

2013-2014

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

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

**No.     , 2014**

*(Immigration and Border Protection)*

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



---

## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
<b>Schedule 1—Amendments</b>		<b>3</b>
Part 1—Korean originating goods		3
<i>Customs Act 1901</i>		3
Part 2—Verification powers		14
<i>Customs Act 1901</i>		14
Part 3—Application provisions		16



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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Customs Amendment*  
6 *(Korea-Australia Free Trade Agreement Implementation) Act*  
7 *2014*.

8 **2 Commencement**

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

1

---

**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The later of: (a) 1 December 2014; and (b) the day the Korea-Australia Free Trade Agreement, done at Seoul on 8 April 2014, 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 notice in the Gazette the day the Agreement enters into force for Australia.	

2  
3  
4

Note: This table relates only to the provisions of this Act as originally enacted.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.

5  
6  
7

(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.

8

### **3 Schedules**

9  
10  
11  
12

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

---

2

1 **Schedule 1—Amendments**

2 **Part 1—Korean originating goods**

3 *Customs Act 1901*

4 **1 After Division 1H of Part VIII**

5 Insert:

6 **Division 1J—Korean originating goods**

7 **Subdivision A—Preliminary**

8 **153ZMA Simplified outline of this Division**

- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 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.

- 1
- 2
- 3
- Subdivision F deals with other matters, such as how the consignment of goods affects whether the goods are Korean originating goods.

4 **153ZMB Interpretation**

5 *Definitions*

6 (1) In this Division:

7 ***Agreement*** means the Korea-Australia Free Trade Agreement,  
8 done at Seoul on 8 April 2014, as amended from time to time.

9 Note: The Agreement could in 2014 be viewed in the Australian Treaties  
10 Library on the AustLII website (<http://www.austlii.edu.au>).

11 ***aquaculture*** has the meaning given by Article 3.30 of the  
12 Agreement.

13 ***Australian originating goods*** means goods that are Australian  
14 originating goods under a law of Korea that implements the  
15 Agreement.

16 ***Certificate of Origin*** means a certificate that is in force and that  
17 complies with the requirements of Article 3.15 of the Agreement.

18 ***Convention*** means the International Convention on the  
19 Harmonized Commodity Description and Coding System done at  
20 Brussels on 14 June 1983, as in force from time to time.

21 Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988]  
22 ATS 30) and could in 2014 be viewed in the Australian Treaties  
23 Library on the AustLII website (<http://www.austlii.edu.au>).

24 ***customs value*** of goods has the meaning given by section 159.

25 ***enterprise*** has the meaning given by Article 1.4 of the Agreement.

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

29 ***indirect materials*** means:



- 1 (a) goods or energy used in the production, testing or inspection  
2 of goods, but not physically incorporated in the goods; or  
3 (b) goods or energy used in the maintenance or operation of  
4 equipment or buildings associated with the production of  
5 goods;  
6 including:  
7 (c) fuel (within its ordinary meaning); and  
8 (d) tools, dies and moulds; and  
9 (e) spare parts and materials; and  
10 (f) lubricants, greases, compounding materials and other similar  
11 goods; and  
12 (g) gloves, glasses, footwear, clothing, safety equipment and  
13 supplies; and  
14 (h) catalysts and solvents.

15 **Interpretation Rules** means the General Rules (as in force from  
16 time to time) for the Interpretation of the Harmonized System  
17 provided for by the Convention.

18 **Korea** means the Republic of Korea.

19 **Korean originating goods** means goods that, under this Division,  
20 are Korean originating goods.

21 **non-originating materials** means goods that are not originating  
22 materials.

23 **originating materials** means:

- 24 (a) Korean originating goods that are used in the production of  
25 other goods; or  
26 (b) Australian originating goods that are used in the production  
27 of other goods; or  
28 (c) indirect materials.

29 **person of Korea** means:

- 30 (a) a national within the meaning, so far as it relates to Korea, of  
31 Article 1.4 of the Agreement; or  
32 (b) an enterprise of Korea.



1 **Subdivision B—Goods wholly obtained in Korea or in Korea**  
2 **and Australia**

3 **153ZMC Goods wholly obtained in Korea or in Korea and Australia**

- 4 (1) Goods are *Korean originating goods* if:
- 5 (a) they are wholly obtained in Korea or in Korea and Australia;
- 6 and
- 7 (b) either:
- 8 (i) the importer of the goods has, at the time for working
- 9 out the rate of import duty on the goods, a Certificate of
- 10 Origin, or a copy of one, for the goods; or
- 11 (ii) Australia has waived the requirement for a Certificate of
- 12 Origin for the goods.
- 13 (2) Goods are *wholly obtained in Korea or in Korea and Australia* if,
- 14 and only if, the goods are:
- 15 (a) minerals, or other natural resources, taken or extracted from
- 16 the territory of Korea; or
- 17 (b) vegetable goods grown, harvested, picked or gathered in the
- 18 territory of Korea, or in the territory of Korea and the
- 19 territory of Australia; or
- 20 (c) live animals born and raised in the territory of Korea, or in
- 21 the territory of Korea and the territory of Australia; or
- 22 (d) goods obtained from live animals referred to in paragraph (c);
- 23 or
- 24 (e) goods obtained from hunting, trapping, gathering, capturing,
- 25 aquaculture or fishing conducted in Korea or the territorial
- 26 sea of Korea; or
- 27 (f) fish, shellfish or other marine life taken from the sea, seabed,
- 28 ocean floor or subsoil outside the territorial sea of Korea by
- 29 ships that are registered or recorded in Korea and are entitled
- 30 to fly the flag of Korea; or
- 31 (g) goods produced, from goods referred to in paragraph (f), on
- 32 board factory ships that are registered or recorded in Korea
- 33 and are entitled to fly the flag of Korea; or
- 34 (h) goods, other than fish, shellfish or other marine life, taken or
- 35 extracted from the seabed, ocean floor or subsoil outside the
- 36 territory of Korea by Korea, or a person of Korea, but only if

