



Customs Legislation Amendment (New Zealand Rules of Origin) Act 2006

No. 166, 2006

An Act to amend the law relating to customs, 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 Legislation Amendment (New Zealand Rules of Origin) Act 2006

No. 166, 2006

An Act to amend the law relating to customs, and for related purposes

[Assented to 12 December 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Legislation Amendment (New Zealand Rules of Origin) Act 2006*.

2 Commencement

This Act commences on 1 January 2007.

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3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—New Zealand originating goods

Customs Act 1901

1 After Division 1D of Part VIII

Insert:

Division 1E—New Zealand originating goods

Subdivision A—Preliminary

153ZIA Simplified outline

The following is a simplified outline of this Division:

- This Division defines *New Zealand originating goods*. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to New Zealand originating goods that are imported into Australia.
- Subdivision B provides that goods are New Zealand originating goods if they are wholly obtained in New Zealand or in New Zealand and Australia.
- Subdivision C provides that goods are New Zealand originating goods if they are produced entirely in New Zealand, or in New Zealand and Australia, from originating materials only.
- Subdivision D sets out when goods are New Zealand originating goods because they are produced entirely in New Zealand, or in New Zealand and Australia, from non-originating materials only or from non-originating materials and originating materials.

- Subdivision E sets out when goods are New Zealand originating goods because they are accessories, spare parts or tools imported with other goods.
- Subdivision F sets out when goods are New Zealand originating goods because they are wholly manufactured in New Zealand.
- Subdivision G sets out when goods are New Zealand originating goods because their last process of manufacture is performed in New Zealand. It is repealed on 1 January 2012.
- Subdivision H deals with how the consignment of goods affects whether the goods are New Zealand originating goods.

153ZIB Interpretation

Definitions

(1) In this Division:

Agreement means the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983, as amended from time to time.

Note: The text of the Agreement is set out in Australian Treaty Series 1983 No. 2. In 2006 the text of an Agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

Australian originating goods means goods that are Australian originating goods under a law of New Zealand that implements the Agreement.

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2006 the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII Internet site (www.austlii.edu.au).

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

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 or consumed in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used or consumed in the operation or maintenance of buildings or 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
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

manufacture means the creation of an article essentially different from the matters or substances that go into that creation, but does not include the following activities (whether performed alone or in combination with each other):

- (a) restoration or renovation processes such as repairing, reconditioning, overhauling or refurbishing;
- (b) minimal operations of pressing, labelling, ticketing, packaging and preparation for sale, whether conducted alone or in combination with each other;
- (c) quality control inspections.

New Zealand originating goods means goods that, under this Division, are New Zealand originating goods.

non-originating materials means goods that are not originating materials.

originating materials means:

- (a) New Zealand originating goods that are used or consumed in the production of other goods; or
- (b) Australian originating goods that are used or consumed in the production of other goods; or
- (c) indirect materials.

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process, assemble or disassemble.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

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 specifying 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) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

Subdivision B—Goods wholly obtained in New Zealand or New Zealand and Australia

153ZIC Goods wholly obtained in New Zealand or New Zealand and Australia

- (1) Goods are *New Zealand originating goods* if they are wholly obtained in New Zealand or in New Zealand and Australia.
- (2) Goods are *wholly obtained in New Zealand or in New Zealand and Australia* if, and only if, the goods are:
 - (a) minerals extracted in New Zealand; or
 - (b) plants grown in New Zealand, or in New Zealand and Australia, or products obtained in New Zealand from such plants; or
 - (c) live animals born and raised in New Zealand, or in New Zealand and Australia; or
 - (d) products obtained from live animals in New Zealand; or
 - (e) goods obtained from hunting, trapping, fishing, capturing or aquaculture conducted in New Zealand; or
 - (f) fish, shellfish or other marine life taken from the sea by ships that are registered or recorded in New Zealand and are flying, or are entitled to fly, the flag of New Zealand; or
 - (g) goods produced or obtained exclusively from goods referred to in paragraph (f) on board factory ships that are registered or recorded in New Zealand and are flying the flag of New Zealand; or
 - (h) goods taken from the seabed, or the subsoil beneath the seabed, of the territorial sea of New Zealand or of the continental shelf of New Zealand:
 - (i) by New Zealand; or
 - (ii) by a New Zealand citizen; or
 - (iii) by a body corporate incorporated in New Zealand; but only if New Zealand has the right to exploit that part of the seabed; or
 - (i) waste and scrap that has been derived from production operations in New Zealand, or from used goods collected in New Zealand, and that is fit only for the recovery of raw materials; or

- (j) goods produced entirely in New Zealand, or in New Zealand and Australia, exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced in New Zealand or New Zealand and Australia from originating materials

153ZID Goods produced in New Zealand or New Zealand and Australia from originating materials

Goods are *New Zealand originating goods* if they are produced entirely in New Zealand, or entirely in New Zealand and Australia, from originating materials only.

