

Customs (Pacific Islands Rules of Origin) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 November 2018

Peter Cosgrove

Governor‑General

By His Excellency’s Command

Linda Reynolds

Assistant Minister for Home Affairs  
Parliamentary Secretary to the Minister for Home Affairs

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Part 1—Preliminary

1 Name

This instrument is the *Customs (Pacific Islands Rules of Origin) Regulations 2018*.

2 Commencement

(1) Each provision of this instrument 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. The whole of this instrument | At the same time as Schedule 1 to the *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018* commences. | 13 December 2020 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

3 Authority

This instrument is made under the *Customs Act 1901*.

4 Definitions

In this instrument:

***Act*** means the *Customs Act 1901*.

***Agreement*** has the meaning given by section 153ZKL of the Act.

***Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*** means the Agreement of that name set out in Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The Marrakesh Agreement Establishing the World Trade Organization is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

***Declaration of Origin*** has the meaning given by section 153ZKL of the Act.

***Harmonized System*** has the meaning given by section 153ZKL of the Act.

***non‑originating materials*** has the meaning given by section 153ZKL of the Act.

***originating materials*** has the meaning given by section 153ZKL of the Act.

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

***production*** has the meaning given by section 153ZKL of the Act.

Part 2—Tariff change requirement

5 Change in tariff classification requirement for non‑originating materials

For the purposes of subsection 153ZKO(3) of the Act, a non‑originating material used in the production of goods that does not satisfy a particular change in tariff classification is taken to satisfy the change in tariff classification if:

(a) it was produced entirely in the territory of one or more of the Parties from other non‑originating materials; and

(b) each of those other non‑originating materials satisfies the change in tariff classification, including by one or more applications of this section.

Part 3—Regional value content requirement

6 Regional value content requirement

(1) For the purposes of subsection 153ZKO(6) of the Act, the regional value content of goods is worked out using the formula:



where:

***customs value*** means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

***value of non‑originating materials*** means the value, worked out under Part 4, of the non‑originating materials used in the production of the goods.

(2) Regional value content must be expressed as a percentage.

Part 4—Determination of value

7 Value of goods that are non‑originating materials

(1) For the purposes of subsection 153ZKL(2) of the Act, the value of non‑originating materials used in the production of goods is:

(a) for non‑originating materials imported into the territory of a Party—the value of the non‑originating materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994; or

(b) for non‑originating materials acquired in the territory of a Party where the goods are produced—the earliest ascertainable price paid or payable for the non‑originating materials in the territory of the Party.

(2) For the purposes of paragraph (1)(a), in working out the value of particular non‑originating materials, the following must be included:

(a) the cost of freight of the non‑originating materials to the port or place of entry in the Party;

(b) the cost of insurance related to that freight.

(3) For the purposes of paragraph (1)(a) or (b), in working out the value of particular non‑originating materials, the following may be deducted:

(a) the costs of freight, insurance, packing and all other costs incurred in transporting the non‑originating materials, within or between the territories of the Parties, to the producer of the goods;

(b) duties, taxes and customs brokerage fees on the non‑originating materials that:

(i) have been paid in the territory of one or more of the Parties; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) the costs of waste and spoilage resulting from the use of the non‑originating materials in the production of the goods, reduced by the value of reusable scrap or by‑products;

(d) the costs of processing incurred in the territory of one or more of the Parties in the production of the non‑originating materials;

(e) the costs of originating materials used or consumed in the production of the non‑originating materials in the territory of one or more of the Parties.

8 Value of accessories, spare parts, tools or instructional or other information materials

If paragraphs 153ZKO(7)(a), (b), (c), (d) and (e) of the Act are satisfied in relation to goods:

(a) the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph 153ZKO(7)(e) of the Act must be taken into account for the purposes of working out the regional value content of the goods under section 6 of this instrument; and

(b) for the purposes of sections 6 and 7 of this instrument, those accessories, spare parts, tools or instructional or other information materials are taken to be non‑originating materials used in the production of the goods.

9 Value of packaging material or container

If paragraphs 153ZKP(2)(a) and (b) of the Act are satisfied in relation to goods:

(a) the value of the packaging material or container in which the goods are packaged must be taken into account for the purposes of working out the regional value content of the goods under section 6 of this instrument; and

(b) for the purposes of sections 6 and 7 of this instrument, that packaging material or container is taken to be a non‑originating material used in the production of the goods.

Part 5—Record keeping obligations

10 Exportation of goods to a Party—record keeping by exporter who is not the producer of the goods

(1) For the purposes of subsection 126AKF(1) of the Act, an exporter of goods mentioned in that subsection, who is not also the producer of the goods, must keep the following records:

(a) records of the purchase of the goods by the exporter;

(b) records of the purchase of the goods by the person to whom the goods are exported;

(c) evidence that payment has been made for the goods;

(d) evidence of the classification of the goods under the Harmonized System;

(e) if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the exporter:

(i) records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and

(ii) evidence of the value of the accessories, spare parts, tools or instructional or other information materials;

(f) if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the exporter:

(i) records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and

(ii) evidence of the value of the materials so purchased; and

(iii) records of the production of the accessories, spare parts, tools or instructional or other information materials;

(g) if the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter:

(i) records of the purchase of the packaging material or container; and

(ii) evidence of the value of the packaging material or container;

(h) if the goods are packaged for retail sale in packaging material or a container that was produced by the exporter:

(i) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and

(ii) evidence of the value of the materials so purchased; and

(iii) records of the production of the packaging material or container;

(i) a copy of the Declaration of Origin for the goods.

(2) The records must be kept for at least 5 years starting on the day of exportation.

(3) The exporter:

(a) may keep the records at any place (whether or not in Australia); and

(b) must ensure that:

(i) the records are kept in a form that would enable   
a determination of whether the goods are   
originating goods in accordance with the Agreement; and

(ii) if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and

(iii) if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

11 Exportation of goods to a Party—record keeping by the producer of the goods

(1) For the purposes of subsection 126AKF(1) of the Act, a producer of goods mentioned in that subsection, whether or not the producer is the exporter of the goods, must keep the following records:

(a) records of the purchase of the goods;

(b) if the producer is the exporter of the goods—evidence of the classification of the goods under the Harmonized System;

(c) evidence that payment has been made for the goods;

(d) evidence of the value of the goods;

(e) records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System;

(f) evidence of the value of those materials;

(g) records of the production of the goods;

(h) if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the producer:

(i) records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and

(ii) evidence of the value of the accessories, spare parts, tools or instructional or other information materials;

(i) if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the producer:

(i) records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and

(ii) evidence of the value of the materials so purchased; and

(iii) records of the production of the accessories, spare parts, tools or instructional or other information materials;

(j) if the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:

(i) records of the purchase of the packaging material or container; and

(ii) evidence of the value of the packaging material or container;

(k) if the goods are packaged for retail sale in packaging material or a container that was produced by the producer:

(i) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and

(ii) evidence of the value of the materials so purchased; and

(iii) records of the production of the packaging material or container;

(l) a copy of the Declaration of Origin for the goods.

(2) The records must be kept for at least 5 years starting on the day of exportation.

(3) The producer:

(a) may keep the records at any place (whether or not in Australia); and

(b) must ensure that:

(i) the records are kept in a form that would enable a determination of whether the goods are originating goods in accordance with the Agreement; and

(ii) if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and

(iii) if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.