



# **Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019**

**No. 108, 2019**

**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 (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019

No. 108, 2019

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

[Assented to 3 December 2019]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019*.

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No. 108, 2019

*Customs Amendment (Growing Australian Export Opportunities Across the Asia-Pacific) Act 2019*

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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.

<b>Commencement information</b>		
<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.	3 December 2019
2. Schedule 1	<p>The later of:</p> <p>(a) the day this Act receives the Royal Assent; and</p> <p>(b) the day the Peru-Australia Free Trade Agreement, done at Canberra on 12 February 2018, enters into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable instrument, the day the Agreement enters into force for Australia.</p>	
3. Schedule 2	<p>The later of:</p> <p>(a) the day this Act receives the Royal Assent; and</p> <p>(b) the day the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019, enters into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable</p>	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	instrument, the day the Agreement enters into force for Australia.	
4. Schedule 3	<p>The later of:</p> <p>(a) the day this Act receives the Royal Assent; and</p> <p>(b) the day the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, enters into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable instrument, the day the Agreement enters into force for Australia.</p>	

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

## Schedule 1—Peru

### Part 1—Peruvian originating goods

#### *Customs Act 1901*

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

After “6,” insert “6A.”

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

After “6,” insert “6A.”

##### **3 After Division 1E of Part VIII**

Insert:

### **Division 1EA—Peruvian originating goods**

#### **Subdivision A—Preliminary**

##### **153ZIL Simplified outline of this Division**

- This Division defines Peruvian 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 Peruvian originating goods if they are wholly obtained or produced entirely in Peru or in Peru and Australia.
- Subdivision C provides that goods are Peruvian originating goods if they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from originating materials only.
- Subdivision D sets out when goods are Peruvian originating goods because they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of



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

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

## **153ZIM Interpretation**

### *Definitions*

(1) In this Division:

**Agreement** means the Peru-Australia Free Trade Agreement, done at Canberra on 12 February 2018, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**aquaculture** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**Australian originating goods** means goods that are Australian originating goods under a law of Peru that implements the Agreement.

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 3.17 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.

## Schedule 1 Peru

### Part 1 Peruvian originating goods

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Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 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.

*enterprise* has the meaning given by Article 1.3 of Chapter 1 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 on 1 January 2017; or
- (b) if the table in Annex 3-B 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.

*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) catalysts and solvents; and
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (f) tools, dies and moulds; and
- (g) spare parts and materials; and
- (h) lubricants, greases, compounding materials and other similar goods.

*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.

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***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) Peruvian 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.

***person of Peru*** means:

- (a) a national within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement; or
- (b) an enterprise of Peru.

***Peruvian originating goods*** means goods that, under this Division, are Peruvian originating goods.

***production*** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

***territory of Australia*** means territory within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

***territory of Peru*** means territory within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 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.

**Subdivision B—Goods wholly obtained or produced entirely in Peru or in Peru and Australia**

**153ZIN Goods wholly obtained or produced entirely in Peru or in Peru and Australia**

- (1) Goods are *Peruvian originating goods* if:
- (a) they are wholly obtained or produced entirely in Peru or in Peru and Australia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are *wholly obtained or produced entirely in Peru or in Peru and Australia* if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the territory of Peru or in the territory of Peru and the territory of Australia; or
  - (b) live animals born and raised in the territory of Peru or in the territory of Peru and the territory of Australia; or
  - (c) goods obtained from live animals in the territory of Peru; or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of Peru; or
  - (e) goods obtained from aquaculture conducted in the territory of Peru; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the territory of Peru; or

- (g) fish, shellfish, other goods of sea-fishing or other marine life taken from the sea, seabed or subsoil beneath the seabed:
  - (i) outside the territory of Peru and the territory of Australia; and
  - (ii) in accordance with international law, outside the territorial sea of non-Parties;by vessels that are registered or recorded with Peru and are entitled to fly the flag of Peru; or
- (h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered or recorded with Peru and is entitled to fly the flag of Peru; or
- (i) goods (except fish, shellfish, other goods of sea-fishing or other marine life) taken by Peru, or a person of Peru, from the seabed, or subsoil beneath the seabed, outside the territory of Peru and the territory of Australia, and beyond areas over which non-Parties exercise jurisdiction, but only if Peru, or the person of Peru, has the right to exploit that seabed or subsoil in accordance with international law; or
- (j) waste or scrap that:
  - (i) has been derived from production in the territory of Peru and that is fit only for the recovery of raw materials; or
  - (ii) has been derived from used goods that are collected in the territory of Peru and that are fit only for the recovery of raw materials; or
- (k) goods produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