- 1 Korea, or the person of Korea, has the right to exploit that  
2 part of the seabed, ocean floor or subsoil; or  
3 (i) goods taken from outer space by Korea, or a person of Korea,  
4 and that are not processed in a country other than Korea or  
5 Australia; or  
6 (j) waste and scrap that:  
7 (i) has been derived from production in the territory of  
8 Korea; or  
9 (ii) has been derived from used goods that are collected in  
10 the territory of Korea and that are fit only for the  
11 recovery of raw materials; or  
12 (k) goods that are collected in the territory of Korea, that can no  
13 longer perform their original purpose and that are fit only for  
14 the recovery of raw materials; or  
15 (l) goods produced entirely in the territory of Korea, or entirely  
16 in the territory of Korea and the territory of Australia,  
17 exclusively from goods referred to in paragraphs (a) to (k) or  
18 from their derivatives.

19 **Subdivision C—Goods produced in Korea, or in Korea and**  
20 **Australia, from originating materials**

21 **153ZMD Goods produced in Korea, or in Korea and Australia, from**  
22 **originating materials**

23 Goods are *Korean originating goods* if:

- 24 (a) they are produced entirely in the territory of Korea, or  
25 entirely in the territory of Korea and the territory of  
26 Australia, from originating materials only; and  
27 (b) either:  
28 (i) the importer of the goods has, at the time for working  
29 out the rate of import duty on the goods, a Certificate of  
30 Origin, or a copy of one, for the goods; or  
31 (ii) Australia has waived the requirement for a Certificate of  
32 Origin for the goods.

1 **Subdivision D—Goods produced in Korea, or in Korea and**  
2 **Australia, from non-originating materials**

3 **153ZME Goods produced in Korea, or in Korea and Australia, from**  
4 **non-originating materials**

- 5 (1) Goods are *Korean originating goods* if:
- 6 (a) they are classified to a heading or subheading of the
  - 7 Harmonized System specified in column 1 or 2 of the table in
  - 8 Schedule 1 to the *Customs (Korean Rules of Origin)*
  - 9 *Regulation 2014*; and
  - 10 (b) they are produced entirely in the territory of Korea, or
  - 11 entirely in the territory of Korea and the territory of
  - 12 Australia, from non-originating materials only or from
  - 13 non-originating materials and originating materials; and
  - 14 (c) each requirement that is prescribed by the regulations to
  - 15 apply in relation to the goods is satisfied; and
  - 16 (d) either:
    - 17 (i) the importer of the goods has, at the time for working
    - 18 out the rate of import duty on the goods, a Certificate of
    - 19 Origin, or a copy of one, for the goods; or
    - 20 (ii) Australia has waived the requirement for a Certificate of
    - 21 Origin for the goods.

22 *Change in tariff classification*

- 23 (2) The regulations may prescribe that each non-originating material
- 24 used in the production of the goods is required to satisfy a
- 25 prescribed change in tariff classification.
- 26 (3) The regulations may also prescribe when a non-originating
- 27 material used in the production of the goods is taken to satisfy the
- 28 change in tariff classification.
- 29 (4) If:
- 30 (a) the requirement referred to in subsection (2) applies in
  - 31 relation to the goods; and
  - 32 (b) one or more of the non-originating materials used in the
  - 33 production of the goods do not satisfy the change in tariff
  - 34 classification;

**Schedule 1** Amendments

**Part 1** Korean originating goods

---

1 then the requirement referred to in subsection (2) is taken to be  
2 satisfied if the total value of those non-originating materials does  
3 not exceed 10% of the customs value of the goods.

4 (5) Subsection (4) does not apply in relation to goods that are  
5 classified to a heading or subheading of the Harmonized System  
6 falling within the following:

- 7 (a) heading 0301 to 0303 or 0305 to 0308 of Chapter 3;  
8 (b) heading 0701 to subheading 0710.10 or heading 0713 to  
9 0714 of Chapter 7;  
10 (c) heading 0801 to 0810 or subheading 0813.10 to 0813.40 of  
11 Chapter 8.

