

Customs Amendment Act (No. 1) 2003

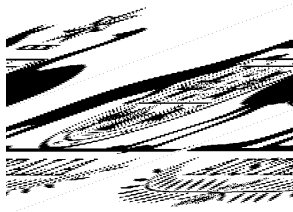
No. 62, 2003

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Customs Amendment Act (No. 1) 2003

No. 62, 2003

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

[Assented to 30 June 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Customs Amendment Act (No. 1) 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	30 June 2003
2. Schedule 1	1 July 2003	1 July 2003
3. Schedule 2	The day on which SAFTA enters into force	

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

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision commences as a result of item 3 of the table, the Minister must announce by notice in the *Gazette* the day on which the provision commenced.
- (4) In this section:

SAFTA has the meaning it has in Division 1B of Part VIII of the *Customs Act 1901*.

Note: Item 3 of Schedule 2 to this Act inserts Division 1B of Part VIII of the *Customs Act 1901*.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Least Developed Countries

Customs Act 1901

1 Section 153B

Insert:

Least Developed Country has the same meaning as in the *Customs Tariff Act 1995*.

2 Section 153B (after paragraph (f) of the definition of qualifying area)

Insert:

- (fa) if goods are claimed to be the manufacture of a Least Developed Country—the Developing Countries, the Forum Island Countries and Australia; or

3 After subsection 153D(2)

Insert:

Goods claimed to be the manufacture of a Least Developed Country—special rule

(2A) If:

- (a) goods claimed to be the manufacture of a Least Developed Country contain materials that, in the form they were received by the factory, were manufactured or produced in Developing Countries that are not Least Developed Countries; and
- (b) the allowable expenditure of the factory on those materials in aggregate would, but for this subsection, exceed 25% of the total factory cost of the goods;

that allowable expenditure on those materials is taken to be 25% of the total factory cost of the goods.

4 After paragraph 153D(3)(b)

Insert:

- (ba) the goods are claimed to be the manufacture of Papua New Guinea or a Forum Island Country; and

5 After section 153N

Insert:

153NA Manufactured goods originating in a Least Developed Country

Goods claimed to be the manufacture of a Least Developed Country are the manufacture of that country if:

- (a) the last process in their manufacture was performed in that country; and
- (b) having regard to their qualifying area, their allowable factory cost is at least 50% of their total factory cost.

Schedule 2—Singapore-Australia Free Trade Agreement

Customs Act 1901

1 Subsection 4(1) (at the end of the definition of unmanufactured raw products)

Add:

Note: This term has a different meaning for the purposes of Division 1B of Part VIII: see section 153UA.

2 After Division 4 of Part VI

Insert:

Division 4A—Exportation of goods to Singapore

126AA Declaration concerning exports to Singapore

The regulations may prescribe the requirements on exporters relating to the making of declarations concerning the export of goods to Singapore for which a preferential tariff is to be claimed.

126AB Record keeping obligations

Regulations may prescribe record keeping obligations

- (1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
 - (a) are exported to Singapore; and
 - (b) are claimed to be the produce or manufacture of Australia for the purpose of obtaining a preferential tariff in Singapore.

On whom obligations may be imposed

- (2) Regulations for the purposes of subsection (1) may impose such obligations on a producer, manufacturer or exporter of goods.

126AC Power to require records

Requirement to produce records

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

Disclosing records to instrumentality or agency of Singapore

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Singapore, disclose any records so produced to an instrumentality or agency of Singapore.

126AD Power to ask questions

Power to ask questions

- (1) An authorised officer may require a person who is an exporter, producer or manufacturer of goods that:
 - (a) are exported to Singapore; and
 - (b) are claimed to be the produce or manufacture of Australia for the purpose of obtaining a preferential tariff in Singapore;to answer questions in order to verify the origin of the goods.

Disclosing answers to instrumentality or agency of Singapore

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Singapore, disclose any answers to such questions to an instrumentality or agency of Singapore.

3 After Division 1A of Part VIII

Insert:

Division 1B—Rules of origin of goods claimed to be the produce or manufacture of Singapore

Subdivision A—Preliminary

153U Purpose of this Division

The purpose of this Division is to set out rules for determining whether goods are the produce or manufacture of Singapore.

