2008

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008

No. , 2008

(Home Affairs)

A Bill for an Act to amend the *Customs Act 1901*, and for related purposes

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i Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008 No. , 2008

A Bill for an Act to amend the *Customs Act 1901*, and for related purposes

³ The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Customs Amendment (Australia-Chile
Free Trade Agreement Implementation) Act 2008.

2 Commencement

according to its terms.		(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 effe according to its terms.	
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Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The later of:	
	(a) 1 January 2009; and	
	(b) the day on which the Australia-Chile Free Trade Agreement, done at Cant on 30 July 2008, comes into force fo Australia.	berra
	However, the provision(s) do not comm at all if the event mentioned in paragrap does not occur.	
	The Minister must announce by notice in <i>Gazette</i> the day on which the Agreemen comes into force for Australia.	
Note:	This table relates only to the provisions of passed by both Houses of the Parliament a expanded to deal with provisions inserted	and assented to. It will no
part of	in 3 of the table contains additional in this Act. Information in this column in any published version of this Act.	
Schedule(s)		
repeal	Act that is specified in a Schedule to the ed as set out in the applicable items in rned, and any other item in a Schedule ling to its terms.	the Schedule

² Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008 No. , 2008

1 2	Schedule 1—Amendments
3	Part 1—Chilean originating goods
4	Customs Act 1901
5 6	1 After Division 1E of Part VIII Insert:
7	Division 1F—Chilean originating goods
8	Subdivision A—Preliminary
9	153ZJA Simplified outline
10	The following is a simplified outline of this Division:
11 12 13	• This Division defines <i>Chilean originating goods</i> . Preferential rates of customs duty under the <i>Customs Tariff Act 1995</i> apply to Chilean originating goods that are imported into Australia.
14 15	• Subdivision B provides that goods are Chilean originating goods if they are wholly obtained goods of Chile.
16 17 18	• Subdivision C provides that goods are Chilean originating goods if they are produced entirely in the territory of Chile from originating materials only.
19 20 21 22 23	• 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.
24 25 26 27	• 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.

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11Note:In 2008, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).14Australian originating goods means goods that are Australian originating goods under a law of Chile that implements the Agreement.16Agreement.17Certificate of Origin means a certificate that is in force and that complies with the requirements of paragraph 2 of Article 4.16 of the Agreement.20Chilean originating goods means goods that, under this Division, are Chilean originating goods.21composite goods has the same meaning as it has in the Agreement.23Convention 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.27Note: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 Treaty Series Library on the			
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<i>customs value</i> of goods has the meaning given by section 159.	27 28 29 30	No. 30. In 2008, the text of a Convention in the Australian Tree Series was accessible through the Australian Treaties Library	eaty
	31	customs value of goods has the meaning given by section 15	9.

1 2 3	<i>Harmonized System</i> means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.
4	<i>indirect materials</i> means:
5	(a) goods or energy used in the production, testing or inspection
6	of goods, but not physically incorporated in the goods; or
7	(b) goods or energy used in the maintenance of buildings or the
8	operation of equipment associated with the production of
9	goods;
10	including:
11	(c) fuel (within its ordinary meaning); and
12	(d) tools, dies and moulds; and
13	(e) spare parts and materials; and
14	(f) lubricants, greases, compounding materials and other similar
15	goods; and
16	(g) gloves, glasses, footwear, clothing, safety equipment and
17	supplies; and
18	(h) catalysts and solvents.
19	Interpretation Rules means the General Rules (as in force from
19 20	time to time) for the Interpretation of the Harmonized System
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20	time to time) for the Interpretation of the Harmonized System provided for by the Convention.
20 21	time to time) for the Interpretation of the Harmonized System
20 21 22 23	time to time) for the Interpretation of the Harmonized System provided for by the Convention. <i>non-originating materials</i> means goods that are not originating materials.
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20 21 22 23 24 25 26 27 28 29	 time to time) for the Interpretation of the Harmonized System provided for by the Convention. <i>non-originating materials</i> means goods that are not originating materials. <i>originating materials</i> 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.
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1	territorial sea has the same meaning as in the Seas and Submerged
2	Lands Act 1973.
3	territory of Australia means territory within the meaning, insofar
4	as it relates to Australia, of Article 2.1 of the Agreement.
5	territory of Chile means territory within the meaning, insofar as it
6	relates to Chile, of Article 2.1 of the Agreement.
7	Regional value content of goods
8	(2) The <i>regional value content</i> of goods for the purposes of this
9	Division is to be worked out in accordance with the regulations.
10	The regulations may prescribe different regional value content
11	rules for different kinds of goods.
12	Value of goods
13	(3) The <i>value</i> of goods for the purposes of this Division is to be
14	worked out in accordance with the regulations. The regulations
15	may prescribe different valuation rules for different kinds of goods.
16	Tariff classifications
17	(4) In specifying tariff classifications for the purposes of this Division,
18	the regulations may refer to the Harmonized System.
19	(5) Subsection $4(3A)$ does not apply for the purposes of this Division.
20	Subdivision B—Wholly obtained goods of Chile
21	153ZJC Wholly obtained goods of Chile
22	(1) Goods are <i>Chilean originating goods</i> if:
23	(a) they are wholly obtained goods of Chile; and
24	(b) the importer of the goods has, at the time the goods are
25	imported, a Certificate of Origin, or a copy of one, for the
26	goods.
27	(2) Goods are <i>wholly obtained goods of Chile</i> if, and only if, the
28	goods are:
29	(a) minerals extracted in or from the territory of Chile; or

