



Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014

No. 124, 2014

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

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

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Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014

No. 124, 2014

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

[Assented to 4 December 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment
(Japan-Australia Economic Partnership Agreement
Implementation) Act 2014*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 December 2014
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the Japan-Australia Economic Partnership Agreement, done at Canberra on 8 July 2014, enters into force for Australia. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce by notice in the Gazette the day the Agreement enters into force for Australia.	

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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—Amendments

Part 1—Japanese originating goods

Customs Act 1901

1 After Division 1J of Part VIII

Insert:

Division 1K—Japanese originating goods

Subdivision A—Preliminary

153ZNA Simplified outline of this Division

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

153ZNB Interpretation

Definitions

(1) In this Division:

Agreement means the Japan-Australia Economic Partnership Agreement, done at Canberra on 8 July 2014, as amended from time to time.

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

Area of Japan means Area within the meaning, so far as it relates to Japan, of Article 1.2 of the Agreement.

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

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 3.15 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 2014 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 1.2 of the Agreement.

factory ships of Japan means factory ships of the Party within the meaning, so far as it relates to Japan, of Article 3.1 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:

Schedule 1 Amendments

Part 1 Japanese originating goods

- (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.

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.

Japanese originating goods means goods that, under this Division, are Japanese originating goods.

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

originating materials means:

- (a) Japanese 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.

origin certification document means a document that is in force and that complies with the requirements of Article 3.16 of the Agreement.

person of Japan means:

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

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

sea-fishing has the same meaning as it has in the Agreement.

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

vessels of Japan means vessels of the Party within the meaning, so far as it relates to Japan, of Article 3.1 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 in Japan

153ZNC Goods wholly obtained in Japan

- (1) Goods are *Japanese originating goods* if:
 - (a) they are wholly obtained in Japan; and
 - (b) either:
 - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.
- (2) Goods are *wholly obtained in Japan* if, and only if, the goods are:
 - (a) live animals born and raised in the Area of Japan, other than the sea outside the territorial sea of Japan; or
 - (b) animals obtained from hunting, trapping, fishing, gathering or capturing in the Area of Japan, other than the sea outside the territorial sea of Japan; or
 - (c) goods obtained from live animals in the Area of Japan; or
 - (d) plants, fungi or algae harvested, picked or gathered in the Area of Japan; or
 - (e) minerals, or other naturally occurring substances, extracted or taken from the Area of Japan, other than the seabed, or subsoil beneath the seabed, outside the territorial sea of Japan; or
 - (f) goods of sea-fishing, or other goods, taken by vessels of Japan from the sea outside the territorial sea of Japan and the territorial sea of Australia; or
 - (g) goods produced on board factory ships of Japan from goods referred to in paragraph (f); or
 - (h) goods taken by Japan, or a person of Japan, from the seabed, or subsoil beneath the seabed, outside the territorial sea of Japan, but only if Japan has rights to exploit that part of the seabed or subsoil in accordance with international law; or
 - (i) goods that are collected in Japan, that can no longer perform their original purpose, that are not capable of being restored

- or repaired and that are fit only for disposal or for the recovery of raw materials; or
- (j) waste and scrap that has been derived from production or consumption in Japan and that is fit only for disposal or for the recovery of raw materials; or
 - (k) raw materials recovered in Japan from goods that can no longer perform their original purpose and that are not capable of being restored or repaired; or
 - (l) goods produced in the Area of Japan exclusively from goods referred to in paragraphs (a) to (k).

Subdivision C—Goods produced in Japan from originating materials

153ZND Goods produced in Japan from originating materials

Goods are *Japanese originating goods* if:

- (a) they are produced entirely in Japan 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 an origin certification document, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document for the goods.

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

153ZNE Goods produced in Japan, or in Japan and Australia, from non-originating materials

- (1) Goods are *Japanese originating goods* if:
 - (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 of the table in Schedule 1 to the *Customs (Japanese Rules of Origin) Regulation 2014*; and

Schedule 1 Amendments

Part 1 Japanese originating goods

- (b) they are produced entirely in Japan, or entirely in Japan and 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) either:
 - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin or an origin certification document, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a Certificate of Origin or an origin certification document 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 or tools; and
- (c) the accessories, spare parts or tools are not invoiced separately from the goods; and
- (d) the quantities and value of the accessories, spare parts or tools are customary for the goods;

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

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

No limit on regulations

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

153ZNF 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.

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

153ZNG Non-qualifying operations

Goods are not Japanese originating goods under this Subdivision merely because of the following operations or processes:

- (a) operations to preserve goods in good condition for the purpose of transport or storage of the goods (such as drying, freezing and keeping goods in brine);
- (b) changing of packaging or the breaking up or assembly of packages;
- (c) disassembly of goods;
- (d) placing in bottles, cases or boxes or other simple packaging operations;
- (e) collecting of parts or components for unassembled goods (where the unassembled goods would be classified to a heading of the Harmonized System in accordance with Rule 2(a) of the Interpretation Rules);
- (f) making-up of sets of goods;
- (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—Consignment

153ZNH Consignment

- (1) Goods are not Japanese originating goods under this Division if the goods are transported through a country other than Japan or Australia and either or both of the following apply:
 - (a) the goods undergo subsequent production or any other operation in that country (other than repacking, relabelling, splitting up of the goods, unloading, reloading, storing or any operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);
 - (b) the goods do not remain under customs control at all times while the goods are in that country.
- (2) This section applies despite any other provision of this Division.

Part 2—Verification powers

Customs Act 1901

2 After Division 4G of Part VI

Insert:

Division 4H—Exportation of goods to Japan

126ANA Definitions

In this Division:

Japanese customs official means a person representing the customs administration of Japan.

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

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

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.

126ANC 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 126ANB 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 Japanese customs official

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

126AND 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 Japan; and
 - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Japan;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 Japanese customs official

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Japan, disclose any answers to such questions to a Japanese 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 Japan on or after the commencement of that item (whether the goods were produced before, on or after that commencement).

*[Minister's second reading speech made in—
House of Representatives on 29 October 2014
Senate on 26 November 2014]*

(234/14)
