



**Customs Amendment
(ASEAN-Australia-New Zealand Free
Trade Agreement Implementation) Act
2009**

No. 97, 2009

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

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

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Customs Amendment (ASEAN- Australia-New Zealand Free Trade Agreement Implementation) Act 2009

No. 97, 2009

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

[Assented to 2 October 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment
(ASEAN-Australia-New Zealand Free Trade Agreement
Implementation) Act 2009*.

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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
Provision(s)	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.	2 October 2009
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Thailand on 27 February 2009, enters into force for Australia. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce by notice in the <i>Gazette</i> the day the Agreement enters into force for Australia.	1 January 2010 (see <i>Gazette</i> 2009, GN48) (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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

Customs Act 1901

1 After Division 1F of Part VIII

Insert:

Division 1G—ASEAN-Australia-New Zealand (AANZ) originating goods

Subdivision A—Preliminary

153ZKA Simplified outline

The following is a simplified outline of this Division:

- This Division defines *AANZ originating goods* (short for ASEAN-Australia-New Zealand originating goods). Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to AANZ originating goods that are imported into Australia.
- Subdivision B provides that goods are AANZ originating goods if they are wholly obtained goods of a Party.
- Subdivision C provides that goods are AANZ originating goods if they are produced entirely in a Party from originating materials only.
- Subdivision D sets out when goods are AANZ originating goods because they are produced from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E sets out when goods are AANZ 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 AANZ originating goods.

153ZKB Interpretation

Definitions

(1) In this Division:

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

Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Thailand on 27 February 2009, as amended from time to time.

Note: In 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

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

Certificate of Origin means a certificate that is in force and that complies with the requirements of Rule 7 of the Annex to 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 text of the Convention is set out in Australian Treaty Series 1988 No. 30 ([1988] ATS 30). In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

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

exclusive economic zone has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Harmonized System means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

in a Party includes:

- (a) the territorial sea of a Party; and
- (b) the exclusive economic zone of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law; and
- (c) the continental shelf of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law.

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.

originating materials means:

- (a) AANZ originating goods that are used or consumed in the production of other goods; or
- (b) indirect materials.

Party means a Party (within the meaning of the Agreement) for which the Agreement has entered into force.

Note: See also subsection (7).

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

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

Regional value content of goods

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

Value of goods

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

Tariff classifications

- (4) In specifying 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) For the purposes of this Division, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.

Notification of entry into force of Agreement for a Party

- (7) The Minister must announce by notice in the *Gazette* the day on which the Agreement enters into force for a Party (other than Australia). For the purposes of this subsection, **Party** means a Party (within the meaning of the Agreement).
- (8) A notice referred to in subsection (7) is not a legislative instrument.

Subdivision B—Wholly obtained goods of a Party

153ZKC Wholly obtained goods of a Party

- (1) Goods are *AANZ originating goods* if:
 - (a) they are wholly obtained goods of a Party; and
 - (b) 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.
 - (2) Goods are *wholly obtained goods of a Party* if, and only if, the goods are:
 - (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in a Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
 - (b) live animals born and raised in a Party; or
 - (c) goods obtained from live animals in a Party; or
 - (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or
 - (e) minerals or other naturally occurring substances extracted or taken in a Party; or
 - (f) fish, shellfish or other marine goods taken from the high seas, in accordance with international law, by ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
 - (g) goods produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
 - (h) goods taken by a Party, or a person of a Party, from the seabed, or beneath the seabed, outside:
 - (i) the exclusive economic zone of that Party; and
 - (ii) the continental shelf of that Party; and
 - (iii) an area over which a third party exercises jurisdiction; and taken under exploitation rights granted in accordance with international law; or
 - (i) waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials; or
 - (j) used goods that are collected in a Party and that are fit only for the recovery of raw materials; or
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- (k) goods produced or obtained entirely in a Party exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

Subdivision C—Goods produced from originating materials

153ZKD Goods produced from originating materials

Goods are *AANZ originating goods* if:

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

Subdivision D—Goods produced from non-originating materials

153ZKE Goods produced from non-originating materials and classified in the tariff table

- (1) Goods are *AANZ originating goods* if:
 - (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
 - (b) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
 - (c) 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.