**Subdivision C—Goods produced in Peru, or in Peru and Australia, from originating materials**

**153ZIO Goods produced in Peru, or in Peru and Australia, from originating materials**

Goods are *Peruvian originating goods* if:

**Schedule 1** Peru

**Part 1** Peruvian originating goods

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

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

**153ZIP Goods produced in Peru, or in Peru and Australia, from non-originating materials**

- (1) Goods are *Peruvian 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 of the Agreement; and
  - (b) they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, 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 Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

Note: Subsection (9) sets out a limitation for goods that are put up in a set for retail sale.

- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3-B 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 worked out in a particular way:

**Schedule 1** Peru

**Part 1** Peruvian originating goods

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- (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 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 classified with, delivered with and not invoiced separately from the goods; and
  - (d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;
- the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

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 153ZIM(2).

- (8) For the purposes of subsection (7), disregard section 153ZIR in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

*Goods put up in a set for retail sale*

- (9) If:
- (a) goods are put up in a set for retail sale; and
  - (b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;
-



the goods are Peruvian originating goods under this section only if:

- (c) all of the goods in the set, when considered separately, are Peruvian originating goods; or
- (d) the total customs value of the goods (if any) in the set that are not Peruvian originating goods does not exceed 20% of the customs value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

### **153ZIQ 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 requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way, 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 (whether the packaging material or container is an originating material or non-originating material).

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

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

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

Goods are *Peruvian 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 Peruvian originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- (e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

**Subdivision F—Consignment**

**153ZIS Consignment**

- (1) Goods are not Peruvian originating goods under this Division if the goods are transported through the territory of one or more non-Parties and either or both of the following apply:
  - (a) the goods undergo subsequent production or any other operation in the territory of a non-Party (other than unloading, reloading, storing, separation from a bulk shipment, labelling or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);
  - (b) while the goods are in the territory of a non-Party, the goods do not remain under customs control at all times.
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Regulations**

### **153ZIT Regulations**

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

## Part 2—Verification powers

### *Customs Act 1901*

#### 4 After Division 4D of Part VI

Insert:

### Division 4DA—Exportation of goods to Peru

#### 126AJE Definitions

In this Division:

*Agreement* means the Peru-Australia Free Trade Agreement, done at Canberra on 12 February 2018, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

*Peruvian customs official* means a person representing the customs administration of Peru.

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

*production* has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

*territory of Peru* means territory within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement.

#### 126AJF 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 the territory of Peru; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Peru.

*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.

**126AJG 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 126AJF 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 Peruvian customs official*

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

**126AJH 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 the territory of Peru; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Peru;

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 Peruvian customs official*

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

## **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 the territory of Peru on or after the commencement of that Part (whether the goods were produced before, on or after that commencement).

## Schedule 2—Indonesia

### Part 1—Indonesian originating goods

#### *Customs Act 1901*

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

After “9,” insert “9A.”

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

After “9,” insert “9A.”

##### 3 After Division 1H of Part VIII

Insert:

### Division 1HA—Indonesian originating goods

#### Subdivision A—Preliminary

##### 153ZLJ Simplified outline of this Division

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



territory of Australia, from non-originating materials only or from non-originating materials and originating materials.

- Subdivision E deals with how the consignment or exhibition of goods affects whether the goods are Indonesian originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Indonesian originating goods.

## **153ZLK Interpretation**

### *Definitions*

(1) In this Division:

***Agreement*** means the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***aquaculture*** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

***Australian originating goods*** means goods that are Australian originating goods under a law of Indonesia that implements the Agreement.

