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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Customs Amendment (China-Australia
Free Trade Agreement Implementation)
Bill 2015**

No. , 2015

(Immigration and Border Protection)

**A Bill for an Act to amend the *Customs Act 1901*,
and for related purposes**

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1 **A Bill for an Act to amend the *Customs Act 1901*,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Customs Amendment*
6 (*China-Australia Free Trade Agreement Implementation*) Act
7 2015.

8 **2 Commencement**

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

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	<p>The later of:</p> <p>(a) the day this Act receives the Royal Assent; and</p> <p>(b) the day the China-Australia Free Trade Agreement, done at Canberra on 17 June 2015, enters into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the Gazette the day the Agreement enters into force for Australia.</p>	
3. Schedule 2	<p>The later of:</p> <p>(a) immediately after the commencement of Schedule 1 to the <i>Acts and Instruments (Framework Reform) Act 2015</i>; and</p> <p>(b) immediately after the commencement of the provisions covered by table item 2.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	

Note: This table relates only to the provisions of this Act as originally enacted.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

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

1 **3 Schedules**

2 Legislation that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.

1 **Schedule 1—Main amendments**

2 **Part 1—Chinese originating goods**

3 *Customs Act 1901*

4 **1 After Division 1K of Part VIII**

5 Insert:

6 **Division 1L—Chinese originating goods**

7 **Subdivision A—Preliminary**

8 **153ZOA Simplified outline of this Division**

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

- Subdivision F provides that goods are not Chinese originating goods under this Division merely because of certain operations.
- Subdivision G deals with how the consignment of goods affects whether the goods are Chinese originating goods.

153ZOB Interpretation

Definitions

(1) In this Division:

Agreement means the China-Australia Free Trade Agreement, done at Canberra on 17 June 2015, as amended from time to time.

Note: The Agreement could in 2015 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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

Certificate of Origin means a certificate that is in force and that complies with the requirements of Article 3.14 of the Agreement.

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

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

Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2015 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

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

Declaration of Origin means a declaration that is in force and that complies with the requirements of Article 3.15 of the Agreement.

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

4 **indirect materials** means:

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

10 including:

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

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

22 **non-originating materials** means goods that are not originating
23 materials.

24 **originating materials** means:

- 25 (a) Chinese originating goods that are used in the production of
26 other goods; or
27 (b) Australian originating goods that are used in the production
28 of other goods; or
29 (c) indirect materials.

30 **plant** has the same meaning as it has in the Agreement.

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

1 **territory of a non-party** has the same meaning as it has in the
2 Agreement, and includes the customs territory of the following
3 members of the World Trade Organization established by the
4 World Trade Organization Agreement:

- 5 (a) Hong Kong, China;
6 (b) Macao, China;
7 (c) Separate Customs Territory of Taiwan, Penghu, Kinmen and
8 Matsu.

9 **territory of Australia** means territory within the meaning, so far as
10 it relates to Australia, of Article 1.3 of the Agreement.

11 **territory of China** means territory within the meaning, so far as it
12 relates to China, of Article 1.3 of the Agreement, and does not
13 include the customs territory of the following members of the
14 World Trade Organization established by the World Trade
15 Organization Agreement:

- 16 (a) Hong Kong, China;
17 (b) Macao, China;
18 (c) Separate Customs Territory of Taiwan, Penghu, Kinmen and
19 Matsu.

20 **World Trade Organization Agreement** means the Marrakesh
21 Agreement establishing the World Trade Organization, done at
22 Marrakesh on 15 April 1994.

23 Note: The Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS
24 8) and could in 2015 be viewed in the Australian Treaties Library on
25 the AustLII website (<http://www.austlii.edu.au>).

26 *Regional value content of goods*

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

31 *Value of goods*

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

1 *Tariff classifications*

2 (4) In prescribing tariff classifications for the purposes of this
3 Division, the regulations may refer to the Harmonized System.

4 (5) Subsection 4(3A) does not apply for the purposes of this Division.

