



Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018

No. 127, 2018

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 127, 2018

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

[Assented to 19 October 2018]

The Parliament of Australia enacts:

No. 127, 2018 Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018 1

1 Short title

This Act is the *Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Act 2018*.

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.	19 October 2018
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile on 8 March 2018, enters into force for Australia. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce, by notifiable instrument, the day the Agreement enters into force for Australia.	30 December 2018 (F2018N00168) (paragraph (b) applies)
Note:	This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

- 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
- (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
- (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.

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.

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).

(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.

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.

Part 2—Verification powers

Customs Act 1901

4 Before Division 4F of Part VI

Insert:

Division 4EB—Exportation of goods to Parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

126AKI Definitions

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.

customs administration, of a Party, has the meaning given by Annex 1-A to Chapter 1 of the Agreement.

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

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

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

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

Trans-Pacific Partnership customs official, for a Party, means a person representing the customs administration of that Party.

126AKJ 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 a Party; and
 - (b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

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.

126AKK 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 126AKJ 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 Trans-Pacific Partnership customs official

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

126AKL 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 a Party; and
 - (b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party;
- 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 Trans-Pacific Partnership customs official

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

Part 3—Application provisions

5 Application provisions

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

*[Minister's second reading speech made in—
House of Representatives on 23 August 2018
Senate on 18 September 2018]*

(164/18)

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Trans-Pacific Partnership Implementation) Act 2018* 21