



Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018

No. 112, 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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Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018

No. 112, 2018

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

[Assented to 25 September 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018*.

No. 112, 2018

Customs Amendment (Pacific Agreement on Closer Economic Relations Plus Implementation) Act 2018

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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.	25 September 2018
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa, Tonga on 14 June 2017, 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.	

Note: This table relates only to the provisions of this Act as originally enacted.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

- (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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Pacific Islands originating goods

Customs Act 1901

1 Subparagraph 105B(3)(b)(ii)

After “8,”, insert “8A,”.

2 Subsection 105B(4) (paragraph (b) of the definition of *biofuel blend*)

After “8,”, insert “8A,”.

3 After Division 1G of Part VIII

Insert:

Division 1GA—Pacific Islands originating goods

Subdivision A—Preliminary

153ZKK Simplified outline of this Division

- This Division defines Pacific Islands originating goods. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to such goods that are imported into Australia.
- Subdivision B provides that goods are Pacific Islands originating goods if they are wholly obtained or produced in a Party.
- Subdivision C provides that goods are Pacific Islands originating goods if they are produced entirely in one or more of the Parties, by one or more producers, from originating materials only.
- Subdivision D sets out when goods are Pacific Islands originating goods because they are produced entirely in one or more of the Parties, by one or more producers, from

non-originating materials only or from non-originating materials and originating materials.

- Subdivision E sets out when goods are Pacific Islands 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 Pacific Islands originating goods.
- Subdivision G allows regulations to make provision for and in relation to determining whether goods are Pacific Islands originating goods.

153ZKL Interpretation

Definitions

(1) In this Division:

Agreement means the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa, Tonga on 14 June 2017, as amended and in force for Australia from time to time.

Note: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

aquaculture has the meaning given by Article 1 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.

Declaration of Origin means a declaration that is in force and that complies with the requirements of Article 15 of Chapter 3 of the Agreement.

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-B to Chapter 3 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.

in a Party has the same meaning as it has in Chapter 3 of the Agreement.

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) indirect materials.

Pacific Islands originating goods means goods that, under this Division, are Pacific Islands originating goods.

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

Note: See also subsection (6).

person of a Party has the same meaning as it has in Chapter 3 of the Agreement.

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

production has the meaning given by Article 1 of Chapter 3 of 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 in a Party

153ZKM Goods wholly obtained or produced in a Party

- (1) Goods are *Pacific Islands originating goods* if:
- (a) they are wholly obtained or produced in a Party; and
 - (b) either:
 - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.
- (2) Goods are *wholly obtained or produced in a Party* if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in a Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
 - (b) live animals born and raised in one or more of the Parties; or
 - (c) goods obtained from live animals in a Party; or
 - (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or
 - (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or beneath the seabed in a Party; or

- (f) goods of sea-fishing, or other marine goods, taken from the high seas, in accordance with international law, by any vessel that is registered or recorded with a Party and is entitled to fly the flag of that Party; or
- (g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered or recorded with a Party and is entitled to fly the flag of that Party; or
- (h) goods taken by a Party, or a person of a Party, from the seabed, or beneath the seabed, beyond the outer limits of:
 - (i) the exclusive economic zone of that Party; and
 - (ii) the continental shelf of that Party; and
 - (iii) an area over which a third party exercises jurisdiction; and taken under exploitation rights granted in accordance with international law; or
- (i) either of the following:
 - (i) waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials;
 - (ii) used goods that are collected in a Party and that are fit only for the recovery of raw materials; or
- (j) goods produced or obtained in a Party solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced from originating materials

153ZKN Goods produced from originating materials

Goods are *Pacific Islands originating goods* if:

- (a) they are produced entirely in one or more of the Parties, by one or more producers, from originating materials only; and
- (b) either:
 - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.

Subdivision D—Goods produced from non-originating materials

153ZKO Goods produced from non-originating materials

- (1) Goods are *Pacific Islands 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-B to Chapter 3 of the Agreement; and
 - (b) they are produced entirely in the territory of one or more of the Parties, by one or more producers, 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 Declaration of Origin, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-B to Chapter 3 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

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.
- (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) 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 (b) does not exceed 10% of the customs value of the goods.

(5) 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 classified to any of Chapters 50 to 63 of the Harmonized System; 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 weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

Regional value content

- (6) 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.

(7) 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 not invoiced separately from the goods; and
- (d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
- (e) the accessories, spare parts, tools or instructional or other information materials are non-originating materials;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.

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 153ZKL(2).

- (8) For the purposes of subsection (7), disregard section 153ZKQ in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.
- (9) If the goods are claimed to be Pacific Islands originating goods on the basis that the goods have a regional value content of not less than a particular percentage worked out in a particular way, the following are to be disregarded in determining whether the goods are Pacific Islands originating goods:
 - (a) operations to preserve the goods in good condition for the purpose of transport or storage of the goods;
 - (b) operations or processes to facilitate the shipment or transportation of the goods;
 - (c) packaging or presenting the goods for sale;
 - (d) affixing of marks, labels or other distinguishing signs on the goods or on their packaging;
 - (e) disassembly of the goods;
 - (f) any combination of things referred to in paragraphs (a) to (e).

153ZKP 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) 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 packaging material or container is a non-originating material;

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.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKL(2).

Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information materials

153ZKQ Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are *Pacific Islands 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 Pacific Islands originating goods; and

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

Subdivision F—Consignment

153ZKR Consignment

- (1) Goods are not Pacific Islands originating goods under this Division if the goods are transported through a non-party and the goods undergo subsequent production or any other operation in the territory of a non-party other than:
 - (a) unloading, reloading, storing, repacking, relabelling or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia; or
 - (b) showing the goods in, or utilising the goods at, an exhibition.
- (2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZKS Regulations

The regulations may make provision for and in relation to determining whether goods are Pacific Islands originating goods under this Division.

Part 2—Verification powers

Customs Act 1901

4 After Division 4E of Part VI

Insert:

Division 4EA—Exportation of goods to Parties to the Pacific Agreement on Closer Economic Relations Plus

126AKE Definitions

In this Division:

Agreement means the Pacific Agreement on Closer Economic Relations Plus, done at Nuku'alofa, Tonga on 14 June 2017, as amended and in force for Australia from time to time.

Note: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

Customs Administration has the meaning given by Article 2 of Chapter 1 of the Agreement.

Pacific Islands customs official, for a Party, means a person representing the Customs Administration of that Party.

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

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

production has the meaning given by Article 1 of Chapter 3 of the Agreement.

126AKF 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 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.

126AKG 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 126AKF 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 Pacific Islands 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 Pacific Islands customs official for that Party.

126AKH 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 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 Pacific Islands 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 Pacific Islands 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 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 16 August 2018
Senate on 23 August 2018]*

(152/18)