5 *Incorporation of other instruments*

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

12 **Subdivision B—Goods wholly obtained or produced in the**
13 **territory of China**

14 **153ZOC Goods wholly obtained or produced in the territory of**
15 **China**

- 16 (1) Goods are *Chinese originating goods* if:
17 (a) they are wholly obtained or produced in the territory of
18 China; and
19 (b) either:
20 (i) the importer of the goods has, at the time the goods are
21 imported, a Certificate of Origin or a Declaration of
22 Origin, or a copy of one, for the goods; or
23 (ii) Australia has waived the requirement for a Certificate of
24 Origin or a Declaration of Origin for the goods.
- 25 (2) Goods are *wholly obtained or produced in the territory of China*
26 if, and only if, the goods are:
27 (a) live animals born and raised in the territory of China; or
28 (b) goods obtained in the territory of China from live animals
29 referred to in paragraph (a); or
30 (c) goods obtained directly from hunting, trapping, fishing,
31 aquaculture, gathering or capturing conducted in the territory
32 of China; or

- 1 (d) plants, or plant products, harvested, picked or gathered in the
2 territory of China; or
- 3 (e) minerals, or other naturally occurring substances, extracted or
4 taken in the territory of China; or
- 5 (f) goods, other than fish, shellfish, plant or other marine life,
6 extracted or taken from the waters, seabed or subsoil beneath
7 the seabed outside the territory of China, but only if China
8 has the right to exploit such waters, seabed or subsoil in
9 accordance with international law and the law of China; or
- 10 (g) fish, shellfish, plant or other marine life taken from the high
11 seas by a vessel registered with China and flying the flag of
12 China; or
- 13 (h) goods obtained or produced from goods referred to in
14 paragraph (g) on board factory ships that are registered with
15 China and flying the flag of China; or
- 16 (i) waste and scrap that:
- 17 (i) has been derived from production in the territory of
18 China; or
- 19 (ii) has been derived from used goods that are collected in
20 the territory of China and that are fit only for the
21 recovery of raw materials; or
- 22 (j) goods produced entirely in the territory of China exclusively
23 from goods referred to in paragraphs (a) to (i).

24 **Subdivision C—Goods produced in China, or in China and**
25 **Australia, from originating materials**

26 **153ZOD Goods produced in China, or in China and Australia, from**
27 **originating materials**

28 Goods are *Chinese originating goods* if:

- 29 (a) they are produced entirely in the territory of China, or
30 entirely in the territory of China and the territory of Australia,
31 from originating materials only; and
- 32 (b) either:
- 33 (i) the importer of the goods has, at the time the goods are
34 imported, a Certificate of Origin or a Declaration of
35 Origin, or a copy of one, for the goods; or

- 1 (ii) Australia has waived the requirement for a Certificate of
2 Origin or a Declaration of Origin for the goods.

3 **Subdivision D—Goods produced in China, or in China and**
4 **Australia, from non-originating materials**

5 **153ZOE Goods produced in China, or in China and Australia, from**
6 **non-originating materials**

- 7 (1) Goods are *Chinese originating goods* if:
8 (a) they are classified to a Chapter, heading or subheading of the
9 Harmonized System specified in column 1 of the table in
10 Part 2 of Schedule 1 to the regulations made for the purposes
11 of this Subdivision; and
12 (b) they are produced entirely in the territory of China, or
13 entirely in the territory of China and the territory of Australia,
14 from non-originating materials only or from non-originating
15 materials and originating materials; and
16 (c) each requirement that is prescribed by the regulations to
17 apply in relation to the goods is satisfied; and
18 (d) either:
19 (i) the importer of the goods has, at the time the goods are
20 imported, a Certificate of Origin or a Declaration of
21 Origin, or a copy of one, for the goods; or
22 (ii) Australia has waived the requirement for a Certificate of
23 Origin or a Declaration of Origin for the goods.

24 *Change in tariff classification*

- 25 (2) The regulations may prescribe that each non-originating material
26 used in the production of the goods is required to satisfy a
27 prescribed change in tariff classification.
28 (3) The regulations may also prescribe when a non-originating
29 material used in the production of the goods is taken to satisfy the
30 change in tariff classification.
31 (4) If:
32 (a) the requirement referred to in subsection (2) applies in
33 relation to the goods; and

1 (b) one or more of the non-originating materials used in the
2 production of the goods do not satisfy the change in tariff
3 classification;
4 then the requirement referred to in subsection (2) is taken to be
5 satisfied if the total value of those non-originating materials does
6 not exceed 10% of the customs value of the goods.

7 *Regional value content*

8 (5) The regulations may prescribe that the goods are required to have a
9 regional value content of at least a prescribed percentage.