1 2	(b)	goods listed in Section II of the Harmonized System that are harvested, picked or gathered in the territory of Chile; or
3	(c)	live animals born and raised in the territory of Chile; or
4		goods obtained from live animals in the territory of Chile; or
5		goods obtained from hunting, trapping, fishing, gathering,
6		capturing or aquaculture conducted in the territory of Chile;
7		or
8	(f)	fish, shellfish or other marine life taken from the high seas by
9		ships that are registered or recorded in Chile and are flying
10		the flag of Chile; or
11	(g)	goods obtained or produced from goods referred to in
12		paragraph (f) on board factory ships that are registered or
13		recorded in Chile and are flying the flag of Chile; or
14	(h)	goods taken from the seabed, or beneath the seabed, outside
15		the territorial sea of Chile:
16		(i) by Chile; or
17		(ii) by a person of Chile;
18		but only if Chile has the right to exploit that part of the
19		seabed in accordance with international law; or
20	(i)	waste and scrap that have been derived from production
21		operations in the territory of Chile, or from used goods
22 23		collected in the territory of Chile, and that are fit only for the recovery of raw materials; or
24	(j)	goods obtained or produced entirely in the territory of Chile
25		exclusively from goods referred to in paragraphs (a) to (i).
26	Subdivision C	—Goods produced in Chile from originating
27	mat	erials
28	153ZJD Goods	produced in Chile from originating materials
29	Good	ls are <i>Chilean originating goods</i> if:
30	(a)	they are produced entirely in the territory of Chile from
31		originating materials only; and
32	(b)	the importer of the goods has, at the time the goods are
33		imported, a Certificate of Origin, or a copy of one, for the
34		goods.

1	Subdivision D—Goods produced in Chile, or Chile and
2	Australia, from non-originating materials
3	153ZJE Goods produced in Chile, or Chile and Australia, from
4	non-originating materials
5	(1) Goods are <i>Chilean originating goods</i> if:
6	 (a) they are classified to a heading or subheading of the
7	Harmonized System specified in column 1 of the table in
8	Schedule 1 to the <i>Customs (Chilean Rules of Origin)</i>
9	<i>Regulations 2008</i> ; and
0	(b) they are produced entirely in the territory of Chile, or entirely
1	in the territory of Chile and the territory of Australia, from
2	non-originating materials only or from non-originating
3	materials and originating materials; and
4 5	(c) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
6	(d) the importer of the goods has, at the time the goods are
7	imported, a Certificate of Origin, or a copy of one, for the
.8	goods.
.9	This subsection is subject to subsections (9) and (10).
0	Change in tariff classification
21 22 23	(2) The regulations may specify that each non-originating material used in the production of the goods is required to satisfy a specified change in tariff classification.
4 5 6	(3) The regulations may also specify when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
:7	(4) If:
.8 .9	(a) the requirement referred to in subsection (2) applies in relation to the goods; and
50	 (b) one or more of the non-originating materials used in the
51	production of the goods do not satisfy the change in tariff
52	classification;
33	then the requirement referred to in subsection (2) is taken to be
34	satisfied if the total value of those non-originating materials does
35	not exceed 10% of the customs value of the goods.

