





**Customs Amendment  
(Malaysia-Australia Free Trade  
Agreement Implementation and Other  
Measures) Act 2012**

**No. 172, 2012**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## Contents

1	Short title .....	2
2	Commencement .....	2
3	Schedule(s) .....	3
<b>Schedule 1—Main amendments</b>		4
Part 1—Malaysian originating goods		4
<i>Customs Act 1901</i>		4
Part 2—Verification powers		14
<i>Customs Act 1901</i>		14
Part 3—Application provisions		16
<b>Schedule 2—Other amendments</b>		17
<i>Customs Act 1901</i>		17
<i>Customs Amendment (New Zealand Rules of Origin) Act 2012</i>		17





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**No. 172, 2012**

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

*[Assented to 4 December 2012]*

The Parliament of Australia enacts:

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*Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other  
Measures) Act 2012 No. 172, 2012*

## 1 Short title

This Act may be cited as the *Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012*.

## 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.

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2012
2. Schedule 1	The later of: (a) 1 January 2013; and (b) the day the Malaysia-Australia Free Trade Agreement, done at Kuala Lumpur on 22 May 2012, enters into force for Australia.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.  The Minister must announce by notice in the <i>Gazette</i> the day the Agreement enters into force for Australia.	
3. Schedule 2, item 1	The day this Act receives the Royal Assent.	4 December 2012
4. Schedule 2, items 2 to 5	Immediately after the time specified in the <i>Customs Amendment (New Zealand Rules of Origin) Act 2012</i> for the commencement of Schedule 1 to that Act.	30 April 2012

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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 Schedule(s)**

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

## Schedule 1—Main amendments

### Part 1—Malaysian originating goods

#### *Customs Act 1901*

#### 1 After Division 1G of Part VIII

Insert:

#### Division 1H—Malaysian originating goods

#### Subdivision A—Preliminary

#### 153ZLA Simplified outline

The following is a simplified outline of this Division:

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

## 153ZLB Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the Malaysia-Australia Free Trade Agreement, done at Kuala Lumpur on 22 May 2012, as amended from time to time.

Note: In 2012, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

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

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

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Articles 3.15 and 3.16, and Rule 7 of the Annex to 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 text of the Convention is set out in Australian Treaty Series 1988 No. 30 ([1988] ATS 30). In 2012, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](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 3.15, and Rule 7 of the Annex to Chapter 3, of the Agreement.

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

***indirect materials*** means:

- (a) goods or energy used 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.

***juridical person*** has the meaning given by Article 1.2 of the Agreement.

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

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

***originating materials*** means:

- (a) Malaysian 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 Malaysia*** means:

- (a) a natural person of a Party within the meaning, so far as it relates to Malaysia, of Article 1.2 of the Agreement; or
- (b) a juridical person of Malaysia.

***planted*** has the meaning given by Article 3.1 of the Agreement.

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

***territory of Australia*** means territory within the meaning, so far as it relates to Australia, of Article 1.2 of the Agreement.

***territory of Malaysia*** means territory within the meaning, so far as it relates to Malaysia, of Article 1.2 of the Agreement.

*Regional value content of goods*

- (2) The ***regional value content*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

*Value of goods*

- (3) The ***value*** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

*Tariff classifications*

- (4) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (5) Subsection 4(3A) does not apply for the purposes of this Division.

*Incorporation of other instruments*

- (6) Despite subsection 14(2) of the *Legislative Instruments 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 Malaysia or in Malaysia and Australia**

**153ZLC Goods wholly obtained or produced in Malaysia or in Malaysia and Australia**

- (1) Goods are *Malaysian originating goods* if:
  - (a) they are wholly obtained or produced in Malaysia or in Malaysia and Australia; and
  - (b) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods.
  
- (2) Goods are *wholly obtained or produced in Malaysia or in Malaysia and Australia* if, and only if, the goods are:
  - (a) minerals, or other naturally occurring substances, extracted or taken in the territory of Malaysia; or
  - (b) plants formed, naturally grown or planted in the territory of Malaysia or in the territory of Malaysia and the territory of Australia, or products obtained in the territory of Malaysia from such plants; or
  - (c) live animals born and raised in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia; or
  - (d) goods obtained from live animals in the territory of Malaysia; or
  - (e) goods obtained directly from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Malaysia; or
  - (f) fish, shellfish or plant or other marine life taken from the high seas by ships that are registered in Malaysia and are flying the flag of Malaysia; or
  - (g) goods obtained or produced from goods referred to in paragraph (f) on board factory ships that are registered in Malaysia and are flying the flag of Malaysia; or
  - (h) goods taken by Malaysia, or a person of Malaysia, from the seabed, or beneath the seabed, outside:
    - (i) the exclusive economic zone of Malaysia; and
    - (ii) the continental shelf of Malaysia; and
    - (iii) an area over which a third party exercises jurisdiction;

and taken under exploitation rights granted in accordance with international law; or

