



# **Customs (International Obligations) Regulation 2015**

## **Select Legislative Instrument No. 32, 2015**

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I, the Honourable Alex Chernov AC QC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 26 March 2015

Alex Chernov  
Administrator

By His Excellency's Command

Peter Dutton  
Minister for Immigration and Border Protection

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*OPC60831 - C*



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## Part 1—Preliminary

### 1 Name

This is the *Customs (International Obligations) Regulation 2015*.

### 2 Commencement

This instrument commences on 1 April 2015.

### 3 Authority

This instrument is made under the *Customs Act 1901*.

### 4 Definitions

In this instrument:

***AANZ originating goods*** has the meaning given by subsection 153ZKB(1) of the Act.

***Act*** means the *Customs Act 1901*.

***Agreement***:

- (a) in Division 2 of Part 3—has the meaning given by subsection 153ZA(1) of the Act; or
- (b) in Division 3 of Part 3—has the meaning given by subsection 153ZIB(1) of the Act.

***Australian originating goods***:

- (a) in Division 2 of Part 3—has the meaning given by subsection 153ZA(1) of the Act; or
- (b) in Division 3 of Part 3—has the meaning given by subsection 153ZIB(1) of the Act; or
- (c) in Division 4 of Part 3—has the meaning given by subsection 153ZJB(1) of the Act.

***Certificate of Origin***:

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- (a) in Division 1 of Part 3—has the meaning given by section 153UA of the Act; or
- (b) in relation to AANZ originating goods—has the meaning given by subsection 153ZKB(1) of the Act; or
- (c) in Division 4 of Part 3 and in relation to Chilean originating goods—has the meaning given by subsection 153ZJB(1) of the Act; or
- (d) in relation to Japanese originating goods—has the meaning given by subsection 153ZNB(1) of the Act; or
- (e) in relation to Korean originating goods—has the meaning given by subsection 153ZMB(1) of the Act; or
- (f) in relation to Malaysian originating goods—has the meaning given by subsection 153ZLB(1) of the Act; or
- (g) in Division 2 of Part 3 and in relation to Thai originating goods—has the meaning given by subsection 153ZA(1) of the Act.

**Chilean originating goods** has the meaning given by subsection 153ZJB(1) of the Act.

**country of export** has the meaning given by section 269T of the Act.

**Declaration of Origin**, in relation to Malaysian originating goods, has the meaning given by subsection 153ZLB(1) of the Act.

**economy in transition** has the meaning given by section 269T of the Act.

**Harmonized System:**

- (a) in Division 2 of Part 3—has the meaning given by subsection 153ZA(1) of the Act; or
- (b) in Division 3 of Part 3—has the meaning given by subsection 153ZIB(1) of the Act; or
- (c) in Division 4 of Part 4—has the meaning given by subsection 153ZJB(1) of the Act.

**intergovernmental agreement** means an agreement:

- (a) to which the Commonwealth and the government of one or more foreign countries are parties; and



- (b) that provides for the importation of goods of a class or classes specified in the agreement into Australia, and that country or those countries, on a temporary basis without payment of duty.

**investigation period** has the meaning given by section 269T of the Act.

**Japanese originating goods** has the meaning given by subsection 153ZNB(1) of the Act.

**Korean originating goods** has the meaning given by subsection 153ZMB(1) of the Act.

**like goods** has the meaning given by section 269T of the Act.

**Malaysian originating goods** has the meaning given by subsection 153ZLB(1) of the Act.

**manufactured goods**: see subsection 35(1).

**origin certification document**, in relation to Japanese originating goods, has the meaning given by subsection 153ZNB(1) of the Act.

**principal manufacturer**, in Division 3 of Part 3, has the meaning given by section 126AJA of the Act.

**processed or treated goods**: see subsection 35(2).

**produce**:

- (a) in Division 2 of Part 3—has the meaning given by subsection 153ZA(1) of the Act; or
- (b) in Division 3 of Part 3—has the meaning given by subsection 153ZIB(1) of the Act.

**producer**, in Division 4 of Part 3, has the meaning given by section 126AKA of the Act.

**Prohibited Exports Regulations** means the *Customs (Prohibited Exports) Regulations 1958*.

**Prohibited Imports Regulations** means the *Customs (Prohibited Imports) Regulations 1956*.

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**relevant dumping duty** means any of the following (within the meanings given by subsection 269T(1) of the Act):

- (a) dumping duty;
- (b) interim dumping duty;
- (c) countervailing duty;
- (d) interim countervailing duty.

**relevant imported goods**: see subsection 35(4).

**safeguard goods** has the meaning given by subsection 16A(7) of the *Customs Tariff Act 1995*.

**SAFTA** has the meaning given by section 153UA of the Act.

**Thai originating goods** has the meaning given by subsection 153ZA(1) of the Act.

**tobacco products** has the meaning given by subsection 233BABAD(7) of the Act.

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## **Part 2—Exemptions under Torres Strait Treaty**

### **5 Notices requesting exemptions**

- (1) For subsection 30A(4) of the Act, this section sets out the information that must be included in a notice given by the master of a ship or the pilot of an aircraft requesting an exemption.
- (2) The notice must include the following information in relation to a voyage or flight:
  - (a) the itinerary of the voyage or flight;
  - (b) if the notice relates to a voyage of a ship—the name of the ship;
  - (c) the registration number of the ship or aircraft;
  - (d) the place of registration of the ship or aircraft;
  - (e) the type and description of the ship or aircraft;
  - (f) the name and address of the owner of the ship or aircraft;
  - (g) if the ship or aircraft is under charter—the name and address of the charterer;
  - (h) the name of the master of the ship or the pilot of the aircraft;
  - (i) the name, date of birth and nationality of each member of the crew of the ship or aircraft.
- (3) The notice must include the following information about each traditional inhabitant who is to undertake the voyage or flight:
  - (a) the name of the traditional inhabitant;
  - (b) the place where the traditional inhabitant:
    - (i) is to embark; and
    - (ii) is to disembark.
- (4) The notice must include the following information about each person who is an employee mentioned in sub-subparagraph 30A(4)(b)(ii)(B) of the Act:
  - (a) the name of the person;
  - (b) the name of the person's employer;
  - (c) the nationality of the person.

## **Part 3—Exportation of goods**

### **Division 1—Exportation of goods to Singapore**

#### **6 Declaration by representative of exporter**

- (1) This section is made for section 126AA of the Act.

*Declaration*

- (2) A representative of an exporter must make a declaration, in writing, before the export of goods mentioned in section 126AA of the Act:
- (a) stating that the goods are the produce or manufacture of Australia, in accordance with SAFTA; and
  - (b) providing details of the exporter's invoice in relation to the goods; and
  - (c) providing details of the Certificate of Origin in relation to the goods; and
  - (d) stating that the goods are identical to goods that are specified in that Certificate of Origin; and
  - (e) stating that the goods comply with the requirements specified in that Certificate of Origin; and
  - (f) including the name, designation and signature of the exporter's representative; and
  - (g) specifying the day on which the declaration was signed by the exporter's representative.

*Additional requirements before making declaration*

- (3) If the exporter was the applicant for the Certificate of Origin and is not the producer or manufacturer of the goods, the exporter must give a copy of the Certificate of Origin to the producer or manufacturer before the representative makes the declaration.
- (4) If the exporter is not the producer or manufacturer of the goods, the exporter must obtain written confirmation of the following from a representative of the producer or manufacturer:

- (a) the details of the evidence of the sale of the goods to the exporter;
  - (b) the details of the Certificate of Origin in relation to the goods;
  - (c) that the goods are identical to goods that are specified in that Certificate of Origin;
  - (d) that the goods comply with the rule specified in that Certificate of Origin.
- (5) The written confirmation must:
- (a) include the name, designation and signature of the producer's or manufacturer's representative; and
  - (b) specify the day on which the confirmation was signed by the producer's or manufacturer's representative; and
  - (c) be obtained before the exporter's representative makes the declaration mentioned in subsection (2).