Subdivision D—Goods produced in New Zealand or New Zealand and Australia from non-originating materials

153ZIE Goods produced in New Zealand or New Zealand and Australia from non-originating materials

- (1) Goods are *New Zealand originating goods* if:
 - (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (New Zealand Rules of Origin) Regulations 2006*; and
 - (b) they are produced entirely in New Zealand, or entirely in New Zealand and Australia, from non-originating materials only or from non-originating materials and originating materials; and
 - (c) each requirement that is specified in the regulations to apply in relation to the goods is satisfied.

Change in tariff classification

- (2) The regulations may specify that each non-originating material used or consumed in the production of the goods is required to satisfy a specified change in tariff classification.

(3) The regulations may also specify when a non-originating material used or consumed 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 or consumed 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 specify that the goods are required to have a regional value content of at least a specified 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 standard accessories, standard spare parts or standard tools; and
- (c) the accessories, spare parts or tools are not invoiced separately from the goods; and
- (d) the quantities and value of the accessories, spare parts or tools are customary for the goods;

then the regulations must require the value of the accessories, spare parts or tools to be taken into account as originating materials or non-originating materials, as the case may be, 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 153ZIB(3).

(7) For the purposes of subsection (6), disregard section 153ZIG in working out whether the accessories, spare parts or tools are originating materials or non-originating materials.

(8) However, subsection (6) does not apply if the accessories, spare parts or tools are imported solely for the purpose of artificially raising the regional value content of the goods.

No limit on regulations

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

153ZIF 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 General Rules for the Interpretation of the Harmonized System provided for by the Convention;

then the packaging material or container is to be disregarded for the purposes of this Subdivision (with 1 exception).

Exception

- (2) If the goods are required to have a regional value content of at least a particular percentage, the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, 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 153ZIB(3).

Subdivision E—Goods that are standard accessories, spare parts or tools

153ZIG Goods that are standard accessories, spare parts or tools

Goods are *New Zealand originating goods* if:

- (a) they are standard accessories, standard spare parts or standard 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 accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
- (d) the other goods are New Zealand originating goods; and

- (e) the accessories, spare parts or tools are not invoiced separately from the other goods; and
- (f) the quantities and value of the accessories, spare parts or tools are customary for the goods.

Subdivision F—Goods wholly manufactured in New Zealand

153ZIH Goods wholly manufactured in New Zealand

- (1) Goods are *New Zealand originating goods* if they are wholly manufactured in New Zealand from one or more of the following:
 - (a) unmanufactured raw products;
 - (b) materials wholly manufactured in Australia or New Zealand or Australia and New Zealand;
 - (c) materials covered by subsection (2).
- (2) The CEO may, by legislative instrument, determine specified materials imported into New Zealand to be manufactured raw materials of New Zealand.

Subdivision G—Goods last processed in New Zealand

153ZII Goods last processed in New Zealand

- (1) Goods are *New Zealand originating goods* if:
 - (a) the last process in their manufacture was performed in New Zealand; and
 - (b) the qualifying expenditure on the goods is at least 50% (the *standard percentage*) of the factory cost of the goods.

Lower percentage in unforeseen circumstances

- (2) If the CEO is satisfied that:
 - (a) a shipment of goods would be New Zealand originating goods under this section if the standard percentage were 48%; and
 - (b) the qualifying expenditure on the goods would have been at least 50% of the factory cost of the goods if an unforeseen circumstance had not occurred; and

(c) the unforeseen circumstance is unlikely to continue;
the CEO may determine in writing that the standard percentage is taken to be 48%:

(d) for the purpose of that shipment of goods; and

(e) for the purpose of any later shipment of similar goods that is affected by that unforeseen circumstance during a period specified in the determination.

(3) A determination made under subsection (2) is not a legislative instrument.

CEO may revoke determination

(4) If:

(a) the CEO makes a determination under subsection (2); and

(b) the CEO becomes satisfied that the unforeseen circumstance no longer exists;

the CEO may, by writing, revoke the determination even though the period specified in it has not ended.

Definitions

(5) In this section:

factory cost of goods has the meaning given by the regulations.

qualifying expenditure on goods has the meaning given by the regulations.

similar goods, in relation to goods in a particular shipment (the *first shipment*), means goods:

(a) that are contained in another shipment that is imported by the same importer; and

(b) that undergo the same process or processes of manufacture as the goods in the first shipment.

153ZIJ Repeal of this Subdivision

This Subdivision is repealed on 1 January 2012.

Subdivision H—Consignment

153ZIK Consignment

- (1) Goods are not New Zealand originating goods under this Division if:
 - (a) they are transported through a country or place other than New Zealand or Australia; and
 - (b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling or any operation that is necessary to preserve them in good condition or to transport them to Australia).
- (2) This section applies despite any other provision of this Division.

