Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017

No. 120, 2017

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 (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017

No. 120, 2017

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

[*Assented to 30 October 2017*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Act 2017*.

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2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 October 2017
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the Agreement (the ***Amending Agreement***) to amend the Singapore-Australia Free Trade Agreement and done at Canberra on 13 October 2016 enters into force for Australia. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce, by notifiable instrument, the day the Amending Agreement enters into force for Australia.	
3. Schedule 2	The third anniversary of the day on which the provisions covered by table item 2 commence.	

Note: This table relates only to the provisions of this Act as originally enacted.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

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Main amendments

Part 1—Singaporean originating goods

Customs Act 1901

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

After "the table in Schedule", insert "4A,".

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

After "the table in Schedule", insert "4A,".

3 After Division 1B of Part VIII

Insert:

Division 1BA—Singaporean originating goods

Subdivision A—Preliminary

153XC Simplified outline of this Division

- This Division defines ***Singaporean 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 Singaporean originating goods if they are wholly obtained or produced entirely in Singapore or in Singapore and Australia.
- Subdivision C provides that goods are Singaporean originating goods if they are produced entirely in Singapore, or in Singapore and Australia, from originating materials only.
- Subdivision D sets out when goods are Singaporean originating goods because they are produced entirely in Singapore, or in Singapore and Australia, from

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

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

153XD Interpretation

Definitions

(1) In this Division:

Agreement means the Singapore-Australia Free Trade Agreement done at Singapore on 17 February 2003, as amended from time to time.

Note: The Agreement is in Australian Treaty Series 2003 No. 16 ([2003] ATS 16) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

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

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

certification of origin means a certificate that is in force and that complies with the requirements of Article 18 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.

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Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2017 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 of Chapter 3 of the Agreement.

Harmonized Commodity Description and Coding System means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

Harmonized System means:

(a) the Harmonized Commodity Description and Coding System as in force immediately before 1 January 2017; or

(b) if the table in Annex 2 to 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) 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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national, for Singapore, has the same meaning as it has in Chapter 3 of the Agreement.

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) Singaporean 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) recovered goods derived in the territory of Australia, or in the territory of Singapore, and used in the production of, and incorporated into, remanufactured goods; or

(d) indirect materials.

person of Singapore means:

(a) a national of Singapore; or

(b) an enterprise of Singapore.

production means growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, collecting, breeding, extracting, aquaculture, gathering, manufacturing, processing or assembling.

recovered goods means goods in the form of one or more individual parts that:

(a) have resulted from the disassembly of used goods; and

(b) have been cleaned, inspected, tested or processed as necessary for improvement to sound working condition.

remanufactured goods means goods that:

(a) are classified to any of Chapters 84 to 90, or to heading 94.02, of the Harmonized System; and

(b) are entirely or partially composed of recovered goods; and

(c) have a similar life expectancy to, and perform the same as or similar to, new goods:

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(i) that are so classified; and
(ii) that are not composed of any recovered goods; and
(d) have a factory warranty similar to that applicable to such new goods.

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

territory of Australia means territory within the meaning, so far as it relates to Australia, of Article 2 of Chapter 1 of the Agreement.

territory of Singapore means territory within the meaning, so far as it relates to Singapore, of Article 2 of Chapter 1 of the Agreement.

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 *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.

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

153XE Goods wholly obtained or produced entirely in Singapore or in Singapore and Australia

(1) Goods are ***Singaporean originating goods*** if:
  (a) they are wholly obtained or produced entirely in Singapore or in Singapore and Australia; and
  (b) either:
    (i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or
    (ii) Australia has waived the requirement for a certification of origin for the goods.

(2) Goods are ***wholly obtained or produced entirely in Singapore or in Singapore 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 Singapore or in the territory of Singapore and the territory of Australia; or
  (b) live animals born and raised in the territory of Singapore or in the territory of Singapore and the territory of Australia; or
  (c) goods obtained in the territory of Singapore from live animals referred to in paragraph (b); or
  (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of Singapore; or
  (e) goods obtained from aquaculture conducted in the territory of Singapore; or
  (f) minerals, or other naturally occurring substances, extracted or taken from the territory of Singapore; or
  (g) fish, shellfish or other marine life taken from the high seas by vessels that are entitled to fly the flag of Singapore; or
  (h) goods produced, from goods referred to in paragraph (g), on board factory ships that are registered, listed or recorded with Singapore and are entitled to fly the flag of Singapore; or

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(i) goods, other than fish, shellfish or other marine life, taken by Singapore, or a person of Singapore, from the seabed, or subsoil beneath the seabed, outside the territory of Singapore, and beyond areas over which non-Parties exercise jurisdiction, but only if Singapore, or the person of Singapore, 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 Singapore; or