153UA Definitions

In this Division:

allowable cost to manufacture has the meaning given by section 153W.

allowable expenditure by the principal manufacturer on labour has the meaning given by section 153WB.

allowable expenditure by the principal manufacturer on materials has the meaning given by section 153WA.

allowable expenditure by the principal manufacturer on overheads has the meaning given by section 153WC.

Certificate of Origin means a certificate that complies with the requirements of Annex 2A of SAFTA.

cultivate includes cultivate by a process of aquaculture.

input means any matter or substance used or consumed in the manufacture or production of a material, other than a matter or substance that is treated as an overhead.

manufacture means the creation of an article essentially different from the matters or substances that go into such manufacture and does not include the following activities (whether performed alone or in combination with each other):

- (a) restoration or renovation processes such as repairing, reconditioning, overhauling or refurbishing;
- (b) minimal operations;

(c) quality control inspections.

material means any matter or substance purchased by the principal manufacturer of the goods and used or consumed in the processing of the goods, other than any matter or substance that is treated as an overhead.

minimal operations means pressing, labelling, ticketing, packaging and preparation for sale, or any similar process, whether conducted alone or in combination with each other.

partly manufactured in Singapore, in relation to goods, has the meaning given by section 153VB.

person includes partnerships and unincorporated associations.

principal manufacturer, in relation to goods, means the person in Singapore who performs, or has had performed on its behalf, the last process of manufacture of the goods.

process means any operation performed on goods, and includes:

- (a) a process of manufacture; and
- (b) minimal operations; and
- (c) quality control inspections.

produce, in relation to wholly obtained goods, means grow, mine, harvest, fish, hunt, gather, trap, capture, farm, cultivate or otherwise obtain wholly obtained goods.

SAFTA means the Singapore-Australia Free Trade Agreement done at Singapore on 17 February 2003, as amended from time to time.

Note: In 2003 the text of the Agreement was accessible on the Internet through the web site of the Department of Foreign Affairs and Trade.

total cost to manufacture has the meaning given by section 153X.

total expenditure by the principal manufacturer on materials has the meaning given by section 153XA.

total expenditure by the principal manufacturer on overseas processing costs has the meaning given by section 153XB.

unmanufactured raw products means:

- (a) natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and includes:
 - (i) animals and products obtained from animals, including greasy wool; and
 - (ii) plants and products obtained from plants; and
 - (iii) minerals in their natural state and ores; and
 - (iv) crude petroleum; or
- (b) raw materials recovered in Singapore or in Australia from waste and scrap.

waste and scrap means only waste and scrap that:

- (a) have been derived from manufacturing operations or consumption; and
- (b) are fit only for the recovery of raw materials.

wholly manufactured in Singapore, in relation to goods, has the meaning given by section 153VA.

wholly obtained goods means:

- (a) unmanufactured raw products; or
- (b) waste and scrap.

153UB Rule against double counting

In determining:

- (a) the allowable cost to manufacture; or
- (b) the total cost to manufacture;

goods claimed to be the produce or manufacture of Singapore, a cost incurred, whether directly or indirectly, by the principal manufacturer of the goods must not be taken into account more than once.

153UC CEO may determine cost of certain input, material etc.

If the CEO is satisfied that any input, material, labour, overhead or overseas process was provided:

- (a) free of charge; or

(b) at a price that is inconsistent with the normal market value of that input, material, labour, overhead or overseas process; the CEO may require, in writing, that an amount determined by the CEO to be the normal market value of that input, material, labour, overhead or overseas process be treated, for the purposes of this Division, as the amount paid by the manufacturer for the input, material, labour, overhead or overseas process.

Subdivision B—Rules of origin of goods claimed to be the produce or manufacture of Singapore

153V Goods claimed to be the produce or manufacture of Singapore

Goods claimed to be produce of Singapore

- (1) Goods claimed to be the produce of Singapore are the produce of that country if they are wholly obtained goods produced in Singapore.