## **7 Record keeping for the producer or manufacturer**

- (1) For section 126AB of the Act, the producer or manufacturer (whether or not the producer or manufacturer is the exporter) of goods mentioned in that section must keep the records set out in the following table.

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### **Records to be kept by producers or manufacturers exporting goods to Singapore**

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<b>Item</b>	<b>Records</b>
1	Records of the purchase of the goods
2	Evidence that payment has been made for the goods
3	Evidence of the cost of the goods in the form in which they were sold to the buyer
4	Evidence of the value of the goods
5	Records of the purchase of all materials that were purchased for use or consumption in the production or manufacture of the goods
6	Evidence that payment has been made for the materials mentioned in item 5
7	Evidence of the cost of the materials mentioned in item 5 in the form in which they were sold to the producer or manufacturer

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**Part 3** Exportation of goods

**Division 1** Exportation of goods to Singapore

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**Records to be kept by producers or manufacturers exporting goods to Singapore**

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**Item    Records**

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8	Evidence of the value of the materials mentioned in item 5
9	Records of the production or manufacture of the goods
10	A copy of the Certificate of Origin in relation to the goods
11	If the producer or manufacturer has given a confirmation mentioned in subsection 6(4) in relation to the goods to an exporter—a copy of the confirmation
12	If the producer or manufacturer is the exporter of the goods—a copy of the declaration mentioned in subsection 6(2) in relation to the goods

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- (2) The producer or manufacturer must keep the records for at least 5 years starting:
- (a) if the producer or manufacturer is the exporter of the goods—on the day of the declaration made under subsection 6(2) in relation to the goods; or
  - (b) if the producer or manufacturer is not the exporter of the goods—on the day of the confirmation obtained under subsection 6(4) in relation to the goods.
- (3) The producer or manufacturer may keep a record under this section at any place (whether or not in Australia).

**8 Record keeping for other exporters**

- (1) For section 126AB of the Act, an exporter of goods mentioned in that section must keep the following records, unless the exporter is also the producer or manufacturer of the goods:
- (a) records of the purchase of the goods by the exporter, including evidence that payment has been made for the goods;
  - (b) records of the purchase of the goods by the person to whom the goods are exported, including evidence that payment has been made for the goods;
  - (c) the confirmation obtained under subsection 6(4) from the producer or manufacturer;
  - (d) a copy of the declaration made under subsection 6(2);

- (e) a copy of the Certificate of Origin in relation to the goods.
- (2) The exporter must keep the records required by subsection (1) for at least 5 years starting on the day of the declaration mentioned in subsection 6(2) in relation to the goods.
- (3) The exporter may keep a record under this section at any place (whether or not in Australia).

### **9 Form in which records to be kept**

For section 126AB of the Act, a person who is required to keep a record under this Division in relation to goods must ensure that the record:

- (a) is kept in a form that would enable a determination of whether the goods are the produce or manufacture of Australia, in accordance with SAFTA; and
- (b) if the record is not in English—is kept in a place and form that would enable an English translation to be readily made; and
- (c) if the record is kept electronically—is readily convertible into a hard copy in English.

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## Division 2—Exportation of goods to Thailand

### 10 Record keeping by exporter who is not the producer of goods

- (1) For subsection 126AG(1) of the Act, an exporter of goods mentioned in that subsection must keep the records set out in the following table, unless the exporter is also the producer of the goods.

<b>Records to be kept by exporters (other than producers) of goods to Thailand</b>	
<b>Item</b>	<b>Records</b>
1	Records of the exporter's purchase of the goods.
2	Records of the purchase of the goods by the person to whom the goods are exported.
3	Evidence that payment has been made for the goods.
4	Evidence of the classification of the goods under the Harmonized System.
5	If the goods include any spare parts, accessories or tools that were purchased by the exporter: (a) records of the purchase of the spare parts, accessories or tools; and (b) evidence of the value of the spare parts, accessories or tools.
6	If the goods include any spare parts, accessories or tools that were produced by the exporter: (a) records of the purchase of all materials that were purchased for use or consumption in the production of the spare parts, accessories or tools; and (b) evidence of the value of the materials; and (c) records of the production of the spare parts, accessories or tools.
7	If the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter: (a) records of the purchase of the packaging material or container; and (b) evidence of the value of the packaging or container.
8	If the goods are packaged for retail sale in packaging material or a container that was produced by the exporter: (a) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and



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**Records to be kept by exporters (other than producers) of goods to Thailand**

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**Item    Records**

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- (b) evidence of the value of the materials; and  
(c) records of the production of the packaging material or container.
- 
- 9        A copy of the Certificate of Origin in relation to the goods.
- 

- (2) The records must be kept for at least 5 years starting on the day of issue of the Certificate of Origin in relation to the goods.
- (3) The exporter may keep a record under this section at any place (whether or not in Australia).

**11 Record keeping by producer of goods**

- (1) For subsection 126AG(1) of the Act, the producer of goods mentioned in that subsection, whether or not the producer is the exporter of the goods, must keep the records set out in the following table.

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**Records to be kept by producers of goods for exportation to Thailand**

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**Item    Records**

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- 1        Records of the purchase of the goods.
- 
- 2        If the producer is the exporter of the goods, evidence of the classification of the goods under the Harmonized System.
- 
- 3        Evidence that payment has been made for the goods.
- 
- 4        Evidence of the value of the goods.
- 
- 5        Records of the purchase of all materials that were purchased for use or consumption in the production of the goods.
- 
- 6        Evidence of the classification of the materials mentioned in item 5 under the Harmonized System.
- 
- 7        Evidence of the value of the materials mentioned in item 5.
- 
- 8        Records of the production of the goods.
- 
- 9        If the goods include any spare parts, accessories or tools that were purchased by the producer:  
(a) records of the purchase of the spare parts, accessories or tools; and  
(b) evidence of the value of the spare parts, accessories or tools.
- 
- 10       If the goods include any spare parts, accessories or tools that were produced
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**Records to be kept by producers of goods for exportation to Thailand**

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**Item    Records**

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by the producer:

- (a) records of the purchase of all materials that were purchased for use or consumption in their production; and
  - (b) evidence of the value of the materials; and
  - (c) records of the production of the spare parts, accessories or tools.
- 

11    If the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:

- (a) records of the purchase of the goods; and
  - (b) evidence of the value of the packaging material or container.
- 

12    If the goods are packaged for retail sale in packaging material or a container that was produced by the producer:

- (a) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
  - (b) evidence of the value of the materials; and
  - (c) records of the production of the packaging material or container.
- 

13    A copy of the Certificate of Origin in relation to the goods.

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- (2) The records must be kept for at least 5 years starting on the day of issue of the Certificate of Origin in relation to the goods.
- (3) The producer may keep a record under this section at any place (whether or not in Australia).

**12 Form in which records to be kept**

For subsection 126AG(1) of the Act, a person who is required to keep a record under this Division in relation to goods must ensure the record:

- (a) is kept in a form that would enable a determination of whether the goods are Australian originating goods in accordance with the Agreement; and
- (b) if the record is not in English—is kept in a place and form that would enable an English translation to be readily made; and

- (c) if the record is kept electronically—is readily convertible into a hard copy in English.

## Division 3—Exportation of goods to New Zealand

### 13 Record keeping by exporter who is not the producer or principal manufacturer of goods

- (1) For subsection 126AJB(1) of the Act, an exporter of goods mentioned in that subsection must keep the records set out in the following table, unless the exporter is also the producer or principal manufacturer of the goods.