10 (6) If:

- 11 (a) the goods are required to have a regional value content of at
12 least a particular percentage; and
13 (b) the goods are imported into Australia with accessories, spare
14 parts or tools; and
15 (c) the accessories, spare parts or tools are classified and
16 invoiced with the goods and are included in the price of the
17 goods; and
18 (d) the quantities and value of the accessories, spare parts or
19 tools are customary for the goods; and
20 (e) the accessories, spare parts or tools are non-originating
21 materials;

22 then the regulations must require the value of the accessories, spare
23 parts or tools to be taken into account as non-originating materials
24 for the purposes of working out the regional value content of the
25 goods.

26 Note: The value of the accessories, spare parts or tools is to be worked out in
27 accordance with the regulations: see subsection 153ZOB(3).

28 (7) For the purposes of subsection (6), disregard section 153ZOG in
29 working out whether the accessories, spare parts or tools are
30 non-originating materials.

31 *No limit on regulations*

32 (8) Subsections (2) and (5) do not limit paragraph (1)(c).

1 **153ZOF Packaging materials and containers**

2 (1) If:

3 (a) goods are packaged for retail sale in packaging material or a
4 container; and

5 (b) the packaging material or container is classified with the
6 goods in accordance with Rule 5 of the Interpretation Rules;

7 then the packaging material or container is to be disregarded for
8 the purposes of this Subdivision.

9 *Regional value content*

10 (2) However, if:

11 (a) the goods are required to have a regional value content of at
12 least a particular percentage; and

13 (b) the packaging material or container is a non-originating
14 material;

15 then the regulations must require the value of the packaging
16 material or container to be taken into account as a non-originating
17 material for the purposes of working out the regional value content
18 of the goods.

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

21 **Subdivision E—Goods that are accessories, spare parts or tools**

22 **153ZOG Goods that are accessories, spare parts or tools**

23 Goods are *Chinese originating goods* if:

24 (a) they are accessories, spare parts or tools in relation to other
25 goods; and

26 (b) the other goods are imported into Australia with the
27 accessories, spare parts or tools; and

28 (c) the other goods are Chinese originating goods; and

29 (d) the accessories, spare parts or tools are classified and
30 invoiced with the other goods and are included in the price of
31 the other goods; and

- 1 (e) the accessories, spare parts or tools are not imported solely
2 for the purpose of artificially raising the regional value
3 content of the other goods; and
4 (f) the quantities and value of the accessories, spare parts or
5 tools are customary for the other goods.

6 **Subdivision F—Non-qualifying operations**

7 **153ZOH Non-qualifying operations**

- 8 (1) Goods are not Chinese originating goods under this Division
9 merely because of the following operations or processes:
10 (a) operations or processes to preserve goods in good condition
11 for the purpose of transport or storage of the goods;
12 (b) packaging or repackaging;
13 (c) sifting, screening, sorting, classifying, grading or matching
14 (including the making up of sets of goods);
15 (d) placing in bottles, cans, flasks, bags, cases or boxes, fixing on
16 cards or boards or other simple packaging operations;
17 (e) affixing or printing marks, labels, logos or other like
18 distinguishing signs on goods or on their packaging;
19 (f) disassembly of goods.
20 (2) This section applies despite any other provision of this Division.

21 **Subdivision G—Consignment**

22 **153ZOI Consignment**

- 23 (1) Goods are not Chinese originating goods under this Division if the
24 goods are transported through the territory of a non-party and one
25 or more of the following apply:
26 (a) the goods undergo any operation in the territory of the
27 non-party (other than unloading, reloading, repacking,
28 relabelling for the purpose of satisfying the requirements of
29 Australia, splitting up of the goods for further transport,
30 temporary storage or any operation that is necessary to
31 preserve the goods in good condition);

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Part 1 Chinese originating goods

- 1 (b) if the goods undergo temporary storage in the territory of the
2 non-party—the goods remain in the territory of the non-party
3 for a period exceeding 12 months;
4 (c) the goods do not remain under customs control at all times
5 while the goods are in the territory of the non-party.
- 6 (2) Without limiting paragraph (1)(c), the regulations may make
7 provision for the circumstances in which goods are under customs
8 control while the goods are in the territory of a non-party.
- 9 (3) This section applies despite any other provision of this Division.

