



Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021

No. 112, 2021

**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/>)

Contents

| | | |
|--|-------------------|----------|
| 1 | Short title..... | 1 |
| 2 | Commencement..... | 2 |
| 3 | Schedules..... | 2 |
| Schedule 1—Amendments | | 4 |
| Part 1—Regional Comprehensive Economic Partnership (RCEP) originating goods | | 4 |
| <i>Customs Act 1901</i> | | 4 |
| Part 2—Verification powers | | 15 |
| <i>Customs Act 1901</i> | | 15 |
| Part 3—Application provisions | | 18 |



Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021

No. 112, 2021

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

[Assented to 25 October 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021*.

No. 112, 2021 *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* 1

2 Commencement

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

| Commencement information | | |
|---|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 25 October 2021 |
| 2. Schedule 1 | The later of: (a) the day this Act receives the Royal Assent; and (b) the day the Regional Comprehensive Economic Partnership Agreement, done on 15 November 2020, enters into force for Australia. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce, by notifiable instrument, the day the Agreement enters into force for Australia. | |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

2 *Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021* No. 112, 2021

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

No. 112, 2021 Customs Amendment (Regional Comprehensive Economic Partnership Agreement Implementation) Act 2021 3

Schedule 1—Amendments

Part 1—Regional Comprehensive Economic Partnership (RCEP) originating goods

Customs Act 1901

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

Omit “or 13”, substitute “, 13 or 14”.

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

Omit “or 13”, substitute “, 13 or 14”.

3 After Division 1M of Part VIII

Insert:

Division 1N—Regional Comprehensive Economic Partnership (RCEP) originating goods

Subdivision A—Preliminary

153ZQA Simplified outline of this Division

- This Division defines RCEP originating goods (short for Regional Comprehensive Economic Partnership 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 RCEP originating goods if they are wholly obtained or produced in a Party.
- Subdivision C provides that goods are RCEP originating goods if they are produced entirely in a Party from originating materials only.

- Subdivision D sets out when goods are RCEP originating goods because they are produced entirely in a Party 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 RCEP originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are RCEP originating goods.

153ZQB Interpretation

Definitions

(1) In this Division:

Agreement means the Regional Comprehensive Economic Partnership Agreement, done on 15 November 2020, as amended and in force for Australia from time to time.

Note: The Agreement could in 2021 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.

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 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

customs authority has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

customs value of goods has the meaning given by section 159.

factory ship of a Party has the same meaning as it has in 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 3A to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

indirect materials means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

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

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

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

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

originating materials means:

- (a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or
- (b) indirect materials.

Party has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

Note: See also subsection (6).

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

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

Proof of Origin means a document that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of the Agreement.

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

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

vessels of a Party 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 specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

Incorporation of other instruments

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this Division may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

Notification of entry into force of Agreement for a Party

- (6) The Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

Subdivision B—Goods wholly obtained or produced in a Party

153ZQC Goods wholly obtained or produced in a Party

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

- (f) goods of sea-fishing or other marine life taken by vessels of that Party, or other goods taken by that Party or a person of that Party, from the waters, seabed or subsoil beneath the seabed outside the territorial sea of the Parties and non-Parties provided that:
 - (i) for goods of sea-fishing or other marine life taken by vessels of that Party (the **relevant Party**) from the exclusive economic zone of any Party or non-Party—the relevant Party has the rights to exploit that exclusive economic zone in accordance with international law; or
 - (ii) for other goods taken by that Party or a person of that Party—that Party or person has the rights to exploit the waters, seabed or subsoil beneath the seabed in accordance with international law; or
- (g) goods of sea-fishing or other marine life taken by vessels of that Party from the high seas in accordance with international law; or
- (h) goods processed or made on board a factory ship of that Party, exclusively from goods covered by paragraph (f) or (g); or
- (i) either of the following:
 - (i) waste and scrap that has been derived from production or consumption in that Party and that is fit only for disposal, for the recovery of raw materials or for recycling purposes;
 - (ii) used goods that are collected in that Party and that are fit only for disposal, for the recovery of raw materials or for recycling purposes; or
- (j) goods obtained or produced in that Party solely from goods referred to in paragraphs (a) to (i) or from their derivatives.

