



Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022

No. 57, 2022

**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—Indian 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 (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022

No. 57, 2022

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

[Assented to 23 November 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022*.

No. 57, 2022

Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022

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.	23 November 2022
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the India-Australia Economic Cooperation and Trade Agreement, done on 2 April 2022, enters into force. 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.	

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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 (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022* No. 57, 2022

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

Schedule 1—Amendments

Part 1—Indian originating goods

Customs Act 1901

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

After “10,”, insert “10A,”.

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

After “10,”, insert “10A,”.

3 After Division 1J of Part VIII

Insert:

Division 1JA—Indian originating goods

Subdivision A—Preliminary

153ZMK Simplified outline of this Division

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

- Subdivision D deals with how the packaging materials or containers in which goods are packaged affects whether the goods are Indian originating goods.
- Subdivision E deals with how the consignment of goods affects whether the goods are Indian originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are Indian originating goods.

153ZML Interpretation

Definitions

(1) In this Division:

Agreement means the India-Australia Economic Cooperation and Trade Agreement, done on 2 April 2022, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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

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

certificate of origin means a certificate that is in force and that complies with the requirements of Article 4.15 of Chapter 4 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2022 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.

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

Harmonized System means:

- (a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017; or
- (b) if the table in Annex 4B to Chapter 4 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.

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

indirect materials means:

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

including:

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

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

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

non-party has the same meaning as it has in Chapter 4 of the Agreement.

originating materials means:

- (a) Indian 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.

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

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

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

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

Value of goods

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

Tariff classifications

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

Incorporation of other instruments

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

Subdivision B—Goods wholly obtained or produced in India or in India and Australia

153ZMM Goods wholly obtained or produced in India or in India and Australia

- (1) Goods are *Indian originating goods* if:
 - (a) they are wholly obtained or produced in India or in India and Australia; and
 - (b) either:
 - (i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a certificate of origin for the goods.
- (2) Goods are *wholly obtained or produced in India or in India and Australia* if, and only if, the goods are:
 - (a) plants, or goods obtained from plants, that are grown and harvested, picked or gathered in the territory of India or in the territory of India and the territory of Australia (including fruit, flowers, vegetables, trees, seaweed, fungi, algae and live plants); or
 - (b) live animals born and raised in the territory of India or in the territory of India and the territory of Australia; or
 - (c) goods obtained from live animals referred to in paragraph (b); or
 - (d) goods obtained from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of India; or
 - (e) minerals, or other naturally occurring substances, extracted or taken from the soil, waters, seabed or subsoil beneath the seabed in the territory of India; or
 - (f) fish, shellfish or other marine life extracted or taken from the sea, seabed or subsoil beneath the seabed:
 - (i) beyond the outer limits of the territory of India and the territory of Australia; and
 - (ii) in accordance with international law, outside the territorial sea of non-parties;

- by vessels that are registered, listed or recorded with India and are entitled to fly the flag of India; or
- (g) goods produced, from goods referred to in paragraph (f), on board a factory ship that is registered, listed or recorded with India and is entitled to fly the flag of India; or
 - (h) goods, other than fish, shellfish or other marine life, extracted or taken from the seabed or subsoil beneath the seabed outside the territorial sea of India, by India, but only if India has the right to exploit that seabed or subsoil in accordance with international law; or
 - (i) waste and scrap that has been derived from production or consumption in the territory of India and that is fit only for the recovery of raw materials or for recycling purposes; or
 - (j) goods produced in the territory of India, or in the territory of India and the territory of Australia, exclusively from the following:
 - (i) goods referred to in paragraphs (a) to (i) or their derivatives;
 - (ii) Australian originating goods of a kind covered by subparagraph (a) of Article 4.2 of Chapter 4 of the Agreement or their derivatives.

Subdivision C—Goods produced in India, or in India and Australia, from non-originating materials

153ZMN Goods produced in India, or in India and Australia, from non-originating materials

- (1) Goods are *Indian 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 4B to Chapter 4 of the Agreement; and
 - (b) they are produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
 - (c) either:
 - (i) the goods satisfy the requirements applicable to the goods in that Annex; or

Schedule 1 Amendments

Part 1 Indian originating goods

- (ii) the goods satisfy the requirements under subsection (3); and
- (d) either:
 - (i) the importer of the goods has, at the time the goods are imported, a certificate of origin, or a copy of one, for the goods; or
 - (ii) Australia has waived the requirement for a certificate of origin for the goods.
- (2) Without limiting subparagraph (1)(c)(i), a requirement may be specified in the table in Annex 4B to Chapter 4 of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.
- (3) Goods satisfy the requirements under this subsection if:
 - (a) all non-originating materials used in the production of the goods have undergone a change in tariff classification at the tariff subheading level; and
 - (b) the goods satisfy the qualifying value content requirements prescribed by regulations made for the purposes of this paragraph; and
 - (c) the final production process of the manufacture of the goods is performed in the territory of India.