***Certificate of Origin*** means a certificate that is in force and that complies with the requirements of Article 4.20 of Chapter 4 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 2019 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 4.20 of Chapter 4 of the Agreement.

***enterprise*** has the meaning given by Article 1.4 of Chapter 1 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 on 1 January 2017; or
- (b) if the table in Annex 4-C 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.

***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 or operation of equipment or buildings 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.

***Indonesian originating goods*** means goods that, under this Division, are Indonesian originating goods.

**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 4 of the Agreement.

**originating materials** means:

- (a) Indonesian 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.

**person of Indonesia** means:

- (a) a natural person of a Party within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 of the Agreement; or
- (b) an enterprise of Indonesia.

**production** has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

**sea-fishing** has the same meaning as it has in Chapter 4 of the Agreement.

**territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.4 of Chapter 1 of the Agreement.

**territory of Indonesia** means territory within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 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 prescribing 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.

**Subdivision B—Goods wholly obtained or produced in Indonesia**

**153ZLL Goods wholly obtained or produced in Indonesia**

- (1) Goods are *Indonesian originating goods* if:
  - (a) they are wholly obtained or produced in Indonesia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.
- (2) Goods are *wholly obtained or produced in Indonesia* if, and only if, the goods are:
  - (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in the territory of Indonesia (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
  - (b) live animals born and raised in the territory of Indonesia; or
  - (c) goods obtained from live animals in the territory of Indonesia; or

- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing conducted in the territory of Indonesia; or
- (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or beneath the seabed in the territory of Indonesia; 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 Indonesia and is entitled to fly the flag of Indonesia; or
- (g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered or recorded with Indonesia and is entitled to fly the flag of Indonesia; or
- (h) goods taken by Indonesia, or a person of Indonesia, from the seabed, or beneath the seabed, outside:
  - (i) the exclusive economic zone of Indonesia; and
  - (ii) the continental shelf of Indonesia; and
  - (iii) an area over which a non-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 the territory of Indonesia and that is fit only for the recovery of raw materials;
  - (ii) used goods that are collected in the territory of Indonesia and that are fit only for the recovery of raw materials; or
- (j) goods obtained or produced in the territory of Indonesia solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

**Subdivision C—Goods produced in Indonesia from originating materials**

**153ZLM Goods produced in Indonesia from originating materials**

Goods are *Indonesian originating goods* if:

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

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

**153ZLN Goods produced in Indonesia, or in Indonesia and Australia, from non-originating materials**

- (1) Goods are *Indonesian 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 4-C of the Agreement; and
  - (b) they are produced entirely in the territory of Indonesia, or entirely in the territory of Indonesia and the territory of Australia, 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 Certificate of Origin or a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin or a Declaration of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 4-C 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.

*Qualifying value content*

(6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

- (a) the qualifying 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 qualifying value content of the goods—the qualifying 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 qualifying 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 accessories, spare parts, tools or instructional or other information materials are included in the price of the goods; and
  - (e) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;
- the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).
- 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 153ZLK(2).
- (8) If the goods are claimed to be Indonesian originating goods on the basis that the goods have a qualifying 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 Indonesian originating goods:
- (a) operations or processes to preserve the goods in good condition for the purpose of transport or storage of the goods;
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- (b) operations or processes to facilitate the shipment or transportation of the goods;
- (c) packaging or presenting the goods for transportation or sale;
- (d) simple processes of sifting, classifying, washing or other similar simple processes;
- (e) affixing of marks, labels or other distinguishing signs on the goods or on their packaging;
- (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
- (g) any combination of things referred to in paragraphs (a) to (f).

### **153ZLO 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.

#### *Qualifying value content*

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, 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 qualifying value content of the goods (whether the packaging material or container is an originating material or non-originating material).

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

## **Subdivision E—Consignment and exhibition**

### **153ZLP Consignment**

- (1) Goods are not Indonesian originating goods under this Division if the goods are transported through a non-party, the goods are not exhibited in the non-party and one or more of the following apply:
  - (a) the goods undergo any operation in the non-party (other than unloading, reloading, unpacking and repacking, labelling or any other operation that is necessary to preserve the goods in good condition);
  - (b) the goods enter the commerce of the non-party;
  - (c) the transport through that non-party is not justified by geographical, economic or logistical reasons.
- (2) This section applies despite any other provision of this Division.