1 **Part 2—Verification powers**

2 *Customs Act 1901*

3 **2 After Division 4H of Part VI**

4 Insert:

5 **Division 4J—Exportation of goods to China**

6 **126AOA Definitions**

7 In this Division:

8 ***Agreement*** means the China-Australia Free Trade Agreement,
9 done at Canberra on 17 June 2015, as amended from time to time.

10 Note: The Agreement could in 2015 be viewed in the Australian Treaties
11 Library on the AustLII website (<http://www.austlii.edu.au>).

12 ***Chinese customs official*** means a person representing the customs
13 administration of the territory of China.

14 ***producer*** means a person who grows, raises, mines, harvests,
15 fishes, farms, traps, hunts, captures, gathers, collects, breeds,
16 extracts, manufactures, processes or assembles goods.

17 ***territory of China*** means territory within the meaning, so far as it
18 relates to China, of Article 1.3 of the Agreement, and does not
19 include the customs territory of the following members of the
20 World Trade Organization established by the World Trade
21 Organization Agreement:

- 22 (a) Hong Kong, China;
23 (b) Macao, China;
24 (c) Separate Customs Territory of Taiwan, Penghu, Kinmen and
25 Matsu.

26 ***World Trade Organization Agreement*** means the Marrakesh
27 Agreement establishing the World Trade Organization, done at
28 Marrakesh on 15 April 1994.

Schedule 1 Main amendments

Part 2 Verification powers

1 Note: The Agreement is in Australian Treaty Series 1995 No. 8 ([1995] ATS
2 8) and could in 2015 be viewed in the Australian Treaties Library on
3 the AustLII website (<http://www.austlii.edu.au>).

4 **126AOB Record keeping obligations**

5 *Regulations may prescribe record keeping obligations*

- 6 (1) The regulations may prescribe record keeping obligations that
7 apply in relation to goods that:
8 (a) are exported to the territory of China; and
9 (b) are claimed to be Australian originating goods for the
10 purpose of obtaining a preferential tariff in the territory of
11 China.

12 *On whom obligations may be imposed*

- 13 (2) Regulations for the purposes of subsection (1) may impose such
14 obligations on an exporter or producer of goods.

15 **126AOC Power to require records**

16 *Requirement to produce records*

- 17 (1) An authorised officer may require a person who is subject to record
18 keeping obligations under regulations made for the purposes of
19 section 126AOB to produce to the officer such of those records as
20 the officer requires.

21 Note: Failing to produce a record when required to do so by an officer may
22 be an offence: see section 243SB. However, a person does not have to
23 produce a record if doing so would tend to incriminate the person: see
24 section 243SC.

25 *Disclosing records to Chinese customs official*

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

1 **126AOD Power to ask questions**

2 *Power to ask questions*

- 3 (1) An authorised officer may require a person who is an exporter or
4 producer of goods that:
5 (a) are exported to the territory of China; and
6 (b) are claimed to be Australian originating goods for the
7 purpose of obtaining a preferential tariff in the territory of
8 China;
9 to answer questions in order to verify the origin of the goods.

10 Note: Failing to answer a question when required to do so by an officer may
11 be an offence: see section 243SA. However, a person does not have to
12 answer a question if doing so would tend to incriminate the person:
13 see section 243SC.

14 *Disclosing answers to Chinese customs official*

- 15 (2) An authorised officer may, for the purpose of verifying a claim for
16 a preferential tariff in the territory of China, disclose any answers
17 to such questions to a Chinese customs official.

1 **Part 3—Application provisions**

2 **3 Application provisions**

- 3 (1) The amendment made by item 1 applies in relation to:
- 4 (a) goods imported into Australia on or after the commencement
5 of that item; and
- 6 (b) goods imported into Australia before the commencement of
7 that item, where the time for working out the rate of import
8 duty on the goods had not occurred before the
9 commencement of that item.
- 10 (2) The amendment made by item 2 applies in relation to goods exported to
11 the territory of China on or after the commencement of that item
12 (whether the goods were produced before, on or after that
13 commencement).

1
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Schedule 2—Contingent amendments

3

Customs Act 1901

4

1 Subsection 153ZOB(6)

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6

Omit “*Legislative Instruments Act 2003*”, substitute “*Legislation Act 2003*”.