



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

No. 113, 2014

**An Act to amend the *Customs Act 1901*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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

No. 113, 2014

**An Act to amend the *Customs Act 1901*, and for
related purposes**

[Assented to 21 October 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment
(Korea-Australia Free Trade Agreement Implementation) Act
2014*.

No. 113, 2014

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

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 October 2014
2. Schedule 1	<p>The later of:</p> <p>(a) 1 December 2014; and</p> <p>(b) the day the Korea-Australia Free Trade Agreement, done at Seoul on 8 April 2014, enters into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the Gazette the day the Agreement enters into force for Australia.</p>	<p>12 December 2014</p> <p>(C2014G02046)</p> <p>(paragraph (b) applies)</p>
<p>Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.</p>		

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendments

Part 1—Korean originating goods

Customs Act 1901

1 After Division 1H of Part VIII

Insert:

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:

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 System means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

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.

Regional value content of goods

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

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 *Legislative Instruments 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
 - (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 heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (Korean Rules of Origin) Regulation 2014*; 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) each requirement that is prescribed by the regulations to apply in relation to the goods is satisfied; 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.

Change in tariff classification

- (2) The regulations may prescribe that each non-originating material used in the production of the goods is required to satisfy a prescribed change in tariff classification.
- (3) The regulations may also 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) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

- (5) Subsection (4) does not apply in relation to goods that are classified to a heading or subheading of the Harmonized System falling within the following:
- (a) heading 0301 to 0303 or 0305 to 0308 of Chapter 3;
 - (b) heading 0701 to subheading 0710.10 or heading 0713 to 0714 of Chapter 7;
 - (c) heading 0801 to 0810 or subheading 0813.10 to 0813.40 of Chapter 8.
- (6) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

Regional value content

- (7) The regulations may prescribe that the goods are required to have a regional value content of at least a prescribed percentage.
- (8) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; 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;

then the regulations must require the value of the accessories, spare parts or tools 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 or tools is to be worked out in accordance with the regulations: see subsection 153ZMB(3).

No limit on regulations

- (9) Subsections (2) and (7) do not limit paragraph (1)(c).

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 the goods are required to have a regional value content of at least a particular percentage, 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 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;
- (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

Schedule 1 Amendments

Part 1 Korean originating goods

- (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.

Part 2—Verification powers

Customs Act 1901

2 After Division 4F of Part VI

Insert:

Division 4G—Exportation of goods to Korea

126AMA Definitions

In this Division:

Korea means the Republic of Korea.

Korean customs official means a person representing the customs administration of Korea.

producer means a person who grows, mines, harvests, fishes, breeds, raises, traps, hunts, manufactures, processes, assembles or disassembles goods.

126AMB Record keeping obligations

Regulations may prescribe record keeping obligations

- (1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
 - (a) are exported to Korea; and
 - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Korea.

On whom obligations may be imposed

- (2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter or producer of goods.

126AMC Power to require records

Requirement to produce records

- (1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AMB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Korean customs official

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Korea, disclose any records so produced to a Korean customs official.

126AMD Power to ask questions

Power to ask questions

- (1) An authorised officer may require a person who is an exporter or producer of goods that:
- (a) are exported to Korea; and
 - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Korea;
- to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Korean customs official

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Korea, disclose any answers to such questions to a Korean customs official.

Part 3—Application provisions

3 Application provisions

- (1) The amendment made by item 1 applies in relation to:
 - (a) goods imported into Australia on or after the commencement of that item; and
 - (b) goods imported into Australia before the commencement of that item, where the time for working out the rate of import duty on the goods had not occurred before the commencement of that item.
- (2) The amendment made by item 2 applies in relation to goods exported to Korea on or after the commencement of that item (whether the goods were produced before, on or after that commencement).

*[Minister's second reading speech made in—
House of Representatives on 4 September 2014
Senate on 30 September 2014]*

(188/14)
