



Customs Amendment (Australia-United Kingdom Free Trade Agreement Implementation) Act 2022

No. 59, 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.....	3
Schedule 1—Amendments		4
Part 1—UK originating goods		4
	<i>Customs Act 1901</i>	4
Part 2—Verification powers		17
	<i>Customs Act 1901</i>	17
Part 3—Application provisions		20



Customs Amendment (Australia-United Kingdom Free Trade Agreement Implementation) Act 2022

No. 59, 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 (Australia-United Kingdom Free Trade Agreement Implementation) Act 2022*.

No. 59, 2022

Customs Amendment (Australia-United Kingdom Free 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 Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, 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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—UK originating goods

Customs Act 1901

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

Omit “or 14”, substitute “, 14 or 15”.

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

Omit “or 14”, substitute “, 14 or 15”.

3 After Division 1N of Part VIII

Insert:

Division 1P—UK originating goods

Subdivision A—Preliminary

153ZRA Simplified outline of this Division

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

Kingdom and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials.

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

153ZRB Interpretation

Definitions

(1) In this Division:

Agreement means the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, 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 the United Kingdom that implements 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.

declaration of origin means a declaration that is in force and that complies with the requirements of Article 4.18 of Chapter 4 of the Agreement.

enterprise has the meaning given by Article 1.4 of Chapter 1 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 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.

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) UK 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 materials derived in the territory of Australia, or in the territory of the United Kingdom, and used in the production of, and incorporated into, remanufactured goods; or
- (d) indirect materials.

person of the United Kingdom means:

- (a) a national within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement; or
- (b) an enterprise of the United Kingdom.

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

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

recovered materials means materials comprising one or more individual parts that:

- (a) have resulted from the disassembly of used goods; and
- (b) have been cleaned, 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 (other than heading 87.02, 87.03, 87.04 or 87.05, 87.11 or 87.16 or subheading 8701.20), or to heading 94.02, of the Harmonized System; and
- (b) are entirely or partially comprised of recovered materials; and

- (c) have a similar life expectancy, working condition and performance to new goods:
 - (i) that are so classified; and
 - (ii) that are not composed of any recovered materials; and
- (d) have been given a warranty that in substance is the same as that applicable to such new goods.

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 1.4 of Chapter 1 of the Agreement.

territory of the United Kingdom means territory within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement.

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

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 the
United Kingdom or in the United Kingdom and
Australia**

**153ZRC Goods wholly obtained or produced in the United Kingdom
or in the United Kingdom and Australia**

- (1) Goods are *UK originating goods* if:
- (a) they are wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia; and
 - (b) one or more of the following applies:
 - (i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;
 - (ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;
 - (iii) Australia has waived the requirement for a declaration of origin for the goods.
- (2) Goods are *wholly obtained or produced in the United Kingdom or in the United Kingdom and Australia* if, and only if, the goods are:
- (a) plants, plant goods or fungus grown, cultivated, harvested, picked or gathered in the territory of the United Kingdom or in the territory of the United Kingdom and the territory of Australia; or
 - (b) live animals born and raised in the territory of the United Kingdom or in the territory of the United Kingdom and the territory of Australia; or
 - (c) goods obtained from live animals in the territory of the United Kingdom; or
 - (d) animals obtained by hunting, trapping, fishing, gathering, or capturing in the territory of the United Kingdom, but not beyond the outer limits of the territorial sea of the United Kingdom; or
 - (e) goods obtained from aquaculture conducted in the territory of the United Kingdom, but not beyond the outer limits of the territorial sea of the United Kingdom; or

Schedule 1 Amendments

Part 1 UK originating goods

- (f) minerals, or other naturally occurring substances, extracted or taken from the territory of the United Kingdom; or
 - (g) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:
 - (i) beyond the outer limits of the territorial sea of the United Kingdom; and
 - (ii) within the territory of the United Kingdom; by vessels that are registered in the United Kingdom and are entitled to fly the flag of the United Kingdom; or
 - (h) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:
 - (i) beyond the outer limits of the territory of the United Kingdom and the territory of Australia; and
 - (ii) in accordance with international law, outside the territorial sea of non-parties; by vessels that are registered in the United Kingdom and are entitled to fly the flag of the United Kingdom; or
 - (i) goods produced, from goods referred to in paragraph (g) or (h), on board a factory ship that is registered in the United Kingdom and is entitled to fly the flag of the United Kingdom; or
 - (j) goods, other than fish, shellfish or other marine life, taken or extracted by the United Kingdom, or a person of the United Kingdom, from the seabed or subsoil beneath the seabed:
 - (i) outside the territory of the United Kingdom and the territory of Australia; and
 - (ii) beyond areas over which non-parties exercise jurisdiction; but only if the United Kingdom, or the person of the United Kingdom, has the right to exploit that seabed or subsoil in accordance with international law; or
 - (k) waste or scrap that:
 - (i) has been derived from production in the territory of the United Kingdom; or
 - (ii) has been derived from used goods that are collected in the territory of the United Kingdom and that are fit only for the recovery of raw materials; or
-

- (l) goods produced in the territory of the United Kingdom, or in the territory of the United Kingdom and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (k) or from their derivatives.