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#### Records to be kept by exporters (other than producers or principal manufacturers)

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Item	Records
1	Records of the purchase of the goods by the exporter.
2	Records of the purchase of the goods by the person to whom the goods are exported.
3	Evidence that payment has been made for the goods.
4	Evidence of the classification of the goods under the Harmonized System.
5	If the goods include any spare parts, accessories or tools that were purchased by the exporter: (a) records of the purchase of the spare parts, accessories or tools; and (b) evidence of the value of the spare parts, accessories or tools.
6	If the goods include any spare parts, accessories or tools that were produced by the exporter: (a) records of the purchase of all materials that were purchased for use or consumption in the production of the spare parts, accessories or tools; and (b) evidence of the value of the materials; and (c) records of the production of the spare parts, accessories or tools.
7	If the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter: (a) records of the purchase of the packaging material or container; and (b) evidence of the value of the packaging or container.
8	If the goods are packaged for retail sale in packaging material or a container that was produced by the exporter: (a) records of the purchase of all materials that were purchased for use or

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**Records to be kept by exporters (other than producers or principal manufacturers)**

---

**Item      Records**

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- consumption in the production of the packaging material or container;  
and
- (b) evidence of the value of the materials; and
  - (c) records of the production of the packaging material or container.
- 

- (2) The records must be kept for at least 5 years starting on the day of exportation.
- (3) The exporter may keep a record under this section at any place (whether or not in Australia).

**14 Record keeping by the producer or principal manufacturer of goods**

- (1) For subsection 126AJB(1) of the Act, the producer or principal manufacturer of goods mentioned in that subsection, whether or not the producer or principal manufacturer is the exporter of the goods, must keep the records set out in the following table.

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**Records to be kept by producers or principal manufacturers of goods for exportation to New Zealand**

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**Item      Records**

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- |   |   |
|---|---|
| 1 | Records of the purchase of the goods.   |
| 2 | If the producer or principal manufacturer is the exporter of the goods—<br>evidence of the classification of the goods under the Harmonized System. |
| 3 | Evidence that payment has been made for the goods.  |
| 4 | Evidence of the value of the goods.   |
| 5 | Records of the purchase of all materials that were purchased for use or<br>consumption in the production of the goods.                              |
| 6 | Evidence of the classification of the materials mentioned in item 5 under the<br>Harmonized System.   |
| 7 | Evidence of the value of the materials mentioned in item 5.   |
| 8 | Records of the production of the goods.   |
| 9 | If the goods include any spare parts, accessories or tools that were purchased<br>by the producer or principal manufacturer:                        |
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**Records to be kept by producers or principal manufacturers of goods for exportation to New Zealand**

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**Item    Records**

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- (a) records of the purchase of the spare parts, accessories or tools; and
  - (b) evidence of the value of the spare parts, accessories or tools.
- 

10      If the goods include any spare parts, accessories or tools that were produced by the producer or principal manufacturer:

- (a) records of the purchase of all materials that were purchased for use or consumption in their production; and
  - (b) evidence of the value of the materials; and
  - (c) records of the production of the spare parts, accessories or tools.
- 

11      If the goods are packaged for retail sale in packaging material or a container that was purchased by the producer or principal manufacturer:

- (a) records of the purchase of the goods; and
  - (b) evidence of the value of the packaging material or container.
- 

12      If the goods are packaged for retail sale in packaging material or a container that was produced by the producer or principal manufacturer:

- (a) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
  - (b) evidence of the value of the materials; and
  - (c) records of the production of the packaging material or container.
- 

- (2) The records must be kept for at least 5 years starting on the day of exportation.
- (3) The producer or principal manufacturer may keep a record under this section at any place (whether or not in Australia).

**15 Form in which records to be kept**

For subsection 126AJB(1) of the Act, a person required to keep a record under this Division in relation to goods must ensure that the record:

- (a) is kept in a form that would enable a determination of whether the goods are Australian originating goods in accordance with the Agreement; and

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- (b) if the record is not in English—is kept in a place and form that would enable an English translation to be readily made; and
- (c) if the record is kept electronically—is readily convertible into a hard copy in English.

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## Division 4—Exportation of goods to Chile

### 16 Record keeping by exporter who is not the producer of goods

- (1) For subsection 126AKB(1) of the Act, an exporter of goods mentioned in that subsection must keep the records set out in the following table, unless the exporter is also the producer of the goods.

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<b>Records to be kept by exporters (other than producers) of goods to Chile</b>	
<b>Item</b>	<b>Records</b>
1	Records of the exporter's purchase of the goods.
2	Records of the purchase of the goods by the person to whom the goods are exported.
3	Evidence that payment has been made for the goods.
4	Evidence of the classification of the goods under the Harmonized System.
5	If the goods include any accessories, spare parts, tools or instructional or other information resources that were purchased by the exporter: (a) records of the purchase of the accessories, spare parts, tools or instructional or other information resources; and (b) evidence of the value of the accessories, spare parts, tools or instructional or other information resources.
6	If the goods include any accessories, spare parts, tools or instructional or other information resources that were produced by the exporter: (a) records of the production of the accessories, spare parts, tools or instructional or other information resources; and (b) records of the purchase of all materials that were purchased for use or consumption in their production; and (c) evidence of the value of the materials.
7	If the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter: (a) records of the purchase of the packaging material or container; and (b) evidence of the value of the packaging material or container.
8	If the goods are packaged for retail sale in packaging material or a container that was produced by the exporter: (a) records of the production of the packaging material or container; and

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**Records to be kept by exporters (other than producers) of goods to Chile**

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**Item    Records**

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- (b) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
  - (c) evidence of the value of the materials.
- 

9    A copy of the Certificate of Origin in relation to the goods.

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- (2) The records must be kept for at least 5 years starting on the day of issue of the Certificate of Origin in relation to the goods.
- (3) The exporter may keep a record under this section at any place (whether or not in Australia).

**17 Record keeping by the producer of goods**

- (1) For subsection 126AKB(1) of the Act, the producer of goods mentioned in that subsection, whether or not the producer is the exporter of the goods, must keep the records set out in the following table.

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**Records to be kept by producers of goods for exportation to Chile**

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**Item    Records**

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1    Records of the purchase of the goods.

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2    If the producer is the exporter of the goods—evidence of the classification of the goods under the Harmonized System.

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3    Evidence that payment has been made for the goods.

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4    Evidence of the value of the goods.

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5    Records of the purchase of all materials that were purchased for use or consumption in the production of the goods.

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6    Evidence of the classification of the materials mentioned in item 5 under the Harmonized System.

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7    Evidence of the value of the materials mentioned in item 5.

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8    Records of the production of the goods.

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9    If the goods include accessories, spare parts, tools or instructional or other information resources that were purchased by the producer:

- (a) records of the purchase of the accessories, spare parts, tools or
-

**Part 3** Exportation of goods  
**Division 4** Exportation of goods to Chile

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**Records to be kept by producers of goods for exportation to Chile**

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**Item    Records**

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- instructional or other information resources; and
- (b) evidence of the value of the accessories, spare parts, tools or instructional or other information resources.
- 
- 10    If the goods include accessories, spare parts, tools or instructional or other information resources that were produced by the producer:
- (a) records of the production of the accessories, spare parts, tools or instructional or other information resources; and
- (b) records of the purchase of all materials that were purchased for use or consumption in their production; and
- (c) evidence of the value of the materials.
- 
- 11    If the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:
- (a) records of the purchase of the packaging material or container; and
- (b) evidence of the value of the packaging material or container.
- 
- 12    If the goods are packaged for retail sale in packaging material or a container that was produced by the producer:
- (a) records of the production of the packaging material or container; and
- (b) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
- (c) evidence of the value of the materials.
- 
- 13    A copy of the Certificate of Origin in relation to the goods.
- 

- (2) The records must be kept for at least 5 years starting on the day of issue of the Certificate of Origin in relation to the goods.
- (3) The producer may keep a record under this section at any place (whether or not in Australia).

**18 Form in which records to be kept**

For subsection 126AKB(1) of the Act, a person who is required to keep a record under this Division in relation to goods must ensure the record:

- (a) is kept in a form that would enable a determination of whether the goods are Australian originating goods; and

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- (b) if the record is not in English—is kept in a place and form that would enable an English translation to be readily made; and
- (c) if the record is kept electronically—is readily convertible into a hard copy in English.

## **Part 4—Delivery of goods on giving of general security or undertaking**

### **19 Reference to duty to include relevant dumping duty**

In this Part, a reference to duty includes a reference to relevant dumping duty that is payable in relation to imported goods.