### **153ZLQ Exhibition**

- (1) Goods are not Indonesian originating goods under this Division if:
  - (a) the goods are imported into Australia after being exhibited in a non-party; and
  - (b) one or more of subparagraphs (a), (b), (c), (d) and (e) of paragraph 1 of Article 4.16 of Chapter 4 of the Agreement are not satisfied.
- (2) This section applies despite any other provision of this Division.

## **Subdivision F—Regulations**

### **153ZLR Regulations**

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

## **Part 2—Verification powers**

### *Customs Act 1901*

#### **4 After Division 4F of Part VI**

Insert:

### **Division 4FA—Exportation of goods to Indonesia**

#### **126ALE Definitions**

In this Division:

*Agreement* means the Indonesia-Australia Comprehensive Economic Partnership Agreement, done at Jakarta on 4 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

*Indonesian customs official* means a person representing the customs administration of Indonesia.

*territory of Indonesia* means territory within the meaning, so far as it relates to Indonesia, of Article 1.4 of Chapter 1 of the Agreement.

#### **126ALF 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 the territory of Indonesia; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Indonesia.

*On whom obligations may be imposed*

- (2) Regulations for the purposes of subsection (1) may impose such obligations on an exporter of goods.

**126ALG 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 126ALF 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 Indonesian customs official*

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

**126ALH Power to ask questions**

*Power to ask questions*

- (1) An authorised officer may require a person who is an exporter of goods that:
- (a) are exported to the territory of Indonesia; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of Indonesia;

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 Indonesian customs official*

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

## 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 the territory of Indonesia on or after the commencement of that Part (whether the goods were produced before, on or after that commencement).

## **Schedule 3—Hong Kong, China**

### **Part 1—Hong Kong originating goods**

#### *Customs Act 1901*

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

Omit “or 12”, substitute “, 12 or 13”.

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

Omit “or 12”, substitute “, 12 or 13”.

##### **3 After Division 1L of Part VIII**

Insert:

### **Division 1M—Hong Kong originating goods**

#### **Subdivision A—Preliminary**

##### **153ZPA Simplified outline of this Division**

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

Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from non-originating materials only or from non-originating materials and originating materials.

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

### **153ZPB Interpretation**

#### *Definitions*

(1) In this Division:

***Agreement*** means the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

***aquaculture*** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

***Area of Australia*** means Area within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

***Area of Hong Kong, China*** means Area within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement, as affected by the following letters related to the geographical application of the Agreement for Hong Kong, China:

- (a) a letter to the Minister for Trade, Tourism, and Investment from the Secretary for Commerce and Economic



Development, Hong Kong Special Administrative Region,  
The People's Republic of China dated 26 March 2019;

- (b) a letter to that Secretary from that Minister dated 26 March 2019.

Note: The letters could in 2019 be viewed on the website of the Department of Foreign Affairs and Trade.

***Australian originating goods*** means goods that are Australian originating goods under a law of Hong Kong, China that implements 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 2019 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 3.16 of Chapter 3 of the Agreement.

***enterprise*** has the meaning given by Article 1.3 of Chapter 1 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 on 1 January 2017; or
- (b) if the table in Annex 3-B 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.

***Hong Kong originating goods*** means goods that, under this Division, are Hong Kong originating goods.

***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 or operation of equipment or buildings associated with the production of goods;

including:

- (c) fuel (within its ordinary meaning); and
- (d) catalysts and solvents; and
- (e) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (f) tools, dies and moulds; and
- (g) spare parts and materials; and
- (h) lubricants, greases, compounding materials and other similar goods.

***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) Hong Kong 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.

***person of Hong Kong, China*** means:

- (a) a natural person of a Party within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement; or
- (b) an enterprise of Hong Kong, China.

**production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

**sea-fishing** has the same meaning as it has in 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 prescribing 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.