(ii) has been derived from used goods that are collected in the territory of Singapore and that are fit only for the recovery of raw materials; or

(k) goods produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

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

153XF Goods produced in Singapore, or in Singapore and Australia, from originating materials

Goods are ***Singaporean originating goods*** if:

(a) they are produced entirely in the territory of Singapore, or entirely in the territory of Singapore 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 certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

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

153XG Goods produced in Singapore, or in Singapore and Australia, from non-originating materials

(1) Goods are ***Singaporean originating goods*** if:

(a) they are classified to a Chapter, heading or subheading of the Harmonized System that is specified in the first column of the table in Annex 2 to the Agreement; and

(b) they are produced entirely in the territory of Singapore, or entirely in the territory of Singapore and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and

(c) either:

(i) each requirement that is specified in the third column of that table to apply in relation to the goods is satisfied; or

(ii) without limiting subparagraph (i), if the regulations specify one or more alternative requirements that apply in relation to the goods—those alternative requirements are satisfied; and

(d) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

(2) Without limiting subparagraph (1)(c)(i), a requirement may be specified in the third column of the table in Annex 2 to the Agreement by using an abbreviation that is defined for the purposes of that column.

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

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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.

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(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;

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 153XD(3).

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

153XH 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.

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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 of not less than a particular percentage worked out in a particular way, 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 153XD(3).

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

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

Goods are ***Singaporean 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 Singaporean 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

153XJ Consignment

(1) Goods are not Singaporean originating goods under this Division if:

(a) the goods are transported through the territory of one or more non-Parties; and

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(b) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, 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 territory of Australia).

(2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153XK Regulations

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

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Part 2—Verification powers

Customs Act 1901

4 Before section 126AA

Insert:

126AAA Definitions

In this Division:

Singaporean customs official means a person representing the customs administration of Singapore.

5 Section 126AA

Omit "for which a preferential tariff is to be claimed", substitute "that are to be claimed to be the produce or manufacture of Australia for the purpose of obtaining a preferential tariff in Singapore".

6 Paragraph 126AB(1)(b)

After "Australia", insert ", or are claimed to be Australian originating goods,".

7 Subsection 126AC(2) (heading)

Repeal the heading, substitute:

Disclosing records to Singapore

8 At the end of subsection 126AC(2)

Add "or to a Singaporean customs official".

9 Paragraph 126AD(1)(b)

After "Australia", insert ", or are claimed to be Australian originating goods,".

10 Subsection 126AD(2) (heading)

Repeal the heading, substitute:

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Disclosing answers to Singapore

11 At the end of subsection 126AD(2)

Add “or to a Singaporean customs official”.

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Part 3—Application and saving provisions

12 Application and saving 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 amendments made by Part 2 apply in relation to goods exported to Singapore on or after the commencement of that Part (whether the goods were produced before, on or after that commencement).

(3) The Singapore-Australia Free Trade Agreement, as in force immediately before the commencement of this item, continues to apply on and after that commencement for the purposes of working out if goods are the produce or manufacture of Singapore under Division 1B of Part VIII of the *Customs Act 1901*.

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Schedule 2—Other amendments

Customs Act 1901

1 Subsection 4(1) (note at the end of the definition of *unmanufactured raw products*)

Repeal the note.

2 Section 126AA

Repeal the section.

3 Paragraph 126AB(1)(b)

Omit "to be the produce or manufacture of Australia, or are claimed to be Australian originating goods,", substitute "to be Australian originating goods".

4 Subsection 126AB(2)

Omit ", manufacturer".

5 Subsection 126AC(2)

Omit "to an instrumentality or agency of Singapore or".

6 Subsection 126AD(1)

Omit ", producer or manufacturer", substitute "or producer".

7 Paragraph 126AD(1)(b)

Omit "to be the produce or manufacture of Australia, or are claimed to be Australian originating goods,", substitute "to be Australian originating goods".

8 Subsection 126AD(2)

Omit "to an instrumentality or agency of Singapore or".

9 Division 1B of Part VIII

Repeal the Division.

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10 Application and saving provisions

(1) The amendments made by items 2 to 8 apply in relation to goods exported to Singapore on or after the commencement of those items (whether the goods were produced before, on or after that commencement).

(2) Despite the amendment made by item 9, Division 1B of Part VIII of the *Customs Act 1901*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to goods imported into Australia before that commencement.

(3) Regulations in force for the purposes of Division 4A of Part VI of the *Customs Act 1901* immediately before the commencement of this item continue to apply on and after that commencement in relation to goods exported to Singapore before the commencement of this item.

[*Minister's second reading speech made in—*
House of Representatives on 6 September 2017
Senate on 18 October 2017]

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