Change in tariff classification

- (4) 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.
- (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) 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:

- (c) in the case of goods classified to any of Chapters 50 to 63 of the Harmonized System—the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or
- (d) otherwise—the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.

Qualifying value content

- (6) If a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:
 - (a) the qualifying value content of the goods is to be worked out in accordance with the Agreement, unless paragraph (b) applies; or
 - (b) if the regulations prescribe how to work out the qualifying value content of the goods—the qualifying value content of the goods is to be worked out in accordance with the regulations.
- (7) If:
 - (a) a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way; and
 - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
 - (c) the accessories, spare parts, tools or instructional or other information materials are presented with, and 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;

the regulations must provide for the following:

- (e) the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the qualifying value content of the goods;
- (f) 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 153ZML(2).

153ZMO Non-qualifying operations

- (1) Goods are not Indian originating goods under this Subdivision merely because of the following operations:
 - (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) for goods that are textiles—attaching accessory articles (including straps, beads, cords, rings and eyelets) to the goods or ironing or pressing the goods;
 - (e) affixing or printing of marks, labels, logos or other like distinguishing signs on the goods or on their packaging;
 - (f) mere dilution with water or another substance that does not materially alter the characteristics of the goods;
 - (g) disassembly of products into parts;
 - (h) slaughtering (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of animals;
 - (i) simple painting or polishing operations;
 - (j) simple peeling, stoning or shelling;
 - (k) simple mixing (within the meaning of Article 4.7 of Chapter 4 of the Agreement) of goods, whether or not of different kinds;
 - (l) any combination of things referred to in paragraphs (a) to (k).

- (2) For the purposes of this section, *simple* has the same meaning as it has in Article 4.7 of Chapter 4 of the Agreement.

Subdivision D—Packaging materials and containers

153ZMP 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 Division.

Qualifying value content

- (2) However, if a requirement that applies in relation to the goods is that the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way, the regulations must provide for the following:
- (a) the value of the packaging material or container to be taken into account for the purposes of working out the qualifying value content of the goods;
 - (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 153ZML(2).

Subdivision E—Consignment

153ZMQ Consignment

- (1) Goods are not Indian originating goods under this Division if the goods are transported through a non-party and either or both of the following apply:
- (a) the goods undergo further production or any other operation in the non-party (other than unloading, reloading, storing, repacking, relabelling for the purpose of satisfying the

Schedule 1 Amendments

Part 1 Indian originating goods

requirements of Australia, splitting up or consolidating loads or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);

(b) while the goods are in the non-party, the goods do not remain under customs control at all times.

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

Subdivision F—Regulations

153ZMR Regulations

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

Part 2—Verification powers

Customs Act 1901

4 After Division 4G of Part VI

Insert:

Division 4GA—Exportation of goods to India

126AME Definitions

In this Division:

Agreement means the India-Australia Economic Cooperation and Trade Agreement, done on 2 April 2022, as amended from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

customs administration for India means customs administration within the meaning, so far as it relates to India, of Article 4.1 of Chapter 4 of the Agreement.

Indian customs official means a person representing the customs administration for India.

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

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

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

126AMF Record keeping obligations

Regulations may prescribe record keeping obligations

- (1) The regulations may prescribe record keeping obligations that apply in relation to goods that:

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

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.

126AMG 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 126AMF 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 Indian customs official

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

126AMH Power to ask questions

Power to ask questions

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

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

Part 3—Application provisions

5 Application provisions

- (1) The amendments made by Part 1 apply in relation to:
- (a) goods imported into Australia on or after the commencement of that Part; and
 - (b) goods imported into Australia before the commencement of that Part, where the time for working out the rate of import duty on the goods had not occurred before the commencement of that Part.
- (2) The amendment made by Part 2 applies in relation to goods exported to the territory of India 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 27 October 2022
Senate on 21 November 2022]*

(106/22)

18

*Customs Amendment (India-Australia Economic Cooperation and
Trade Agreement Implementation) Act 2022*

No. 57, 2022