Change in tariff classification

- (2) The regulations may specify that each non-originating material used or consumed in the production of the goods is required to satisfy a specified change in tariff classification.
 - (3) The regulations may also specify when a non-originating material used or consumed in the production of the goods is taken to satisfy the change in tariff classification.
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- (4) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; and
 - (b) one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification;
- then the requirement referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

- (5) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; and
 - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
 - (c) one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification;
- then the requirement referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

Regional value content

- (6) The regulations may specify that the goods are required to have a regional value content of at least a specified percentage.
- (7) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; and
 - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
 - (c) the accessories, spare parts, tools or instructional or other information materials are 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;
- then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be
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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 153ZKB(3).

- (8) For the purposes of subsection (7), disregard section 153ZKI in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.
- (9) However, subsection (7) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.

No limit on regulations

- (10) Subsections (2) and (6) do not limit paragraph (1)(b).

153ZKF Goods produced from non-originating materials and not classified in the tariff table

Regional value content of at least 40%

- (1) Goods are *AANZ originating goods* if:
 - (a) they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
 - (b) the final process in their production was performed in a Party; and
 - (c) the goods have a regional value content of at least 40%; and
 - (d) 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.
- (2) For the purposes of subsection (1), if:

- (a) the 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 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 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 153ZKB(3).

- (3) For the purposes of subsection (2), disregard section 153ZKI in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.
- (4) However, subsection (2) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.

Change in tariff classification at heading level

- (5) Goods are **AANZ originating goods** if:
 - (a) they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
 - (b) they are produced entirely in one or more Parties from non-originating materials only or from non-originating materials and originating materials; and
 - (c) each non-originating material used or consumed in the production of the goods undergoes a change in tariff classification that is a change to a heading of the Harmonized

System from any other heading of the Harmonized System;
and

- (d) 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.
- (6) For the purposes of paragraph (5)(c), if one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification referred to in that paragraph, then that paragraph is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.
- (7) For the purposes of paragraph (5)(c), if:
- (a) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
 - (b) one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification referred to in that paragraph;
- then that paragraph is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

153ZKG Non-qualifying operations or processes

- (1) This section applies for the purposes of working out if goods are AANZ originating goods under:
- (a) subsection 153ZKE(1) where, in relation to paragraph 153ZKE(1)(b), the goods are claimed to be AANZ originating goods solely on the basis that the goods have a regional value content of at least a particular percentage; or
 - (b) subsection 153ZKF(1).
- (2) The goods are not AANZ originating goods merely because of the following:
- (a) operations or processes to preserve goods in good condition for the purpose of transport or storage of the goods;
 - (b) operations or processes to facilitate the shipment or transportation of goods;

- (c) packaging (other than encapsulation of electronics) for transportation or sale or presenting goods for transportation or sale;
- (d) simple processes of sifting, classifying, washing, cutting, slitting, bending, coiling, uncoiling or other similar simple processes;
- (e) affixing of marks, labels or other distinguishing signs on goods or on their packaging;
- (f) dilution with water or another substance that does not materially alter the characteristics of goods;
- (g) any combination of things referred to in paragraphs (a) to (f).

153ZKH 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 (with one exception).

Exception

- (2) If the goods are required to have a regional value content of at least a particular percentage, the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

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

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

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

Goods are *AANZ originating goods* if:

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- (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 accessories, spare parts, tools or instructional or other information materials are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
 - (d) the other goods are AANZ originating goods; and
 - (e) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and
 - (f) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

Subdivision F—Consignment

153ZKJ Consignment

- (1) Goods are not AANZ originating goods under this Division if:
 - (a) the goods are transported through a country or place other than a Party; and
 - (b) at least one of the following applies:
 - (i) the goods undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing or any operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);
 - (ii) the goods enter the commerce of that country or place;
 - (iii) the transport through that country or place is not justified by geographical, economic or logistical reasons.
- (2) This section applies despite any other provision of this Division.

2 Application

- (1) Subject to this item, the amendment made by item 1 applies in relation to:
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Schedule 1 Amendments

- (a) goods imported into Australia on or after the commencement of this item; and
 - (b) goods imported into Australia before the commencement of this item, where the time for working out the rate of import duty on the goods had not occurred before the commencement of this item.
- (2) For a Party for which the Agreement enters into force on a day (the **start day**) later than the day on which the Agreement enters into force for Australia, the amendment made by item 1 applies in relation to:
 - (a) goods imported into Australia on or after the start day; and
 - (b) goods imported into Australia before the start day, where the time for working out the rate of import duty on the goods had not occurred before the start day.

- (3) In this item:

Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Thailand on 27 February 2009, as amended from time to time.

Note: In 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Party means a Party (within the meaning of the Agreement).

[Minister's second reading speech made in—
House of Representatives on 16 September 2009
Senate on 16 September 2009]

(172/09)