**Subdivision B—Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia**

**153ZPC Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia**

- (1) Goods are **Hong Kong originating goods** if:
- (a) they are wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia; 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 entirely in Hong Kong, China or in Hong Kong, China and Australia*** if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or
  - (b) live animals born and raised in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or
  - (c) goods obtained from live animals in the Area of Hong Kong, China; or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the Area of Hong Kong, China; or
  - (e) goods obtained from aquaculture conducted in the Area of Hong Kong, China; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the Area of Hong Kong, China; or
  - (g) goods of sea-fishing, or other marine goods, taken from the high seas, by any vessel that is entitled to fly the flag of Hong Kong, China; or
  - (h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered, listed or recorded with Hong Kong, China and is entitled to fly the flag of Hong Kong, China; or
  - (i) goods, other than fish, shellfish or other marine life, taken by Hong Kong, China, or a person of Hong Kong, China, from the seabed, or subsoil beneath the seabed, outside the Area of Hong Kong, China and the Area of Australia, and beyond territories over which non-Parties exercise jurisdiction, but only if Hong Kong, China, or the person of Hong Kong, China, has the right to exploit that seabed or subsoil in accordance with international law; or
  - (j) waste or scrap that:

- (i) has been derived from production or consumption in the Area of Hong Kong, China and that is fit only for the recovery of raw materials; or
- (ii) has been derived from used goods that are collected in the Area of Hong Kong, China and that are fit only for the recovery of raw materials; or
- (k) goods produced in the Area of Hong Kong, China, or in the Area of Hong Kong, China and the Area of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

**Subdivision C—Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials**

**153ZPD Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials**

Goods are *Hong Kong originating goods* if:

- (a) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, 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 in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials**

**153ZPE Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials**

- (1) Goods are *Hong Kong originating goods* if:

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- (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-B of the Agreement; and
  - (b) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, 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 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 classified with, delivered with and not invoiced separately from the goods; and

(d) the types, 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 153ZPB(2).

(8) For the purposes of subsection (7), disregard section 153ZPG in working out whether the accessories, spare parts, tools or instructional or other information materials are non-originating materials.

### **153ZPF 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 153ZPB(2).

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

#### **153ZPG Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Hong Kong 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 Hong Kong originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- (e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

### **Subdivision F—Consignment**

#### **153ZPH Consignment**

- (1) Goods are not Hong Kong originating goods under this Division if:
  - (a) the goods are transported through the territory of one or more non-Parties; and
  - (b) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, repacking, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the Area of Australia).
- (2) This section applies despite any other provision of this Division.

## **Subdivision G—Regulations**

### **153ZPI Regulations**

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

## Part 2—Verification powers

### *Customs Act 1901*

#### 4 After Division 4J of Part VI

Insert:

### Division 4K—Exportation of goods to Hong Kong, China

#### 126APA Definitions

In this Division:

**Agreement** means the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, as amended from time to time.

Note: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**Area of Hong Kong, China** means Area within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement, as affected by the following letters related to the geographical application of the Agreement for Hong Kong, China:

- (a) a letter to the Minister for Trade, Tourism, and Investment from the Secretary for Commerce and Economic Development, Hong Kong Special Administrative Region, The People's Republic of China dated 26 March 2019;
- (b) a letter to that Secretary from that Minister dated 26 March 2019.

Note: The letters could in 2019 be viewed on the website of the Department of Foreign Affairs and Trade.

**Hong Kong, China customs official** means a person representing the customs administration of Hong Kong, China.

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

**production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

### **126APB 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 the Area of Hong Kong, China; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the Area of Hong Kong, China.

*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.

### **126APC 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 126APB 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 Hong Kong, China customs official*

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

### **126APD 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:
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- (a) are exported to the Area of Hong Kong, China; and
- (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the Area of Hong Kong, China;

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 Hong Kong, China customs official*

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

## 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 the Area of Hong Kong, China on or after the commencement of that Part (whether the goods were produced before, on or after that commencement).

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*[Minister's second reading speech made in—  
House of Representatives on 16 October 2019  
Senate on 11 November 2019]*

(194/19)

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