make an affirmation as a witness, or to answer any question when required to do so by a member of the Committee; or
  - (c) refuse or fail to produce a book or document which he or she was required by the summons to produce.

Penalty: 10 penalty units.

- (2) Paragraphs (1)(a) and (c) do not apply if the person has reasonable cause for the failure or refusal.

### **183Q Statements by witness**

A person is not excused from answering a question or producing a book or document when required to do so under section 183P on the ground that the answer to the question, or the production of the book or document, might tend to incriminate the person or make him or her liable to a penalty, but the person's answer to any such question is not admissible in evidence against him or her in proceedings other than proceedings for:

- (a) an offence against paragraph 183P(1)(b) or (c); or
- (b) an offence in connection with the making by him or her of a statement in an examination before the Committee under section 183N.

### **183R Witness fees**

- (1) A person who attends in obedience to a summons to attend as a witness before the Committee is entitled to be paid witness fees and travelling allowance according to the scale of fees and allowances payable to witnesses in the Supreme Court of the State or Territory in which he or she is required to attend or, in special circumstances, such fees and allowances as the Chair of the Committee directs (less any amount previously paid to the person for his or her expenses of attendance).
- (2) The fees and allowances are payable:
  - (a) in the case of a witness summoned at the request of the customs broker to whom the inquiry relates—by that customs broker; and
  - (b) in any other case—by the Commonwealth.

### **183S Representation by counsel etc.**

- (1) In an inquiry before the Committee, the customs broker to whom the inquiry relates and the Comptroller-General of Customs are

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each entitled to be represented by a barrister or solicitor or, with the approval of the Committee, by some other person.

- (2) A barrister, solicitor or other person appearing before the Committee may examine or cross-examine witnesses and address the Committee.

**183T Protection of members**

- (1) An action or proceeding, civil or criminal, does not lie against a member of the Committee for or in respect of an act or thing done, or report made, in good faith by the member of the Committee in his or her capacity as a member.
- (2) An act or thing shall be deemed to have been done in good faith if the member or Committee by whom the act or thing was done was not actuated by ill-will to the person affected or by any other improper motive.

**183U Protection of barristers, witnesses etc.**

- (1) A barrister, solicitor or other person appearing before the Committee has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (2) A witness summoned to attend or appearing before the Committee has the same protection as a witness in proceedings in the High Court.