### **20 Bringing goods into Australia on a temporary basis**

For subsection 162A(1) of the Act, the following goods may be brought into Australia on a temporary basis without payment of duty:

- (a) goods included in a class of goods to which an intergovernmental agreement applies;
- (b) goods imported by persons included in a class of persons to which an intergovernmental agreement applies;
- (c) goods imported for a purpose specified in an intergovernmental agreement as a purpose for which the goods may be imported on a temporary basis without payment of duty.

### **21 Dealing with goods brought into Australia on a temporary basis**

- (1) For subsection 162A(4) of the Act, if goods are brought into Australia on a temporary basis without payment of duty, the person to whom the goods are delivered must not, except with the consent of a Collector, do any of the following in relation to the goods:
  - (a) lend, sell, pledge, mortgage, hire, give away or exchange the goods;
  - (b) part with possession of the goods;
  - (c) otherwise dispose of the goods;
  - (d) alter the goods in any way.
- (2) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Collector to refuse to give consent under subsection (1).

**22 Circumstances in which duty is not payable**

For paragraph 162A(5)(b) of the Act, a circumstance in relation to duty not being payable on goods is that the goods have no value because:

- (a) they have been accidentally damaged or destroyed; or
- (b) if the goods are an animal—it has died, or has been destroyed, because of an accident or illness.

## Part 5—Refunds, rebates and remissions of duty— originating goods

### Division 1—Circumstances for refund, rebate or remission

#### 23 Circumstances for refunds, rebates and remissions of duty

For paragraph 163(1)(b) of the Act, each of the following is a circumstance in which a refund, rebate or remission may be made by a Collector:

- (a) for a class of goods mentioned in the following table—the circumstance mentioned in the table for the class of goods;
- (b) both of the following apply:
  - (i) interim duty (within the meaning of section 269T of the Act) has been paid;
  - (ii) the amount paid is more than the interim duty payable because of a declaration made by the Minister under subsection 269ZDB(1) of the Act or a decision made by the Minister under subsection 269ZZM(1) of the Act.

Note: The *Customs Regulation 2015* also prescribes circumstances for refunds, rebates and remissions of duty under paragraph 163(1)(b) of the Act.

<b>Circumstances for refunds, rebates and remissions—originating goods</b>		
<b>Item</b>	<b>Class of goods</b>	<b>Circumstances</b>
1	Thai originating goods	Duty has been paid on the goods.
2	Goods that would have been Thai originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods	Both of the following apply: <ul style="list-style-type: none"><li>(a) duty has been paid on the goods;</li><li>(b) the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund.</li></ul>
3	Chilean originating goods	Duty has been paid on the goods.
4	Goods that would have been Chilean originating goods if,	Both of the following apply: <ul style="list-style-type: none"><li>(a) duty has been paid on the goods;</li></ul>

<b>Circumstances for refunds, rebates and remissions—originating goods</b>		
<b>Item</b>	<b>Class of goods</b>	<b>Circumstances</b>
	at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods	(b) the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund.
5	Malaysian originating goods	Duty has been paid on the goods.
6	Goods that would have been Malaysian originating goods if, at the time the goods were imported, the importer held: (a) a Declaration of Origin, or a Certificate of Origin, for the goods; or (b) a copy of a document mentioned in paragraph (a)	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Declaration of Origin, or a Certificate of Origin for the goods, or a copy of either of those documents, at the time of making the application for the refund.
7	AANZ originating goods	Duty has been paid on the goods.
8	Goods that would have been AANZ originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund.
9	Korean originating goods	Duty has been paid on the goods.
10	Goods that would have been Korean originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund.
11	Japanese originating goods	Duty has been paid on the goods.
12	Goods that would have been Japanese originating goods if, at the time the goods were imported, the importer held: (a) a Certificate of Origin or	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin or origin certification document for the goods, or a copy of either of

**Part 5** Refunds, rebates and remissions of duty—originating goods

**Division 1** Circumstances for refund, rebate or remission

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<b>Circumstances for refunds, rebates and remissions—originating goods</b>		
<b>Item</b>	<b>Class of goods</b>	<b>Circumstances</b>
	origin certification document for the goods; or	those documents, at the time of making the application for the refund.
(b)	a copy of a document mentioned in paragraph (a)	

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**24 Whether goods are originating goods—refund not payable in certain circumstances**

A refund is not payable under item 6 of the table in clause 1 of Schedule 6 to the *Customs Regulation 2015* to the extent that an application for a refund relates to one or more of the factors that determine whether:

- (a) the goods mentioned in item 1 or 2 of the table in section 23 are Thai originating goods; or
- (b) the goods mentioned in item 3 or 4 of the table in section 23 are Chilean originating goods; or
- (c) the goods mentioned in item 5 or 6 of the table in section 23 are Malaysian originating goods; or
- (d) the goods mentioned in item 7 or 8 of the table in section 23 are AANZ originating goods; or
- (e) the goods mentioned in item 9 or 10 of the table in section 23 are Korean originating goods; or
- (f) the goods mentioned in item 11 or 12 of the table in section 23 are Japanese originating goods.



## **Division 2—Application for refund, rebate or remission**

### **25 When an application is required for a refund, rebate or remission of duty**

For subsection 163(1AA) of the Act, an application is required for a refund, rebate or remission of duty under this Part.

Note: The application must be made in accordance with sections 26 and 28.

### **26 Application for a refund, rebate or remission of duty**

- (1) An application for a refund, rebate or remission of duty under this Part must be made in accordance with this section.

#### *Application by document*

- (2) An application by document for a refund, rebate or remission of duty must:
  - (a) be in an approved form; and
  - (b) include the information required by the form; and
  - (c) be signed as required by the form; and
  - (d) state the circumstance in section 23 to which the refund, rebate or remission relates; and
  - (e) be:
    - (i) given or sent to an officer performing duties in relation to refunds, rebates or remissions of duty; or
    - (ii) left in a Customs Office at a place designated for lodgement of applications for refunds, rebates or remissions of duty.

#### *Application by computer*

- (3) An application by computer for a refund, rebate or remission of duty must:
  - (a) include the information required by an approved statement; and
  - (b) state the circumstance in section 23 to which the refund, rebate or remission relates; and

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- (c) be transmitted, and signed, in a manner that meets the information technology requirements:
  - (i) determined under section 126DA of the Act; and
  - (ii) that apply to import declarations, self-assessed clearance declarations, or returns, about goods of the kind to which the application relates.

Note: See section 27 for when an application is taken to have been communicated to Customs.

*General requirements relating to applications*

- (4) The goods for which an application is made must be goods covered by the same:
  - (a) import declaration; or
  - (b) self-assessed clearance declaration; or
  - (c) return under subsection 69(8), 70(7) or 105C(2) of the Act.
- (5) For paragraphs (2)(d) and (3)(b), only one circumstance may be stated to apply to particular goods mentioned in a line of an application.

*Definitions*

- (6) In this section:

***line of an application*** means the part of the application that describes particular goods that have a single tariff classification to which a duty rate applies, whether or not the application describes other goods that have the same tariff classification or another tariff classification.

**27 Communication of application for refund, rebate or remission by computer to Customs**

An application by computer for a refund, rebate or remission of duty under this Part is taken to have been communicated to Customs when an electronic message is transmitted by Customs to the person who made the application stating that:

- (a) the application has been accepted and the refund, rebate or remission has been approved; or

- (b) the application has been received but further information is required.

## **28 Period for making an application for refund, rebate or remission**

- (1) An application for a remission of duty under this Part must be made before the goods to which the remission relates leave the control of Customs.
- (2) An application for a refund or rebate of duty under this Part must be made within 4 years after the day on which the duty was paid.
- (3) If an application must be made within a time (the *application time*) that ends while a notice under section 126E of the Act that an information system has become temporarily inoperative is in force, the application time is taken to be extended until the end of the day after the CEO gives notice that the information system has again become operative.