Goods claimed to be manufacture of Singapore

- (2) Goods claimed to be the manufacture of Singapore are the manufacture of that country if:
- (a) they are wholly manufactured in Singapore; or
 - (b) they are partly manufactured in Singapore.
- (3) This section is subject to sections 153VE and 153VF.

153VA Goods wholly manufactured in Singapore

Goods are *wholly manufactured in Singapore* if they are manufactured in that country from one or more of the following:

- (a) unmanufactured raw products;
- (b) waste and scrap produced in Singapore or Australia;
- (c) materials wholly manufactured within Singapore or Australia;
- (d) materials imported into Singapore that the CEO has determined, by *Gazette* notice, to be manufactured raw materials of Singapore.

153VB Goods partly manufactured in Singapore

General rule

- (1) Goods are ***partly manufactured in Singapore*** if:
 - (a) in relation to any goods—subsection (2) applies to the goods; or
 - (b) in relation to any goods that are not specified in Annex 2C of SAFTA—subsection (5) applies to the goods.

Any goods

- (2) This subsection applies to the goods if:
 - (a) the last process of manufacture was performed in Singapore by, or on behalf of, the principal manufacturer; and
 - (b) the allowable cost to manufacture the goods is not less than:
 - (i) if the goods are specified in Annex 2D of SAFTA—30% of the total cost to manufacture the goods; or
 - (ii) in any other case—50% of the total cost to manufacture the goods.

Costs not included in allowable cost to manufacture—any goods

- (3) For the purposes of subsection (2), the allowable cost to manufacture the goods does not include the following:
 - (a) the cost of any material purchased by the principal manufacturer and subsequently processed outside Singapore or Australia;
 - (b) the cost of processing (including the cost of labour and overheads) any materials referred to in paragraph (a) that is performed, whether in Singapore or Australia or elsewhere, up until the processed material is returned to Singapore.

Minimal operations or quality control inspections

- (4) For the purposes of subsection (2), if minimal operations or quality control inspections are conducted by, or on behalf of, the principal manufacturer in Singapore, as part of a process of manufacturing the goods, the cost of those minimal operations or quality control inspections may be included in the calculation of:
 - (a) the total expenditure on materials; and

- (b) the allowable expenditure on materials, labour and overheads;

to the extent that they relate to the cost of materials, labour or overheads, as the case requires.

Goods other than those specified in Annex 2C

- (5) This subsection applies to the goods if:
 - (a) one or more processes of manufacture was or were performed on the goods in Singapore by, or on behalf of, the principal manufacturer; and
 - (b) one or more processes was or were performed on the goods in Singapore by, or on behalf of, the principal manufacturer immediately prior to export of the goods to Australia; and
 - (c) the principal manufacturer in Singapore incurred all the costs associated with any process performed on the goods outside Singapore or Australia; and
 - (d) the allowable cost to manufacture the goods is not less than:
 - (i) if the goods are specified in Annex 2D of SAFTA—30% of the total cost to manufacture the goods; or
 - (ii) in any other case—50% of the total cost to manufacture the goods.

Costs not included in allowable cost to manufacture—other goods

- (6) For the purposes of subsection (5), the allowable cost to manufacture the goods does not include the cost of processing (including the cost of labour or overheads) any material outside Singapore or Australia.

153VC Reduction of the required percentage of allowable cost to manufacture in unforeseen circumstances

When 30% in subsection 153VB(2) or 153VB(5) can be read as 28%

- (1) If the CEO is satisfied:
 - (a) that the allowable cost to manufacture goods that are claimed to be the manufacture of Singapore, in a shipment of such

goods, is at least 28% but not 30%, of the total cost to manufacture those goods; and

- (b) that the allowable cost to manufacture those goods would be at least 30% of the total cost to manufacture those goods if an unforeseen circumstance had not occurred; and
 - (c) that the unforeseen circumstance is unlikely to continue;
- the CEO may determine, in writing, that subsection 153VB(2) or 153VB(5) has effect:
- (d) for the purposes of the shipment of goods that is affected by that unforeseen circumstance; and
 - (e) for the purposes of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153VB(2) or 153VB(5) to 30% were a reference to 28%.

