



Customs (Indian Rules of Origin) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 24 November 2022

David Hurley
Governor-General

By His Excellency's Command

Clare O'Neil
Minister for Home Affairs

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Part 1—Preliminary

1 Name

This instrument is the *Customs (Indian Rules of Origin) Regulations 2022*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day on which Schedule 1 to the <i>Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Act 2022</i> commences.	29 December 2022 (paragraph (b) applies)

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

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

4 Definitions

In this instrument:

Act means the *Customs Act 1901*.

Agreement has the meaning given by subsection 153ZML(1) of the Act.

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 means the Agreement of that name:

- (a) set out in Annex 1A of the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994; and
(b) as in force for Australia from time to time.

Note: The Marrakesh Agreement establishing the World Trade Organization is in Australian Treaty Series 1995 No. 8 ([1995] ATS 8) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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Australian originating goods has the meaning given by subsection 153ZML(1) of the Act.

certificate of origin has the meaning given by subsection 153ZML(1) of the Act.

Harmonized System has the meaning given by subsection 153ZML(1) of the Act.

non-originating materials has the meaning given by subsection 153ZML(1) of the Act.

originating materials has the meaning given by subsection 153ZML(1) of the Act.

production has the meaning given by subsection 153ZML(1) of the Act.

territory of Australia has the meaning given by subsection 153ZML(1) of the Act.

territory of India has the meaning given by subsection 153ZML(1) of the Act.

Part 2—Tariff change requirement

5 Change in tariff classification requirement for non-originating materials

For the purposes of subsection 153ZMN(4) of the Act, a non-originating material used in the production of goods that does not satisfy a particular change in tariff classification is taken to satisfy the change in tariff classification if:

- (a) it was produced entirely in the territory of India, or entirely in the territory of India and the territory of Australia, from other non-originating materials;
and
- (b) each of those other non-originating materials satisfies the change in tariff classification, including by one or more applications of this section.

Part 3—Qualifying value content requirement

6 Prescribed qualifying value content requirements

For the purposes of paragraph 153ZMN(3)(b) of the Act, the prescribed qualifying value content requirements for goods is that the goods satisfy either or both the following:

- (a) the requirement that the qualifying value content of the goods under the build-down method, worked out under this Part, is not less than 45%;
- (b) the requirement that the qualifying value content of the goods under the build-up method, worked out under this Part, is not less than 35%.

7 Build-down method

- (1) For the purposes of paragraph 153ZMN(6)(b) of the Act, the qualifying value content of goods under the build-down method is worked out using the formula:

$$\frac{\text{Customs value} - \text{Value of non-originating materials}}{\text{Customs value}} \times 100$$

where:

customs value means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

value of non-originating materials means the value, worked out under Part 4, of the non-originating materials used in the production of the goods.

- (2) Qualifying value content must be expressed as a percentage.

8 Build-up method

- (1) For the purposes of paragraph 153ZMN(6)(b) of the Act, the qualifying value content of goods under the build-up method is worked out using the formula:

$$\frac{\text{Value of originating materials}}{\text{Customs value}} \times 100$$

where:

customs value means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

value of originating materials means the value, worked out under Part 4, of the originating materials used in the production of the goods.

- (2) Qualifying value content must be expressed as a percentage.

Part 4—Determination of value

9 Value of goods that are originating materials or non-originating materials

- (1) For the purposes of subsection 153ZML(2) of the Act, this section explains how to work out the value of originating materials or non-originating materials used in the production of goods.
- (2) The value of the materials is as follows:
 - (a) for materials imported into the territory of India by the producer of the goods:
 - (i) the price paid or payable for the materials at the time of importation;
or
 - (ii) if the value of the materials cannot be determined under subparagraph (i)—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
 - (b) for materials acquired in the territory of India—one of the following chosen by the importer of the goods:
 - (i) the price paid or payable for the materials by the producer of the goods;
 - (ii) the value of those materials worked out under paragraph (a) on the assumption that those materials had been imported into the territory of India by the producer of the goods;
 - (iii) the earliest ascertainable price paid or payable for the materials in the territory of India;
 - (c) for materials that are produced by the producer of the goods—all the costs incurred in the production of the materials, including general expenses.
- (3) For the purposes of paragraph (2)(a), in working out the value of particular materials, the costs of insurance and freight incurred in delivering the materials to the port of importation in India must be included.
- (4) In working out the value of particular originating materials under subsection (2), the following may be included, to the extent that they have not been taken into account under that subsection:
 - (a) the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;
 - (b) duties, taxes and customs brokerage fees on the materials that:
 - (i) have been paid in either or both of the territory of India and the territory of Australia; and
 - (ii) have not been waived or refunded; and
 - (iii) are not refundable or otherwise recoverable;including any credit against duties or taxes that have been paid or that are payable;

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- (c) the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by-products.
- (5) In working out the value of particular non-originating materials under subsection (2), the following may be deducted:
- (a) the costs of freight, insurance, packing and all other transport related costs incurred to transport the materials to the location of the producer of the goods;
 - (b) duties, taxes and customs brokerage fees on the materials that:
 - (i) have been paid in either or both of the territory of India and the territory of Australia; and
 - (ii) have not been waived or refunded; and
 - (iii) are not refundable or otherwise recoverable;including any credit against duties or taxes that have been paid or that are payable;
 - (c) the costs of waste and spoilage resulting from the use of the materials in the production of the goods, reduced by the value of reusable scrap or by-products.