## **29 Procedures for dealing with application for refund, rebate or remission**

- (1) This section sets out procedures to be followed by Customs in dealing with applications for a refund, rebate or remission of duty under this Part.

### *Verifying particulars and other matters*

- (2) Before considering an application for a refund, rebate or remission of duty, a Collector must:
  - (a) verify particulars in the application; and
  - (b) be satisfied of any other matter that may be relevant to approval of the refund, rebate or remission.
- (3) A Collector may require the applicant to verify the information in the application by declaration or by producing documents.

### *Requiring documents or information*

- (4) A Collector may require the applicant to give to the Collector:
  - (a) any commercial documents relating to the application that are in the applicant's possession or control; or

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- (b) information, of a kind specified by the Collector, about the goods that is within the knowledge of the applicant or that the applicant is reasonably able to obtain.
- (5) If a requirement mentioned in subsection (4) is to be communicated in a document, the requirement must:
  - (a) be communicated to:
    - (i) the applicant; or
    - (ii) if another person made the application for the applicant—that other person; and
  - (b) be in an approved form; and
  - (c) include the information required by the form.
- (6) If a requirement mentioned in subsection (4) is to be communicated electronically, the requirement must:
  - (a) be transmitted electronically to the person who made the application; and
  - (b) include the information required by an approved statement.

*Questions about the application*

- (7) A Collector may require the following to answer questions about the application:
  - (a) in any case—the applicant;
  - (b) if another person made the application for the applicant—that other person.

*Considering an application*

- (8) If a requirement under subsection (3), (4) or (7) to verify information, give documents or information, or answer questions, is not complied with within 30 days after the requirement is made, an application may be considered only on the information available to a Collector.

*Returning a commercial document*

- (9) If a person delivers a commercial document to a Collector, the Collector must deal with the document and then return the document to the person.

### **Division 3—Conditions for refund, rebate or remission**

#### **30 Conditions for refund, rebate or remission of duty—drawback**

- (1) For paragraph 163(1)(b) of the Act, this section sets out conditions and restrictions to which a refund, rebate or remission of duty under this Part is subject.
- (2) A refund, rebate or remission of duty must not be made if drawback of all the import duty paid for the goods has been paid.
- (3) If an amount of drawback of import duty paid for the goods is less than the total import duty paid for the goods, that amount of drawback must be deducted from the amount of the refund, rebate or remission of duty.

## Division 4—Amount of refund, rebate or remission

### 31 Calculation of refund, rebate or remission of duty

- (1) For subsection 163(1A) of the Act, this section prescribes the amount of a refund, rebate or remission of duty under this Part that may be made by a Collector.
- (2) The amount of a refund, rebate or remission that may be made for a circumstance set out in paragraph 23(a) is the amount worked out using the formula:

Duty paid – Duty payable

where:

**duty paid** means the amount of duty paid on the goods.

**duty payable** means the amount of duty payable:

- (a) for a circumstance mentioned in item 1, 3, 5, 7, 9 or 11 of the table in section 23—on the goods as relevant originating goods; or
- (b) for a circumstance mentioned in item 2, 4, 6, 8, 10 or 12 of the table in section 23—on the goods as if they had been relevant originating goods at the time of their importation.

**relevant originating goods** means whichever of the following class of goods relates to the circumstance:

- (a) Thai originating goods;
- (b) Chilean originating goods;
- (c) Malaysian originating goods;
- (d) AANZ originating goods;
- (e) Korean originating goods;
- (f) Japanese originating goods.

## **Part 6—UN-sanctioned goods**

### **32 UN-sanctioned goods**

For subsection 233BABAA(1) of the Act, Schedule 1 prescribes goods that are UN-sanctioned goods.

Note 1: Importation of UN-sanctioned goods is an offence under section 233BABAB of the Act.

Note 2: Exportation of UN-sanctioned goods is an offence under section 233BABAC of the Act.

## **Part 7—Drawback of import duty**

### **Division 1—Drawback of dumping duty**

#### **33 Reference to import duty to include relevant dumping duty**

In this Part, a reference to import duty includes a reference to relevant dumping duty that has been paid in relation to imported goods.



## **Division 2—Goods for which drawback may be paid**

### **34 Drawback of import duty on goods—general**

- (1) For section 168 of the Act, drawback of import duty may be paid, in accordance with this Part, on the exportation of imported goods for which import duty has been paid.

Note: For manufactured goods and processed or treated goods, see section 35.

- (2) However, drawback of import duty is not payable on second-hand goods.
- (3) Goods are *second-hand goods* if, after their first importation into Australia, they have been used other than for the purpose of being inspected or exhibited.

### **35 Drawback of import duty on goods—manufactured goods and processed or treated goods**

- (1) If:
- (a) relevant imported goods were used in the manufacture of other goods in Australia; and
  - (b) those other goods (the *manufactured goods*) are exported;
- drawback of import duty may be paid, on the exportation, for the relevant imported goods that were used, lost or wasted in the manufacture.
- (2) If:
- (a) relevant imported goods were subjected to a process or to treatment in Australia for the purpose of producing other goods; and
  - (b) the other goods (the *processed or treated goods*) are exported;
- drawback of import duty may be paid, on the exportation, for the relevant imported goods.
- (3) However, drawback of import duty is not payable if the manufactured goods, or the processed or treated goods, have been

**Part 7** Drawback of import duty

**Division 2** Goods for which drawback may be paid

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used in Australia otherwise than for the purpose of being inspected or exhibited.

- (4) Imported goods are *relevant imported goods* if:
- (a) import duty has been paid on the goods; and
  - (b) the goods have only been used in Australia:
    - (i) in the manufacture of other goods; or
    - (ii) in being subjected to a process or to treatment for the purpose of producing other goods; or
    - (iii) for the purpose of being inspected or exhibited.
- (5) In this section:

*manufacture*, of goods, includes the process of packaging the goods.

Note: If the relevant imported goods were mixed with similar goods produced in Australia, see section 41.

### **Division 3—Circumstances when drawback is not payable**

#### **36 Circumstances when drawback of import duty is not payable**

- (1) Drawback of import duty is not payable under section 34 on the exportation of goods if:
  - (a) the free on board (F.O.B.) price of the goods at the time of exportation is not more than 25% of the customs value of the goods determined for the purposes of Division 2 of Part VIII of the Act at the time of importation of the goods; or
  - (b) the import duty paid on the goods has been refunded.
- (2) Drawback of import duty is also not payable under that section on the exportation of fuel if:
  - (a) an entity:
    - (i) has an entitlement to a fuel tax credit or decreasing fuel tax adjustment in relation to that fuel; and
    - (ii) does not have an increasing fuel tax adjustment in relation to the fuel; or
  - (b) an entity:
    - (i) had an entitlement mentioned in subparagraph (a)(i); and
    - (ii) did not have an adjustment mentioned in subparagraph (a)(ii).
- (3) Drawback of import duty is not payable under section 35 for goods if the import duty paid for the goods has been refunded.

## Division 4—Conditions relating to drawback

### 37 Conditions relating to drawback of import duty

Drawback of import duty is not payable on the exportation of goods unless the conditions set out in the following table are met.

<b>Conditions relating to drawback of import duty</b>	
<b>Item</b>	<b>Condition</b>
1	Before exportation, the goods are available at all reasonable times for examination by an officer.
2	The following records are available at all reasonable times for examination by an officer: (a) records that show that import duty has been paid on the goods; (b) records that show relevant details of the receipt and disposal of the goods by the owner.
3	A claim by document for drawback of import duty paid on the goods: (a) is in an approved form; and (b) sets out the amount of the claim (see section 40) and the other information that the form requires.
4	A claim made electronically for drawback of import duty paid on the goods: (a) includes the information required by an approved statement; and (b) sets out the amount of the claim (see section 40) and the other information that the statement requires; and (c) is transmitted, and signed, in a manner that meets the information technology requirements determined under section 126DA of the Act.
5	A claim for drawback of import duty includes a statement that to the best of the knowledge, information and belief of the person making the claim, the goods have not been used in Australia other than for the purpose of being inspected or exhibited.
6	The person who is the legal owner of goods at the time the goods are exported gives the claim for drawback to a Collector in the period: (a) starting on the day on which the goods are exported; and (b) ending: (i) for goods that are tobacco or tobacco products—12 months after the day on which the goods are exported; and (ii) for goods that are not tobacco or tobacco products—4 years after

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**Conditions relating to drawback of import duty**

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**Item    Condition**

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the day on which the goods are exported.