When 50% in subsection 153VB(2) or 153VB(5) can be read as 48%

(2) If the CEO is satisfied:

- (a) that the allowable cost to manufacture goods that are claimed to be the manufacture of Singapore, in a shipment of such goods, is at least 48% but not 50%, of the total cost to manufacture those goods; and
 - (b) that the allowable cost to manufacture those goods would be at least 50% of the total cost to manufacture those goods if an unforeseen circumstance had not occurred; and
 - (c) that the unforeseen circumstance is unlikely to continue;
- the CEO may determine, in writing, that subsection 153VB(2) or 153VB(5) has effect:
- (d) for the purposes of the shipment of goods that is affected by that unforeseen circumstance; and
 - (e) for the purposes of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153VB(2) or 153VB(5) to 50% were a reference to 48%.

Effect of determination

- (3) If the CEO makes a determination under this section then, in relation to all goods imported into Australia that are covered by that determination, section 153VB has effect in accordance with the determination.

CEO may revoke determination

- (4) If:
- (a) the CEO has made a determination under this section; and
 - (b) the CEO becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;
- the CEO may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

Similar goods

- (5) In this section:

similar goods, in relation to goods in a particular shipment, means goods:

- (a) that are contained in another shipment that is imported by the same importer; and
- (b) that are covered by the same Certificate of Origin.

153VD Changing the required percentage of allowable cost to manufacture in exceptional circumstances

CEO may determine a different percentage

- (1) If the CEO is satisfied that exceptional circumstances apply, the CEO may determine, by *Gazette* notice, that a reference to a percentage in subsection 153VB(2) or 153VB(5) is taken to be a reference to another percentage in respect of particular goods or goods of a specific class or kind during a period specified in the determination.

Effect of determination

- (2) If the CEO makes a determination under this section then, in relation to all goods imported into Australia that are covered by that determination, section 153VB has effect in accordance with the determination.

CEO may revoke determination

- (3) If:
- (a) the CEO makes a determination under this section; and
 - (b) the CEO becomes satisfied that the exceptional circumstances giving rise to the determination no longer continue;
- the CEO may, by *Gazette* notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

153VE Certificate of Origin requirements

Certificate of Origin

- (1) Goods claimed to be the produce or manufacture of Singapore are not the produce or manufacture of Singapore, unless:
- (a) the importer of the goods holds a valid Certificate of Origin and a declaration relevant to the goods at the time of entry of the goods; and
 - (b) if an officer requests production of a copy of the Certificate of Origin and the declaration, both copies are produced to the officer.

Declaration

- (2) In this section:

declaration means a declaration made, by the exporter of the goods in question from Singapore, in accordance with Article 11.6 of Chapter 3 of SAFTA.

153VF Consignment requirements

Goods claimed to be the produce or manufacture of Singapore are not the produce or manufacture of Singapore, unless:

- (a) they have been transported directly to Australia from Singapore; or
- (b) they have been transported through a country or place other than Singapore or Australia but:
 - (i) did not undergo operations in that country or place other than packing, packaging, unloading, reloading or operations to preserve them in good condition; and
 - (ii) were not traded or used in that country or place; or
- (c) they have been transported from a country or place other than Singapore where minimal operations were performed immediately after importation from Singapore and immediately before their exportation to Australia.

Subdivision C—Allowable cost to manufacture

153W Allowable cost to manufacture

The *allowable cost to manufacture* goods is the sum of:

- (a) the allowable expenditure by the principal manufacturer on materials in respect of the goods; and
- (b) the allowable expenditure by the principal manufacturer on labour in respect of the goods; and
- (c) the allowable expenditure by the principal manufacturer on overheads in respect of the goods.

153WA Allowable expenditure by principal manufacturer on materials

General rule

- (1) The *allowable expenditure by the principal manufacturer on materials* in respect of goods is the amount incurred, directly or indirectly, by the principal manufacturer for all materials, in the form purchased by the principal manufacturer, that were manufactured or produced in Singapore or Australia.

Particular matters included in allowable expenditure on materials

- (2) The **allowable expenditure by the principal manufacturer on materials** in respect of goods includes:
- (a) freight, insurance, shipping and packing costs and all other costs, incurred directly or indirectly by the principal manufacturer, in transporting the materials to the first place in Singapore or Australia at which a process is performed on those materials by or on behalf of the principal manufacturer; and
 - (b) customs brokerage fees, incurred directly or indirectly by the principal manufacturer on the materials paid in Singapore or Australia or both.