- (i) waste and scrap that has been derived from production or consumption in the territory of Malaysia and that is fit only for the recovery of raw materials; or
- (j) used goods that are collected in the territory of Malaysia and that are fit only for the recovery of raw materials; or
- (k) goods produced or obtained entirely in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

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

**153ZLD Goods produced in Malaysia, or in Malaysia and Australia, from originating materials**

Goods are *Malaysian originating goods* if:

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

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

**153ZLE Goods produced in Malaysia, or in Malaysia and Australia, from non-originating materials**

- (1) Goods are *Malaysian originating goods* if:
  - (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (Malaysian Rules of Origin) Regulation 2012*; and
  - (b) they are produced entirely in the territory of Malaysia, or entirely in the territory of Malaysia and the territory of

- Australia, from non-originating materials only or from non-originating materials and originating materials; and
- (c) each requirement that is prescribed by the regulations to apply in relation to the goods is satisfied; and
  - (d) the importer of the goods has, at the time the goods are imported, a Declaration of Origin or a Certificate of Origin, or a copy of one, for the goods.

*Change in tariff classification*

- (2) The regulations may prescribe that each non-originating material used in the production of the goods is required to satisfy a prescribed change in tariff classification.
- (3) The regulations may also 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) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

(5) If:

- (a) the requirement referred to in subsection (2) applies in relation to the goods; 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 referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

*Regional value content*

- (6) The regulations may prescribe that the goods are required to have a regional value content of at least a prescribed percentage.
- (7) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; and
  - (b) the goods are imported into Australia with 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;

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

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZLB(3).

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

*No limit on regulations*

- (9) Subsections (2) and (6) do not limit paragraph (1)(c).

**153ZLF 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 the goods are required to have a regional value content of at least a particular percentage, the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.
- (3) If the packaging material or container is not customary for the goods, the regulations must require the value of the packaging material or container to be taken into account as non-originating materials 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 153ZLB(3).

**153ZLG Non-qualifying operations**

Goods are not Malaysian originating goods under this Subdivision merely because of the following:

- (a) operations to preserve goods in good condition for the purpose of transport or storage of the goods;
- (b) operations to facilitate the shipment or transportation of goods;
- (c) disassembly of goods;
- (d) affixing of marks, labels or other distinguishing signs on goods or on their packaging;
- (e) placing goods in bottles, cases or boxes or other simple packaging operations;
- (f) changing of packaging or the breaking up or assembly of packages;
- (g) the reclassification of goods without any physical change in the goods;
- (h) any combination of things referred to in paragraphs (a) to (g).

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

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

Goods are *Malaysian 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 Malaysian 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**

**153ZLI Consignment**

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

## Part 2—Verification powers

### *Customs Act 1901*

#### 2 After Division 4E of Part VI

Insert:

### Division 4F—Exportation of goods to Malaysia

#### 126ALA Definitions

In this Division:

*Malaysian customs official* means a person representing the customs administration of Malaysia.

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

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

*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.

## **126ALC 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 126ALB 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 Malaysian customs official*

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

## **126ALD 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 Malaysia; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Malaysia;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 Malaysian customs official*

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

## Part 3—Application provisions

### 3 Application provisions

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

## **Schedule 2—Other amendments**

### *Customs Act 1901*

#### **1 Section 153ZIA**

Omit:

- Subdivision G sets out when goods are New Zealand originating goods because their last process of manufacture is performed in New Zealand. It is repealed on 1 January 2012.
- Subdivision GA provides that goods are not New Zealand originating goods under this Division merely because of certain operations.

substitute:

- Subdivision G provides that goods are not New Zealand originating goods under this Division merely because of certain operations.

### *Customs Amendment (New Zealand Rules of Origin) Act 2012*

#### **2 Item 9 of Schedule 1**

Repeal the item.

#### **3 Item 10 of Schedule 1 (heading)**

Omit “Subdivision G”, substitute “Subdivision F”.

#### **4 Item 10 of Schedule 1**

Omit “Subdivision GA”, substitute “Subdivision G”.

#### **5 Item 10 of Schedule 1**

Omit “153ZIIA”, substitute “153ZIJ”.

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*[Minister's second reading speech made in—  
House of Representatives on 1 November 2012  
Senate on 28 November 2012]*

(199/12)

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*18 Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012 No. 172, 2012*