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- 7      For goods that are tobacco or tobacco products:
- (a) the owner of the goods gives a Collector notice in writing, a reasonable time before the exportation, of the owner's intention to claim drawback on the exportation; and
  - (b) the claim for drawback mentions that, to the best of the knowledge, information and belief of the person making the claim, the goods have not been, and are not intended to be, re-landed in Australia.
- 
- 8      The amount of the drawback:
- (a) is at least \$100; or
  - (b) meets the following requirements:
    - (i) the amount is claimed at the same time, and in the same approved form, as another claim or claims made by the owner of the goods for drawback on the exportation of other goods;
    - (ii) together the claims result in an aggregate amount of drawback of at least \$100.
- 

**38 Additional conditions for tobacco and tobacco products**

- (1) This section applies in relation to goods that are tobacco or tobacco products.
- (2) If the owner of the goods gives to a Collector a notice of intention to claim for drawback on the exportation of the goods under paragraph (a) of item 7 of the table in section 37, the Collector may, by notice in writing to the owner of the goods, require the owner to do any of the following:
  - (a) produce the goods to an officer for examination before the exportation of the goods;
  - (b) cause the goods to be packed, in the presence of an officer, into the packages in which they are intended to be exported;
  - (c) cause the goods to be secured to the satisfaction of an officer after they have been packed into the packages in which they are intended to be exported;
  - (d) mark each of the packages, into which any of the goods are packed for the purpose of being exported, with a distinctive mark or label;

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**Division 4** Conditions relating to drawback

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- (e) cause a distinctive label to be affixed to any goods that are to be exported without having been packed into a package.
- (3) Paragraph (2)(b) does not apply in relation to goods that:
  - (a) are intended to be exported in the packages in which they were packed when entered for home consumption; or
  - (b) are intended to be exported without being packed into packages.
- (4) If a Collector gives a notice under subsection (2) to the owner of the goods, drawback of import duty is not payable on the exportation of the goods unless the owner complies with the notice.

**39 Drawback of import duty for goods imported more than once**

If:

- (a) drawback of import duty is payable on the exportation of goods; and
- (b) the goods have been imported on more than one occasion; the import duty for which drawback is payable is the import duty paid for the importation of the goods last preceding the exportation of the goods in relation to which drawback is payable.

## **Division 5—Amount of claim for drawback**

### **40 Amount of claim for drawback of import duty**

- (1) For paragraph (b) of items 3 and 4 of the table in section 37, this section sets out how to work out the amount of a claim for drawback of import duty.
- (2) The amount of a claim for drawback of import duty paid on the exportation of goods must not exceed the amount of import duty:
  - (a) paid on the goods; or
  - (b) for manufactured goods—paid on the relevant imported goods used in the manufacture of the manufactured goods; or
  - (c) for processed or treated goods—paid on the relevant imported goods subjected to a process or treatment for the purpose of producing the processed or treated goods.
- (3) The amount of the claim may be worked out by reference to the amount of import duty paid on identical goods that were imported on a previous occasion by the person making the claim.
- (4) If:
  - (a) the amount of import duty paid on the goods is not known by the person making the claim; and
  - (b) an amount of quantitative duty does not apply to the goods;the amount of the claim may be worked out using the formula:

$$\text{Price paid} \times 0.3 \times \text{Rate of import duty}$$

where:

***price paid*** means the price paid for the goods by the person who was the owner of the goods when the goods were exported.

***rate of import duty*** means the ad valorem rate of import duty for the goods.

- (5) If:
  - (a) the amount of import duty paid on the goods is not known by the person making the claim; and

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(b) an amount of quantitative duty applies to the goods;  
the amount of the claim may be worked out using the formula:

$$\text{Duty} + \left[ \left( \text{Price} - \text{Duty} \right) \times 0.3 \times \frac{\text{Rate of import duty}}{\text{import duty}} \right]$$

where:

**duty** means the quantitative duty for the goods.

**price** means the price paid for the goods by the person who was the owner of the goods when the goods were exported.

**rate of import duty** means the ad valorem rate of import duty for the goods.

(6) In this section:

**quantitative duty**, for goods, means the import duty worked out in accordance with the Customs Tariff by reference to:

- (a) the actual quantities of the goods; or
- (b) the actual quantities of a component of the goods.

**41 Amount of drawback for goods mixed with similar goods—  
manufactured goods or processed or treated goods**

- (1) This section applies if the relevant imported goods in section 35 were mixed with similar goods produced in Australia before the mixture, or part of the mixture, of goods was:
  - (a) used in the manufacture of other goods; or
  - (b) subjected to a process or treatment for the purpose of producing other goods.
- (2) Subject to this Part, the amount of drawback that may be paid on the exportation of the other goods is an amount considered by a Collector to be fair and reasonable, having regard to:
  - (a) the amount of import duty that was paid on the relevant imported goods contained in the mixture of goods; and
  - (b) the quantity of the mixture of goods that has been lost or wasted, or has been used otherwise than in the manufacture or processing or treatment of other goods; and



- (c) if part of the mixture of goods was:
- (i) used in the manufacture of other goods that have previously been exported; or
  - (ii) subjected to a process or treatment for the purpose of producing other goods that have previously been exported;
- the amount of drawback of import duty that was paid on the exportation of those previously exported goods.

#### **42 Deduction of rebates from drawback payable**

The amount of any drawback of import duty that may be paid on the exportation of goods is reduced by an amount equal to the amount of any rebate of import duty under this Part that has been made.

## Part 8—Anti-dumping duties

### Division 1—Ordinary course of trade

#### 43 Determination of cost of production or manufacture

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
  - (a) the manner in which the Minister must, for paragraph 269TAAD(4)(a) of the Act, work out an amount (the *amount*) to be the cost of production or manufacture of like goods in a country of export; and
  - (b) factors that the Minister must take account of for that purpose.
- (2) If:
  - (a) an exporter or producer of like goods keeps records relating to the like goods; and
  - (b) the records:
    - (i) are in accordance with generally accepted accounting principles in the country of export; and
    - (ii) reasonably reflect competitive market costs associated with the production or manufacture of like goods;the Minister must work out the amount by using the information set out in the records.
- (3) The Minister must take account of the information available to the Minister about the allocation of costs in relation to like goods, in particular to establish:
  - (a) appropriate amortisation and depreciation periods; and
  - (b) allowances for capital expenditures and other development costs.
- (4) For subsection (3), the information includes information given by the exporter or producer of the goods mentioned in subsection (1) that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
- (5) If:

- (a) the Minister identifies a non-recurring item of cost that benefits current production or future production (or both) of the goods mentioned in subsection (1); and
  - (b) the information mentioned in subsection (3) does not identify the item;
- the Minister must adjust the costs identified by the exporter or producer to take that item into account.
- (6) Subsection (7) applies if:
    - (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start-up operations; and
    - (b) the information mentioned in subsection (3) does not identify the circumstance.
  - (7) The Minister must adjust the costs identified in the information:
    - (a) to take the circumstance into account; and
    - (b) to reflect:
      - (i) the costs at the end of the start-up period; or
      - (ii) if the start-up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
  - (8) For this section, the Minister may disregard any information that he or she considers to be unreliable.