12 (6) If:

- 13 (a) the requirement referred to in subsection (2) applies in  
14 relation to the goods; and  
15 (b) the goods are classified to any of Chapters 50 to 63 of the  
16 Harmonized System; and  
17 (c) one or more of the non-originating materials used in the  
18 production of the goods do not satisfy the change in tariff  
19 classification;

20 then the requirement referred to in subsection (2) is taken to be  
21 satisfied if the total weight of those non-originating materials does  
22 not exceed 10% of the total weight of the goods.

23 *Regional value content*

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

26 (8) If:

- 27 (a) the goods are required to have a regional value content of at  
28 least a particular percentage; and  
29 (b) the goods are imported into Australia with accessories, spare  
30 parts or tools; and  
31 (c) the accessories, spare parts or tools are not invoiced  
32 separately from the goods; and  
33 (d) the quantities and value of the accessories, spare parts or  
34 tools are customary for the goods;
-

1 then the regulations must require the value of the accessories, spare  
2 parts or tools to be taken into account as originating materials or  
3 non-originating materials, as the case may be, for the purposes of  
4 working out the regional value content of the goods.

5 Note: The value of the accessories, spare parts or tools is to be worked out in  
6 accordance with the regulations: see subsection 153ZMB(3).

7 *No limit on regulations*

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

9 **153ZMF Packaging materials and containers**

10 (1) If:

11 (a) goods are packaged for retail sale in packaging material or a  
12 container; and

13 (b) the packaging material or container is classified with the  
14 goods in accordance with Rule 5 of the Interpretation Rules;

15 then the packaging material or container is to be disregarded for  
16 the purposes of this Subdivision.

17 *Regional value content*

18 (2) However, if the goods are required to have a regional value content  
19 of at least a particular percentage, the regulations must require the  
20 value of the packaging material or container to be taken into  
21 account as originating materials or non-originating materials, as the  
22 case may be, for the purposes of working out the regional value  
23 content of the goods.

24 Note: The value of the packaging material or container is to be worked out  
25 in accordance with the regulations: see subsection 153ZMB(3).

26 **Subdivision E—Non-qualifying operations**

27 **153ZMG Non-qualifying operations**

28 (1) Goods are not Korean originating goods under this Division merely  
29 because of the following operations or processes:

30 (a) operations to preserve goods in good condition for the  
31 purpose of transport or storage of the goods;

- 1 (b) changing of packaging or the breaking up or assembly of  
2 packages;  
3 (c) washing, cleaning or removal of dust, oxide, oil, paint or  
4 other coverings;  
5 (d) sharpening or simple processes of grinding, crushing or  
6 cutting;  
7 (e) simple placing in bottles, cans, flasks, bags, cases or boxes,  
8 fixing on cards or boards or other simple packaging  
9 operations;  
10 (f) affixing or printing marks, labels, logos or other  
11 distinguishing signs on goods or on their packaging;  
12 (g) disassembly of goods;  
13 (h) the reclassification of goods without any physical change in  
14 the goods;  
15 (i) any combination of things referred to in paragraphs (a) to (h).

16 (2) This section applies despite any other provision of this Division.

17 **Subdivision F—Other matters**

18 **153ZMH Consignment**

- 19 (1) Goods are not Korean originating goods under this Division if they  
20 are transported through a country other than Korea or Australia and  
21 either or both of the following apply:  
22 (a) they undergo subsequent production or any other operation in  
23 that country (other than unloading, reloading, storing,  
24 repacking, relabelling, splitting up of loads for transport or  
25 any operation that is necessary to preserve them in good  
26 condition or to transport them to Australia);  
27 (b) they do not remain under customs control at all times while  
28 they are in that country.

29 (2) This section applies despite any other provision of this Division.

30 **153ZMI Outward processing zones on the Korean Peninsula**

- 31 Goods are not prevented from being Korean originating goods  
32 under this Division if they contain materials that:  
33 (a) have been exported from Korea; and
-



- 1 (b) have undergone processing in an area designated as an  
2 outward processing zone in accordance with Annex 3-B to  
3 Chapter 3 of the Agreement; and  
4 (c) have been re-imported to Korea after that processing.

1 **Part 2—Verification powers**

2 *Customs Act 1901*

3 **2 After Division 4F of Part VI**

4 Insert:

5 **Division 4G—Exportation of goods to Korea**

6 **126AMA Definitions**

7 In this Division:

8 *Korea* means the Republic of Korea.

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

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

14 **126AMB 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 Korea; and

19 (b) are claimed to be Australian originating goods for the  
20 purpose of obtaining a preferential tariff in Korea.

21 *On whom obligations may be imposed*

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

1 **126AMC Power to require records**

2 *Requirement to produce records*

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

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

11 *Disclosing records to Korean customs official*

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

15 **126AMD Power to ask questions**

16 *Power to ask questions*

- 17 (1) An authorised officer may require a person who is an exporter or  
18 producer of goods that:  
19 (a) are exported to Korea; and  
20 (b) are claimed to be Australian originating goods for the  
21 purpose of obtaining a preferential tariff in Korea;  
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  
24 be an offence: see section 243SA. However, a person does not have to  
25 answer a question if doing so would tend to incriminate the person:  
26 see section 243SC.

27 *Disclosing answers to Korean customs official*

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

1 **Part 3—Application provisions**

2 **3 Application provisions**

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