What is not included in allowable expenditure on materials

- (3) The allowable expenditure by the principal manufacturer on materials in respect of goods does not include the following:
- (a) a customs or excise duty imposed on the materials by or under a law of Singapore or Australia;
 - (b) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty, imposed on the materials by or under a law of Singapore or Australia;
 - (c) the cost of any input that, in the form it was received by the manufacturer or producer of the materials, was not manufactured or produced in Singapore or Australia.

Total cost of inputs may be included in allowable expenditure on materials

- (4) Despite paragraph (3)(c), the total cost of those inputs that would, because of that paragraph, not have been included in the allowable expenditure on a material by the principal manufacturer may be included in that allowable expenditure if the total cost does not exceed 50% of the total expenditure by the principal manufacturer on that material.
- (5) Subsection (4) does not apply in relation to materials that are provided for processing in a country other than Singapore or Australia.

153WB Allowable expenditure by principal manufacturer on labour

The *allowable expenditure by the principal manufacturer on labour*, in respect of goods, is the sum of those parts, of the costs relating to the goods that are costs referred to in section (i) of Annex 2B of SAFTA, that:

- (a) are incurred, directly or indirectly, by the principal manufacturer; and
- (b) relate, directly or indirectly, and wholly or partly, to the processing of the goods in Singapore; and
- (c) can reasonably be allocated to the processing of the goods in Singapore.

153WC Allowable expenditure by principal manufacturer on overheads

The *allowable expenditure by the principal manufacturer on overheads*, in respect of goods, is the sum of those parts, of the costs relating to the goods that are costs allowed in section (ii) of Annex 2B of SAFTA, that:

- (a) are incurred, directly or indirectly, by the principal manufacturer; and
- (b) relate, directly or indirectly, and wholly or partly, to the processing of the goods in Singapore; and
- (c) can reasonably be allocated to the processing of the goods in Singapore.

Subdivision D—Total cost to manufacture

153X Total cost to manufacture

The *total cost to manufacture* goods is the sum of:

- (a) the total expenditure by the principal manufacturer on materials in respect of the goods; and
- (b) the allowable expenditure by the principal manufacturer on labour in respect of the goods; and
- (c) the allowable expenditure by the principal manufacturer on overheads in respect of the goods; and

- (d) the total expenditure (if any) by the principal manufacturer on overseas processing costs in respect of the goods.

153XA Total expenditure by principal manufacturer on materials

General rule

- (1) The *total expenditure by the principal manufacturer on materials* in respect of goods is the amount incurred, directly or indirectly, by the principal manufacturer for all materials.

What is included in total expenditure on materials

- (2) The *total expenditure by the principal manufacturer on materials* in respect of goods includes:
- (a) freight, insurance, shipping and packing costs and all other costs, incurred directly or indirectly by the principal manufacturer, in transporting the materials to the first place in Singapore or Australia at which a process is performed on those materials by or on behalf of the principal manufacturer; and
 - (b) customs brokerage fees, incurred directly or indirectly by the principal manufacturer, on the materials paid in Singapore or Australia or both.

What is not included in total expenditure on materials

- (3) The total expenditure by the principal manufacturer on materials in respect of goods does not include:
- (a) a customs or excise duty; or
 - (b) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty;
- imposed on the materials by or under a law of Singapore or Australia.

153XB Total expenditure by principal manufacturer on overseas processing costs

The *total expenditure by the principal manufacturer on overseas processing costs* in respect of goods is the sum of those parts, of the costs relating to the goods, that:

- (a) are incurred, directly or indirectly, by the principal manufacturer; and
- (b) relate, directly or indirectly, and wholly or partly, to the processing of the goods outside Singapore or Australia, including any associated transport costs; and
- (c) can reasonably be allocated to the processing of the goods.

*[Minister's second reading speech made in—
House of Representatives on 15 May 2003
Senate on 16 June 2003]*

(64/03)