#### **44 Determination of administrative, selling and general costs**

- (1) For subsection 269TAAD(5) of the Act, this section sets out:
  - (a) the manner in which the Minister must, for paragraph 269TAAD(4)(b) of the Act, work out an amount (the *amount*) to be the administrative, selling and general costs associated with the sale of like goods in a country of export; and
  - (b) factors that the Minister must take account of for that purpose.
- (2) If:

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- (a) an exporter or producer of like goods keeps records relating to the like goods; and
  - (b) the records:
    - (i) are in accordance with generally accepted accounting principles in the country of export; and
    - (ii) reasonably reflect the administrative, general and selling costs associated with the sale of the like goods;
- the Minister must work out the amount by using the information set out in the records.
- (3) If the Minister is unable to work out the amount by using the information mentioned in subsection (2), the Minister must work out the amount by:
    - (a) identifying the actual amounts of administrative, selling and general costs incurred by the exporter or producer in the production and sale of the same general category of goods in the domestic market of the country of export; or
    - (b) identifying the weighted average of the actual amounts of administrative, selling and general costs incurred by other exporters or producers in the production and sale of like goods in the domestic market of the country of export; or
    - (c) using any other reasonable method and having regard to all relevant information.
  - (4) The Minister must take account of the information available to the Minister about the allocation of costs, in particular to establish:
    - (a) appropriate amortisation and depreciation periods; and
    - (b) allowances for capital expenditures and other development costs.
  - (5) For subsection (4), the information includes information given by the exporter or producer of goods that demonstrates that the exporter or producer of the goods has historically used the method of allocation.
  - (6) If:
    - (a) the Minister identifies a non-recurring item of cost that benefits current production or future production (or both) of goods; and

- (b) the information mentioned in subsection (4) does not identify the item;
- the Minister must adjust the costs identified by the exporter or producer to take that item into account.
- (7) Subsection (8) applies if:
- (a) the Minister identifies a circumstance in which costs, during the investigation period, are affected by start-up operations; and
  - (b) the information mentioned in subsection (4) does not identify the circumstance.
- (8) The Minister must adjust the costs identified in the information:
- (a) to take the circumstance into account; and
  - (b) to reflect:
    - (i) the costs at the end of the start-up period; or
    - (ii) if the start-up period extends beyond the investigation period—the most recent costs that can reasonably be taken into account by the Minister during the investigation.
- (9) For this section, the Minister may disregard any information that he or she considers to be unreliable.
- (10) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

## **Division 2—Normal value of goods**

### **45 Determination of profit**

- (1) For subsection 269TAC(5B) of the Act, this section sets out:
  - (a) the manner in which the Minister must, for subparagraph 269TAC(2)(c)(ii) or (4)(e)(ii) of the Act, work out an amount (the *amount*) to be the profit on the sale of goods; and
  - (b) factors that the Minister must take account of for that purpose.
- (2) The Minister must, if reasonably practicable, work out the amount by using data relating to the production and sale of like goods by the exporter or producer of the goods in the ordinary course of trade.
- (3) If the Minister is unable to work out the amount by using the data mentioned in subsection (2), the Minister must work out the amount by:
  - (a) identifying the actual amounts realised by the exporter or producer from the sale of the same general category of goods in the domestic market of the country of export; or
  - (b) identifying the weighted average of the actual amounts realised by other exporters or producers from the sale of like goods in the domestic market of the country of export; or
  - (c) using any other reasonable method and having regard to all relevant information.
- (4) However, if:
  - (a) the Minister uses a method of calculation under paragraph (3)(c) to work out an amount representing the profit of the exporter or producer of the goods; and
  - (b) the amount worked out exceeds the amount of profit normally realised by other exporters or producers on sales of goods of the same general category in the domestic market of the country of export;

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the Minister must disregard the amount by which the amount worked out exceeds the amount of profit normally realised by the other exporters or producers.

- (5) For this section, the Minister may disregard any information that he or she considers to be unreliable.
- (6) For paragraph (3)(b), subsection 269T(5A) of the Act sets out how to work out the weighted average.

**46 Determining whether conditions exist—matters to which the Minister must have regard**

- (1) For subsection 269TAC(5E) of the Act, the matters are set out in the following table.

<b>Matters to which the Minister must have regard</b>	
<b>Item</b>	<b>Matter</b>
1	Whether the entity makes decisions about prices, costs, inputs, sales and investments: <ul style="list-style-type: none"><li>(a) in response to market signals; and</li><li>(b) without significant interference by a government of the country of export (see subsection (2)).</li></ul>
2	Whether the entity keeps accounting records in accordance with generally accepted accounting standards in the country of export.
3	Whether the generally accepted accounting standards in the country of export are in line with: <ul style="list-style-type: none"><li>(a) international financial reporting standards developed by; and</li><li>(b) international accounting standards adopted by;</li></ul> the International Accounting Standards Board.  Note: The international financial reporting standards and international accounting standards could in 2015 be viewed on the International Accounting Standards Board's website ( <a href="http://www.ifs.org">http://www.ifs.org</a> ).
4	Whether the accounting records mentioned in item 2 are independently audited.
5	Whether the entity's production costs or financial situation is significantly affected by the influence that a government of the country of export had on the domestic price of goods in the country before the country's economy was an economy in transition.

**Part 8** Anti-dumping duties  
**Division 2** Normal value of goods

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**Matters to which the Minister must have regard**

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<b>Item</b>	<b>Matter</b>
6	Whether the country of export has laws relating to bankruptcy and property.
7	Whether the entity is subject to the bankruptcy and property laws mentioned in item 6.
8	Whether the entity is part of a market or sector in which the presence of an enterprise owned by a government of the country of export prevents market conditions from prevailing in that market or sector.
9	Whether utilities are supplied to the entity under contracts that reflect commercial terms and prices that are generally available throughout the economy of the country of export.
10	If the land on which the entity's facilities are built is owned by a government of the country of export—whether the conditions of rent are comparable to those in a market economy.
11	Whether the entity has the right to hire and dismiss employees and to fix the salaries of employees.

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- (2) In assessing whether there is significant interference for paragraph (b) of item 1 in the table in subsection (1), the Minister must have regard to the following:
- (a) whether a genuinely private company or party holds the majority shareholding in the entity;
  - (b) if officials of a government of the country of export hold positions on the board of the entity—whether those officials are a minority of the members of the board;
  - (c) if officials of a government of the country of export hold significant management positions within the entity—whether those officials are a minority of the persons holding significant management positions;
  - (d) whether the entity's ability to carry on business activities in the country of export is affected by:
    - (i) a restriction on selling in the domestic market; or
    - (ii) the potential for the right to do business being withdrawn other than under contractual terms; or
    - (iii) if the entity is a joint-venture in which one of the parties is a foreign person, or is carried on in the form of such a joint-venture—the ability of the foreign person to export profits and repatriate capital invested;



- (e) whether the entity's significant production inputs (including raw materials, labour, energy and technology) are supplied:
  - (i) by enterprises that are owned or controlled by a government of the country of export; and
  - (ii) at prices that do not substantially reflect conditions found in a market economy.
- (3) In this section:

**entity**, in relation to goods, means:

- (a) the exporter of the exported goods mentioned in subsection 269TAC(5D) of the Act; or
- (b) if the exporter of the goods is not the producer of the goods, but the goods are produced in the country of export—the producer of the goods.

**government**, of a country, includes any level of government of the country.

#### **47 Determination of value—countries to which subsection 269T(5D) of the Act does not apply**

For subsection 269TAC(5J) of the Act, Schedule 2 prescribes countries to which subsection 269TAC(5D) of the Act does not apply.

## Division 3—Circumvention activities

### 48 Circumvention activities

- (1) For subsection 269ZDBB(6) of the Act, the circumstance set out in subsection (2) of this section is prescribed.