Subdivision C—Goods produced in the United Kingdom, or in the United Kingdom and Australia, from originating materials

153ZRD Goods produced in the United Kingdom, or in the United Kingdom and Australia, from originating materials

Goods are *UK originating goods* if:

- (a) they are produced entirely in the territory of the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, from originating materials only; and
- (b) one or more of the following applies:
 - (i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;
 - (ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;
 - (iii) Australia has waived the requirement for a declaration of origin for the goods.

Subdivision D—Goods produced in the United Kingdom, or in the United Kingdom and Australia, from non-originating materials

153ZRE Goods produced in the United Kingdom, or in the United Kingdom and Australia, from non-originating materials

- (1) Goods are *UK 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 the United Kingdom, or entirely in the territory of the United Kingdom and the territory of Australia, 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) one or more of the following applies:
 - (i) the importer of the goods has, at the time the goods are imported, a declaration of origin, or a copy of one, for the goods;
 - (ii) the importer of the goods has, at the time the goods are imported, other documentation to support that the goods are originating;
 - (iii) Australia has waived the requirement for a declaration of origin for the goods.
- (2) Without limiting paragraph (1)(c), 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.

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) 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 1 to 24 or 50 to 63 of the Harmonized System:
 - (i) the total weight of the non-originating materials covered by paragraph (b) does not exceed 10% of the total weight of the goods; or
 - (ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or
 - (iii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the production value of the goods; or
- (d) in the case of goods classified to any of Chapters 25 to 49 or 64 to 97 of the Harmonized System:
 - (i) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods; or
 - (ii) the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the production value of the goods.

Regional value content

- (5) 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, unless paragraph (b) applies; 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.
- (6) 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 and delivered with, and not invoiced separately from, the goods; and
- (d) the quantities, value and type 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 regional 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 153ZRB(2).

- (7) For the purposes of subsection (6), disregard section 153ZRG in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

Goods put up in a set for retail sale

- (8) If:

- (a) goods are put up in a set for retail sale; and
- (b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

the goods are UK originating goods under this section only if:

- (c) all of the goods in the set, when considered separately, are UK originating goods; or
- (d) the total customs value of the goods (if any) in the set that are not UK originating goods does not exceed 20% of the customs value of the set of goods; or
- (e) the total production value of the goods (if any) in the set that are not UK originating goods does not exceed 20% of the production value of the set of goods.

Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.

The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.

153ZRF 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 153ZRB(2).

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

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

Goods are *UK 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 UK originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified and delivered with, and not invoiced separately from, the other goods; and
- (e) the quantities, value and type of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

Subdivision F—Consignment

153ZRH Consignment

- (1) Goods are not UK originating goods under this Division if the goods are transported through the territory of one or more non-parties and either or both of the following apply:
 - (a) the goods undergo further production or any other operation in the territory of a non-party (other than unloading, reloading, separation from a bulk shipment or splitting of a consignment, storing, repacking, labelling or marking required by Australia or any other operation necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);
 - (b) the goods are released to free circulation in the territory of a non-party.
- (2) This section applies despite any other provision of this Division.

Subdivision G—Regulations

153ZRI Regulations

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

Part 2—Verification powers

Customs Act 1901

4 After Division 4L of Part VI

Insert:

Division 4M—Exportation of goods to the United Kingdom

126ARA Definitions

In this Division:

Agreement means the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, 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 authority for the United Kingdom means customs authority within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement.

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 the United Kingdom means territory within the meaning, so far as it relates to the United Kingdom, of Article 1.4 of Chapter 1 of the Agreement.

United Kingdom customs official means a person representing the customs authority for the United Kingdom.

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

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.

126ARC 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 126ARB 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 United Kingdom customs official

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

126ARD 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 the United Kingdom; and
- (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in the territory of the United Kingdom;

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 United Kingdom customs official

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in the territory of the United Kingdom, disclose any answers to such questions to a United Kingdom 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 the United Kingdom 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]*

(107/22)