Part 2—Verification powers

Customs Act 1901

2 After Division 4C of Part VI

Insert:

Division 4D—Exportation of goods to New Zealand

126AJA Definitions

In this Division:

manufacture means the creation of an article essentially different from the matters or substances that go into that creation, but does not include the following activities (whether performed alone or in combination with each other):

- (a) restoration or renovation processes such as repairing, reconditioning, overhauling or refurbishing;
- (b) minimal operations of pressing, labelling, ticketing, packaging and preparation for sale, whether conducted alone or in combination with each other;
- (c) quality control inspections.

New Zealand customs official means a person representing the customs administration of New Zealand.

principal manufacturer of goods means the person in Australia who performs, or has had performed on the person's behalf, the last process of manufacture of the goods.

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

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

On whom obligations may be imposed

- (2) Regulations made for the purposes of subsection (1) may impose such obligations on the exporter, the principal manufacturer or a producer of the goods.

126AJC 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 126AJB 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 New Zealand customs official

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

126AJD Power to ask questions

Power to ask questions

- (1) An authorised officer may require a person who is the exporter, the principal manufacturer or a producer of goods that:
 - (a) are exported to New Zealand; and

(b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in New Zealand; 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 New Zealand customs official

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

Part 3—Other amendments

Customs Act 1901

3 Subsection 153A(3)

Repeal the subsection.

4 Section 153B (paragraph (a) of the definition of *qualifying area*)

Repeal the paragraph.

5 Subsection 153D(6)

Repeal the subsection.

6 Sections 153J and 153K

Repeal the sections.

7 Section 153T

Repeal the section.

8 Section 269TAAA

Repeal the section, substitute:

269TAAA Anti-dumping measures not to apply to New Zealand originating goods

This Part, so far as it relates to duty that may become payable under section 8 or 9 of the Dumping Duty Act, does not apply to goods that are New Zealand originating goods under Division 1E of Part VIII of this Act.

9 Schedule VII

Repeal the Schedule.

Customs Tariff Act 1995

10 Subsection 3(1) (paragraph (a) of the definition of Preference Country)

Repeal the paragraph.

11 After section 13B

Insert:

13C When goods are New Zealand originating goods

For the purposes of this Act, goods are New Zealand originating goods if, and only if, they are New Zealand originating goods under Division 1E of Part VIII of the *Customs Act 1901*.

12 After subparagraph 16(1)(a)(iii)

Insert:

and (iv) are not New Zealand originating goods;

13 Paragraph 16(1)(b)

Omit “the produce or manufacture of New Zealand”, substitute “New Zealand originating goods”.

14 After subparagraph 18(2)(a)(iii)

Insert:

and (iv) are not New Zealand originating goods;

15 Paragraph 18(2)(b)

Omit “the produce or manufacture of New Zealand”, substitute “New Zealand originating goods”.

Customs Tariff (Anti-Dumping) Act 1975

16 Subsection 8(1)

Repeal the subsection, substitute:

- (1) This section does not apply to goods that are New Zealand originating goods under Division 1E of Part VIII of the *Customs Act 1901*.

17 Subsection 9(1)

Repeal the subsection, substitute:

- (1) This section does not apply to goods that are New Zealand originating goods under Division 1E of Part VIII of the *Customs Act 1901*.

Legislative Instruments Act 2003

18 Subsection 44(2) (table item 10)

Omit “paragraph 153J(1)(c), 153L(1)(c), 153P(2)(c) or 153Q(1)(c)”, substitute “paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2)”.

19 Subsection 44(2) (table item 11)

Repeal the item.

20 Subsection 54(2) (table item 12)

Omit “paragraph 153J(1)(c), 153L(1)(c), 153P(2)(c) or 153Q(1)(c)”, substitute “paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2)”.

21 Subsection 54(2) (table item 13)

Repeal the item.

Part 4—Application and transitional provisions

22 Application

- (1) The amendments made by items 1 and 3 to 17 apply in relation to goods imported into Australia on or after 1 January 2007.
- (2) The amendment made by item 2 applies in relation to goods exported to New Zealand on or after 1 January 2007 (whether the goods were produced or manufactured before, on or after that day).
- (3) The repeal of Subdivision G of Division 1E of Part VIII of the *Customs Act 1901* on 1 January 2012 applies in relation to:
 - (a) goods imported into Australia on or after 1 January 2012; and
 - (b) goods imported into Australia before 1 January 2012, where the time for working out the rate of import duty on the goods had not occurred before 1 January 2012.

23 Transitional—manufactured raw materials

Despite the repeal of section 153J of the *Customs Act 1901* made by this Schedule, a determination in force under paragraph 153J(1)(c) of that Act immediately before the commencement of this item continues in force after that commencement as if it were a determination made under subsection 153ZIH(2) of that Act.

*[Minister's second reading speech made in—
House of Representatives on 1 November 2006
Senate on 29 November 2006]*

(152/06)