



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

No. 136, 2015

**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 (China-Australia Free Trade Agreement Implementation) Act 2015

No. 136, 2015

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

[Assented to 11 November 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment
(China-Australia Free Trade Agreement Implementation) Act
2015*.

No. 136, 2015

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

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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.	11 November 2015
2. Schedule 1	<p>The later of:</p> <p>(a) the day this Act receives the Royal Assent; and</p> <p>(b) the day the China-Australia Free Trade Agreement, done at Canberra on 17 June 2015, 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>20 December 2015</p> <p>(C2015G02138)</p> <p>(paragraph (b) applies)</p>
3. Schedule 2	<p>The later of:</p> <p>(a) immediately after the commencement of Schedule 1 to the <i>Acts and Instruments (Framework Reform) Act 2015</i>; and</p> <p>(b) immediately after the commencement of the provisions covered by table item 2.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	<p>5 March 2016</p> <p>(paragraph (a) applies)</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Note:	This table relates only to the provisions of this Act as originally enacted.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.	

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- (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.

Schedule 1—Main amendments

Part 1—Chinese originating goods

Customs Act 1901

1 After Division 1K of Part VIII

Insert:

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.

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 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.

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
- (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>).

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 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.
- (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 specified in column 1 of the table in Part 2 of Schedule 1 to the regulations made for the purposes of this Subdivision; 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) 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 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.

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.

Regional value content

- (5) The regulations may prescribe that the goods are required to have a regional value content of at least a prescribed percentage.

- (6) 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 classified and invoiced with the goods and are included in the price of 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;

then the regulations must require the value of the accessories, spare parts or tools to be taken into account as non-originating materials 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.

No limit on regulations

- (8) Subsections (2) and (5) do not limit paragraph (1)(c).

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) the goods are required to have a regional value content of at least a particular percentage; and
 - (b) the packaging material or container is a non-originating material;
- then the regulations must require the value of 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.

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, 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.

Part 2—Verification powers

Customs Act 1901

2 After Division 4H of Part VI

Insert:

Division 4J—Exportation of goods to China

126AOA Definitions

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>).

Chinese customs official means a person representing the customs administration of the territory of China.

producer means a person who grows, raises, mines, harvests, fishes, farms, traps, hunts, captures, gathers, collects, breeds, extracts, manufactures, processes or assembles goods.

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.

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126AOB 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 the territory of China; and
 - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of China.

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.

126AOC 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 126AOB 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 Chinese customs official

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

126AOD 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 the territory of China; and
 - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of China;
- 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 Chinese customs official

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of China, disclose any answers to such questions to a Chinese 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 the territory of China on or after the commencement of that item (whether the goods were produced before, on or after that commencement).

Schedule 2—Contingent amendments

Customs Act 1901

1 Subsection 153ZOB(6)

Omit “*Legislative Instruments Act 2003*”, substitute “*Legislation Act 2003*”.

[Minister’s second reading speech made in—
House of Representatives on 16 September 2015
Senate on 9 November 2015]

(172/15)

No. 136, 2015

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