10 Value of accessories, spare parts, tools or instructional or other information materials

If paragraphs 153ZMN(7)(a), (b), (c) and (d) of the Act are satisfied in relation to goods:

- (a) the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account for the purposes of working out the qualifying value content of the goods under Part 3 of this instrument; and
- (b) if the accessories, spare parts, tools or instructional or other information materials are originating materials—for the purposes of sections 8 and 9 of this instrument, those accessories, spare parts, tools or instructional or other information materials must be taken into account as originating materials used in the production of the goods; and
- (c) if the accessories, spare parts, tools or instructional or other information materials are non-originating materials—for the purposes of sections 7 and 9 of this instrument, those accessories, spare parts, tools or instructional or other information materials must be taken into account as non-originating materials used in the production of the goods.

11 Value of packaging material and container

If paragraphs 153ZMP(1)(a) and (b) of the Act are satisfied in relation to goods and the goods must have a qualifying value content of not less than a particular percentage worked out in a particular way:

- (a) the value of the packaging material or container in which the goods are packaged must be taken into account for the purposes of working out the qualifying value content of the goods under Part 3 of this instrument; and
- (b) if that packaging material or container is an originating material—for the purposes of sections 8 and 9 of this instrument, that packaging material or

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- container must be taken into account as an originating material used in the production of the goods; and
- (c) if that packaging material or container is a non-originating material—for the purposes of sections 7 and 9 of this instrument, that packaging material or container must be taken into account as a non-originating material used in the production of the goods.

Part 5—Record keeping obligations

12 Exportation of goods to India—record keeping by exporter who is not the producer of the goods

- (1) For the purposes of subsection 126AMF(1) of the Act, an exporter of goods mentioned in that subsection, who is not also the producer of the goods, must keep the following records:
 - (a) records of the purchase of the goods by the exporter;
 - (b) records of the purchase of the goods by the person to whom the goods are exported;
 - (c) evidence that payment has been made for the goods;
 - (d) evidence of the classification of the goods under the Harmonized System;
 - (e) if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the exporter:
 - (i) records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
 - (f) if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the exporter:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the accessories, spare parts, tools or instructional or other information materials;
 - (g) if the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter:
 - (i) records of the purchase of the packaging material or container; and
 - (ii) evidence of the value of the packaging material or container;
 - (h) if the goods are packaged for retail sale in packaging material or a container that was produced by the exporter:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the packaging material or container;
- (2) The records must be kept for at least 5 years starting on the date the certificate of origin for the goods is issued.
- (3) The exporter:
 - (a) may keep the records at any place (whether or not in Australia); and
 - (b) must ensure that:

- (i) the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and
- (ii) if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and
- (iii) if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

13 Exportation of goods to India—record keeping by the producer of the goods

- (1) For the purposes of subsection 126AMF(1) of the Act, a producer of goods mentioned in that subsection, whether or not the producer is the exporter of the goods, must keep the following records:
 - (a) records of the purchase of the goods;
 - (b) if the producer is the exporter of the goods—evidence of the classification of the goods under the Harmonized System;
 - (c) evidence that payment has been made for the goods;
 - (d) evidence of the value of the goods;
 - (e) records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System;
 - (f) evidence of the value of those materials;
 - (g) records of the production of the goods;
 - (h) if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the producer:
 - (i) records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
 - (i) if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the producer:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the accessories, spare parts, tools or instructional or other information materials;
 - (j) if the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:
 - (i) records of the purchase of the packaging material or container; and
 - (ii) evidence of the value of the packaging material or container;
 - (k) if the goods are packaged for retail sale in packaging material or a container that was produced by the producer:
 - (i) records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
 - (ii) evidence of the value of the materials so purchased; and
 - (iii) records of the production of the packaging material or container;
 - (l) a copy of the certificate of origin for the goods.

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- (2) The records must be kept for at least 5 years starting on the date the certificate of origin for the goods is issued.
- (3) The producer:
 - (a) may keep the records at any place (whether or not in Australia); and
 - (b) must ensure that:
 - (i) the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and
 - (ii) if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and
 - (iii) if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.