1	Regional value content
2	(5) The regulations may specify that the goods are required to have a
3	regional value content of at least a specified percentage.
4	(6) If:
5	(a) the goods are required to have a regional value content of at
6	least a particular percentage; and
7	(b) the goods are imported into Australia with accessories, spare
8	parts, tools or instructional or other information resources;
9	and
10	(c) the accessories, spare parts, tools or instructional or other
11 12	information resources are not invoiced separately from the goods; and
13	(d) the quantities and value of the accessories, spare parts, tools
14	or instructional or other information resources are customary
15	for the goods; and
16	(e) the accessories, spare parts, tools or instructional or other
17	information resources are non-originating materials;
18	then the regulations must require the value of the accessories, spare
19	parts, tools or instructional or other information resources to be
20	taken into account as non-originating materials for the purposes of
21	working out the regional value content of the goods.
22	Note: The value of the accessories, spare parts, tools or instructional or other
23 24	information resources is to be worked out in accordance with the regulations: see subsection 153ZJB(3).
24	
25	(7) For the purposes of subsection (6), disregard section 153ZJG in
26	working out whether the accessories, spare parts, tools or
27	instructional or other information resources are non-originating
28	materials.
29	No limit on regulations
30	(8) Subsections (2) and (5) do not limit paragraph (1)(c).
31	Goods put up in a set for retail sale
32	(9) If:
33	(a) the goods are put up in a set for retail sale; and
34	(b) the goods are classified in accordance with Rule 3 of the
35	Interpretation Rules;
	-

1	the g	oods are Chilean originating goods under this section only if:
2	(c)	all of the goods in the set, considered individually, are
3		Chilean originating goods under this Division; or
4	(d)	the total value of the goods in the set that are not Chilean
5		originating goods under this Division does not exceed 25% of
6		the customs value of the set of goods.
7 8	Note:	The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153ZJB(3).
9	Com	posite goods
10	(10) If:	
11	(a)	the goods are composite goods; and
12	(b)	the goods are classified in accordance with Rule 3 of the
13		Interpretation Rules;
14	the g	oods are Chilean originating goods under this section only if:
15	(c)	all of the components of the composite goods, considered
16		individually, are Chilean originating goods under this
17		Division; or
18	(d)	the total value of the components of the composite goods that
19 20		are not Chilean originating goods under this Division does not exceed 25% of the customs value of the goods.
21 22	Note:	The value of the components of the composite goods is to be worked out in accordance with the regulations: see subsection 153ZJB(3).
23	153ZJF Packa	ging materials and containers
24	(1) If:	
24		goods are packaged for retail sale in packaging material or a
26	(d)	container; and
27	(b)	the packaging material or container is classified with the
28	()	goods in accordance with Rule 5 of the Interpretation Rules;
29	then	the packaging material or container is to be disregarded for
30	the p	urposes of this Subdivision (with 1 exception).
31	Exce	ption
32	(2) If:	
33	(a)	the goods are required to have a regional value content of at
34		least a particular percentage; and

1 2	(b) the packaging material or container is a non-originating material;
3 4 5 6	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.
7 8	Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZJB(3).
9 10	Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information resources
11 12	153ZJG Goods that are accessories, spare parts, tools or instructional or other information resources
13	Goods are <i>Chilean originating goods</i> if:
14 15	 (a) they are accessories, spare parts, tools or instructional or other information resources in relation to other goods; and
16 17 18	 (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information resources; and
19	(c) the other goods are Chilean originating goods; and
20	(d) the accessories, spare parts, tools or instructional or other
21 22	information resources are not invoiced separately from the other goods; and
23	(e) the quantities and value of the accessories, spare parts, tools
24	or instructional or other information resources are customary
25	for the other goods.
26	Subdivision F—Non-qualifying operations
27	153ZJH Non-qualifying operations
28	(1) Goods are not Chilean originating goods under this Division
29	merely because of the following operations:
30	(a) operations to preserve goods in good condition for the
31	purpose of storage of the goods during transport;
32 33	 (b) changing of packaging or the breaking up or assembly of packages;
34	(c) disassembly of goods;
51	(c) all about of goods,