Subdivision C—Goods produced from originating materials

153ZQD Goods produced from originating materials

Goods are **RCEP originating goods** if:

- (a) they are produced entirely in a Party from originating materials only; and
- (b) either:

- (i) the importer of the goods has, at the time the goods are imported, a Proof of Origin, or a copy of one, for the goods; or
- (ii) Australia has waived the requirement for a Proof of Origin for the goods.

Subdivision D—Goods produced from non-originating materials

153ZQE Goods produced from non-originating materials

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

Change in tariff classification

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

(4) If:

- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
- (b) the goods are classified to any of Chapters 1 to 97 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 value of the non-originating materials covered by paragraph (c) 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.

153ZQF 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 of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:
- (a) 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;
 - (b) the packaging material or container to be taken into account as an originating material or non-originating material, as the case may be.

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

153ZQG Accessories, spare parts, tools or instructional or other information materials

- (1) If:
- (a) goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
 - (b) the accessories, spare parts, tools or instructional or other information materials are presented with, and not invoiced separately from, the goods; and
 - (c) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the accessories, spare parts, tools or instructional or other information materials are 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 of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:
- (a) 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;
 - (b) 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.

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 153ZQB(2).

153ZQH Non-qualifying operations or processes

- (1) Goods are not RCEP originating goods under this Subdivision merely because of the following operations or processes:
- (a) preserving operations to ensure that the goods remain in good condition for the purpose of transport or storage of the goods;
 - (b) packaging or presenting the goods for transportation or sale;
 - (c) simple processes, consisting of sifting, screening, sorting, classifying, sharpening, cutting, slitting, grinding, bending, coiling or uncoiling;
 - (d) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;
 - (e) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
 - (f) disassembly of products into parts;
 - (g) slaughtering (within the meaning of Article 3.6 of Chapter 3 of the Agreement) of animals;
 - (h) simple painting or polishing operations;

Schedule 1 Amendments

Part 1 Regional Comprehensive Economic Partnership (RCEP) originating goods

- (i) simple peeling, stoning or shelling;
 - (j) simple mixing of goods, whether or not of different kinds;
 - (k) any combination of things referred to in paragraphs (a) to (j).
- (2) For the purposes of this section, *simple* has the same meaning as it has in Article 3.6 of Chapter 3 of the Agreement.

Subdivision E—Consignment

153ZQI Consignment

- (1) Goods are not RCEP originating goods under this Division if the goods are transported through one or more Parties (other than the Party from which the goods are exported or Australia) or non-Parties and either or both of the following apply:
- (a) the goods undergo further processing in those Parties or non-Parties (other than logistics activities such as unloading, reloading, storing or any other operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);
 - (b) while the goods are in those Parties or non-Parties, the goods do not remain under the control of the customs authorities of those Parties or non-Parties at all times.
- (2) This section applies despite any other provision of this Division.

Subdivision F—Regulations

153ZQJ Regulations

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

Part 2—Verification powers

Customs Act 1901

4 After Division 4K of Part VI

Insert:

Division 4L—Exportation of goods to Parties to the Regional Comprehensive Economic Partnership Agreement

126AQA Definitions

In this Division:

Agreement means the Regional Comprehensive Economic Partnership Agreement, done on 15 November 2020, as amended and in force for Australia from time to time.

Note: The Agreement could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

customs authority has the meaning given by Article 4.1 of Chapter 4 of the Agreement.

Party has the meaning given by Article 1.2 of Chapter 1 of the Agreement.

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

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

RCEP customs official, for a Party, means a person representing the customs authority of that Party.

126AQB Record keeping obligations

Regulations may prescribe record keeping obligations

- (1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
 - (a) are exported to a Party; and
 - (b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

On whom obligations may be imposed

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

126AQC 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 126AQB 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 RCEP customs official

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

126AQD Power to ask questions

Power to ask questions

- (1) An authorised officer may require a person who is an exporter or producer of goods that:
-

- (a) are exported to a Party; and
- (b) are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party;

to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to RCEP customs official

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

Part 3—Application provisions

5 Application provisions

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

*[Minister's second reading speech made in—
House of Representatives on 1 September 2021
Senate on 20 October 2021]*

(106/21)