*Slight modification of goods exported to Australia*

- (2) The circumstance is that all of the following apply:
- (a) goods (the ***circumvention goods***) are exported to Australia from a foreign country in respect of which the notice applies;
  - (b) before that export, the circumvention goods are slightly modified;
  - (c) the use or purpose of the circumvention goods is the same before, and after, they are so slightly modified;
  - (d) had the circumvention goods not been so slightly modified, they would have been the subject of the notice;
  - (e) section 8 or 10 of the *Customs Tariff (Anti-Dumping) Act 1975*, as the case requires, does not apply to the export of the circumvention goods to Australia.
- (3) For the purpose of determining whether a circumvention good is slightly modified, the Commissioner must compare the circumvention good and the good the subject of the notice, having regard to any factor that the Commissioner considers relevant, including any of the following factors:
- (a) each good's general physical characteristics;
  - (b) each good's end use;
  - (c) the interchangeability of each good;
  - (d) differences in the processes used to produce each good;
  - (e) differences in the cost to produce each good;
  - (f) the cost of modification;
  - (g) customer preferences and expectations relating to each good;
  - (h) the way in which each good is marketed;
  - (i) channels of trade and distribution for each good;
  - (j) patterns of trade for each good;

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- (k) changes in the pricing of each good;
- (l) changes in the export volumes for each good;
- (m) tariff classifications and statistical codes for each good.

## Part 9—Transitional matters

### 49 Approved forms and approved statements

- (1) Subsection (2) applies if:
  - (a) a form or statement approved under section 4A of the Act before the repeal of the *Customs Regulations 1926* is approved for the purposes of a provision of those Regulations; and
  - (b) the form or statement, if approved after that time, could have been approved under that section for the purposes of a provision of this instrument (the *corresponding provision*) that corresponds to the provision of the Regulations mentioned in paragraph (a).
- (2) The form or statement has effect for the purposes of this instrument as if it had been approved for the purposes of the corresponding provision of this instrument.

## **Schedule 1—UN-sanctioned goods**

Note: See section 32.

### **Part 1—Prohibited Imports Regulations**

#### **1 Prohibited Imports Regulations**

For section 32, the goods specified in an item in the following table are UN-sanctioned goods.

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<b>UN-sanctioned goods—Prohibited Imports Regulations</b>	
<b>Item</b>	<b>Goods</b>
1	Goods to which regulation 4N of the Prohibited Imports Regulations applies
2	Goods to which regulation 4Y of the Prohibited Imports Regulations applies
3	Goods to which regulation 4Z of the Prohibited Imports Regulations applies
4	Goods to which regulation 4ZA of the Prohibited Imports Regulations applies
5	Goods to which regulation 4ZB of the Prohibited Imports Regulations applies

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## Part 2—Prohibited Exports Regulations

### 2 Prohibited Exports Regulations

For section 32, the goods specified in an item in the following table are UN-sanctioned goods.

<b>UN-sanctioned goods—Prohibited Exports Regulations</b>	
<b>Item</b>	<b>Goods</b>
1	Goods to which regulation 13CI of the Prohibited Exports Regulations applies
2	Goods to which regulation 13CJ of the Prohibited Exports Regulations applies
3	Goods to which regulation 13CK of the Prohibited Exports Regulations applies
4	Goods to which regulation 13CL of the Prohibited Exports Regulations applies
5	Goods to which regulation 13CM of the Prohibited Exports Regulations applies
6	Goods to which regulation 13CN of the Prohibited Exports Regulations applies
7	Goods to which regulation 13CO of the Prohibited Exports Regulations applies
8	Goods to which regulation 13CP of the Prohibited Exports Regulations applies
9	Goods to which regulation 13CQ of the Prohibited Exports Regulations applies
10	Goods to which regulation 13CR of the Prohibited Exports Regulations applies
11	Goods to which regulation 13CS of the Prohibited Exports Regulations applies
12	Goods to which regulation 13CT of the Prohibited Exports Regulations applies
13	Goods to which regulation 13E of the Prohibited Exports Regulations applies if the immediate or final destination is, or is intended to be, one of the following countries:

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**UN-sanctioned goods—Prohibited Exports Regulations**

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**Item Goods**

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- (a) Afghanistan;
  - (b) Central African Republic;
  - (c) Cote d'Ivoire;
  - (d) Democratic People's Republic of Korea (North Korea);
  - (e) Democratic Republic of the Congo;
  - (f) Eritrea;
  - (g) Iran;
  - (h) Iraq;
  - (i) Lebanon;
  - (j) Liberia;
  - (k) Libya;
  - (l) Sierra Leone;
  - (m) Somalia;
  - (n) Sudan.
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Clause 1

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## **Schedule 2—Countries to which subsection 269TAC(5D) of the Act does not apply**

Note: See section 47.

### **1 Countries**

For section 47, subsection 269TAC(5D) of the Act does not apply to the countries mentioned in the following table.

<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>		<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>	
<b>Item</b>	<b>Country</b>	<b>Item</b>	<b>Country</b>
1	Albania	19	Burma (Myanmar)
2	Angola	20	Burundi
3	Antigua and Barbuda	21	Cabo Verde (Cape Verde)
4	Argentina	22	Cambodia
5	Armenia	23	Cameroon
6	Austria	24	Canada
7	Bahrain	25	Central African Republic
8	Bangladesh	26	Chad
9	Barbados	27	Chile
10	Belgium	28	China
11	Belize	29	Colombia
12	Benin	30	Costa Rica
13	Bolivia	31	Côte d'Ivoire
14	Botswana	32	Croatia
15	Brazil	33	Cuba
16	Brunei Darussalam	34	Cyprus
17	Bulgaria	35	Czech Republic
18	Burkina Faso	36	Democratic People's



<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>		<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>	
<b>Item</b>	<b>Country</b>	<b>Item</b>	<b>Country</b>
	Republic of Korea (North Korea)	63	Iceland
37	Democratic Republic of the Congo	64	India
38	Denmark	65	Indonesia
39	Djibouti	66	Ireland
40	Dominica	67	Israel
41	Dominican Republic	68	Italy
42	Ecuador	69	Jamaica
43	Egypt	70	Japan
44	El Salvador	71	Jordan
45	Estonia	72	Kenya
46	Fiji	73	Kuwait
47	Finland	74	Kyrgyz Republic
48	France	75	Latvia
49	Gabon	76	Lesotho
50	Georgia	77	Liechtenstein
51	Germany	78	Lithuania
52	Ghana	79	Luxembourg
53	Greece	80	Macau
54	Grenada	81	Madagascar
55	Guatemala	82	Malawi
56	Guinea	83	Malaysia
57	Guinea-Bissau	84	Maldives
58	Guyana	85	Mali
59	Haiti	86	Malta
60	Honduras	87	Mauritania
61	Hong Kong	88	Mauritius
62	Hungary	89	Mexico
		90	Moldova
		91	Mongolia

**Schedule 2** Countries to which subsection 269TAC(5D) of the Act does not apply

Clause 1

<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>	
<b>Item</b>	<b>Country</b>
92	Montenegro
93	Morocco
94	Mozambique
95	Namibia
96	Nepal
97	Netherlands
98	Netherlands Antilles
99	New Zealand
100	Nicaragua
101	Niger
102	Nigeria
103	Norway
104	Oman
105	Pakistan
106	Panama
107	Papua New Guinea
108	Paraguay
109	Peru
110	Philippines
111	Poland
112	Portugal
113	Qatar
114	Republic of Korea (South Korea)
115	Romania
116	Russia
117	Rwanda
118	Saint Kitts and Nevis
119	Saint Lucia

<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>	
<b>Item</b>	<b>Country</b>
120	Saint Vincent and the Grenadines
121	Samoa
122	Saudi Arabia
123	Senegal
124	Sierra Leone
125	Singapore
126	Slovakia
127	Slovenia
128	Solomon Islands
129	South Africa
130	Spain
131	Sri Lanka
132	Suriname
133	Swaziland
134	Sweden
135	Switzerland
136	Taiwan
137	Tanzania
138	Thailand
139	The Former Yugoslav Republic of Macedonia
140	The Gambia
141	The Republic of the Congo
142	Togo
143	Tonga
144	Trinidad and Tobago
145	Tunisia
146	Turkey

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<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>	
<b>Item</b>	<b>Country</b>
147	Uganda
148	Ukraine
149	United Arab Emirates
150	United Kingdom
151	United States of America

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<b>Countries to which subsection 269TAC(5D) of the Act does not apply</b>	
<b>Item</b>	<b>Country</b>
152	Uruguay
153	Venezuela
154	Vietnam
155	Zambia
156	Zimbabwe