1	(d) placing goods in bottles, cases or boxes or other simple
2	packaging operations;
3	(e) making up of sets of goods;
4	(f) any combination of operations referred to in paragraphs (a) to
5	(e).
6	(2) This section applies despite any other provision of this Division.
7	Subdivision G—Consignment
8	153ZJI Consignment
9	(1) Goods are not Chilean originating goods under this Division if:
10	(a) they are transported through a country or place other than
11	Chile or Australia; and
12	(b) they undergo subsequent production or any other operation in
13	that country or place (other than unloading, reloading,
14	storing, repacking, relabelling, exhibition or any operation
15	that is necessary to preserve them in good condition or to
16	transport them to Australia).
17	(2) This section applies despite any other provision of this Division.

2	Part 2—Verification powers
3	Customs Act 1901
4	2 After Division 4D of Part VI
5	Insert:
6	Division 4E—Exportation of goods to Chile
7	126AKA Definitions
8	In this Division:
9	Chilean customs official means a person representing the customs
10	administration of Chile.
11	producer means a person who grows, farms, raises, breeds, mines,
12 13	harvests, fishes, traps, hunts, captures, gathers, collects, extracts, manufactures, processes or assembles goods.
14	126AKB Record keeping obligations
15	Regulations may prescribe record keeping obligations
16	(1) The regulations may prescribe record keeping obligations that
17	apply in relation to goods that:
18	(a) are exported to Chile; and
19 20	(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile.
21	On whom obligations may be imposed
22 23	(2) Regulations for the purposes of subsection (1) may impose such obligations on a producer or exporter of goods.

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 produce a record if doing so would tend to incriminate the person: see section 243SC. <i>Disclosing records to Chilean customs official</i> (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Chile, disclose any records so produced to a Chilean customs official. 126AKD Power to ask questions <i>Power to ask questions</i> (1) An authorised officer may require a person who is an exporter or producer of goods that: (a) are exported to Chile; and (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile; 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 	2	Power to require records
 keeping obligations under regulations made for the purposes of section 126AKB 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. <i>Disclosing records to Chilean customs official</i> (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Chile, disclose any records so produced to a Chilean customs official. 126AKD Power to ask questions <i>Power to ask questions</i> (1) An authorised officer may require a person who is an exporter or producer of goods that: (a) are exported to Chile; and (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile; to answer questions in order to verify the origin of the goods. 	2	Requirement to produce records
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 21 purpose of obtaining a preferential tariff in Chile; 22 to answer questions in order to verify the origin of the goods. 23 Note: Failing to answer a question when required to do so by an officer may 	19	(a) are exported to Chile; and
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23 Note: Failing to answer a question when required to do so by an officer may	21	purpose of obtaining a preferential tariff in Chile;
	22	to answer questions in order to verify the origin of the goods.
24 be an offence; see section 243SA. However, a person does not have to	23	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.		
26 see section 243SC.	20	see section 245SC.
27 Disclosing answers to Chilean customs official		Disclosing answers to Chilean customs official
28 (2) An authorised officer may, for the purpose of verifying a claim for	27	Disclosing answers to entical casions official
		An authorised officer may, for the purpose of verifying a claim for
30 to a Chilean customs official.	28 (2)	An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Chile, disclose any answers to such questions

2 Part 3—Application provisions

3 **3 Application**

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4	(1)	The amendment made by item 1 applies in relation to:
5		(a) goods imported into Australia on or after the commencement
6		of this item; and
7		(b) goods imported into Australia before the commencement of
8		this item, where the time for working out the rate of import
9		duty on the goods had not occurred before the
10		commencement of this item.
11	(2)	The amendment made by item 2 applies in relation to goods exported to
12		Chile on or after the commencement of this item (whether the goods
13		were produced before, on or after that commencement).