



# **Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Act 2004**

**No. 130, 2004**

**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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**No. 130, 2004**

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

*[Assented to 26 November 2004]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Act 2004*.

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## 2 Commencement

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

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	
2. Schedule 1, Parts 1 and 2	<p>The later of:</p> <p>(a) 1 January 2005; and</p> <p>(b) the day on which the Thailand-Australia Free Trade Agreement, done at Canberra on 5 July 2004, comes into force for Australia.</p> <p>However, the provision(s) 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 <i>Gazette</i> the day on which the Agreement comes into force for Australia.</p>	
3. Schedule 1, item 3	<p>At the same time as the provision(s) covered by table item 2.</p> <p>However, the provision(s) do not commence at all unless item 1 of Schedule 1 to the <i>US Free Trade Agreement Implementation (Customs Tariff) Act 2004</i> commences before, or at the same time as, the provision(s) covered by table item 2.</p>	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 1, item 4	<p>At the same time as the provision(s) covered by table item 2.</p> <p>However, the provision(s) do not commence at all if item 1 of Schedule 1 to the <i>US Free Trade Agreement Implementation (Customs Tariff) Act 2004</i> commences before, or at the same time as, the provision(s) covered by table item 2.</p>	
5. Schedule 1, item 5	<p>At the same time as item 1 of Schedule 1 to the <i>US Free Trade Agreement Implementation (Customs Tariff) Act 2004</i> commences.</p> <p>However, the provision(s) do not commence at all if item 1 of Schedule 1 to the <i>US Free Trade Agreement Implementation (Customs Tariff) Act 2004</i> commences before, or at the same time as, the provision(s) covered by table item 2.</p>	
6. Schedule 1, item 6	At the same time as the provision(s) covered by table item 3.	
7. Schedule 1, item 7	At the same time as the provision(s) covered by table item 4.	
8. Schedule 1, item 8	At the same time as the provision(s) covered by table item 5.	

**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 contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

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

## **Schedule 1—Amendments**

### **Part 1—Thai originating goods**

#### *Customs Act 1901*

##### **1 Before Division 2 of Part VIII**

Insert:

#### **Division 1D—Thai originating goods**

##### **Subdivision A—Preliminary**

###### **153Z Simplified outline**

The following is a simplified outline of this Division:

- This Division defines **Thai originating goods**. Preferential rates of customs duty under the *Customs Tariff Act 1995* apply to Thai originating goods that are imported into Australia.
- Subdivision B sets out when goods that are wholly obtained goods of Thailand are Thai originating goods.
- Subdivision C sets out when goods that are produced entirely in Thailand, or in Thailand and Australia, are Thai originating goods.
- Subdivision D sets out when accessories, spare parts or tools (imported with other goods) are Thai originating goods.
- Subdivision E deals with how the packaging materials or containers in which goods are packaged affects whether the goods are Thai originating goods.
- Subdivision F deals with how the consignment of goods affects whether the goods are Thai originating goods.

## **153ZA Interpretation**

### *Definitions*

(1) In this Division:

**Agreement** means the Thailand-Australia Free Trade Agreement, done at Canberra on 5 July 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible on the Internet through the web site of the Department of Foreign Affairs and Trade.

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

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of Annex 4.2 of the Agreement.

**continental shelf** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2004 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

**customs value**, in relation to goods, has the meaning given by section 159.

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

**Interpretation Rules** means the General Rules for the Interpretation of the Harmonized System provided for by the Convention.

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

**originating materials** means:

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**Schedule 1** Amendments

**Part 1** Thai originating goods

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- (a) goods that are used in the production of other goods and that are Thai originating goods; or
- (b) goods that are used in the production of other goods and that are Australian originating goods.

**produce** means grow, raise, mine, harvest, fish, trap, hunt, manufacture, process, assemble or disassemble. **Producer** and **production** have corresponding meanings.

**tariff table** means the table in Schedule 1 to the *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004*.

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

**Thai originating goods** means goods that, under this Division, are Thai originating goods.

*Value of goods*

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

*Tariff classifications*

- (3) In specifying tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.
- (4) Subsection 4(3A) does not apply for the purposes of this Division.

*Regulations*

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

**Subdivision B—Wholly obtained goods of Thailand**

**153ZB Wholly obtained goods of Thailand**

- (1) Goods are **Thai originating goods** if:
  - (a) they are wholly obtained goods of Thailand; and

(b) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

(2) Goods are ***wholly obtained goods of Thailand*** if, and only if, the goods are:

- (a) minerals extracted in Thailand; or
- (b) agricultural goods harvested, picked or gathered in Thailand; or
- (c) live animals born and raised in Thailand; or
- (d) products obtained from live animals in Thailand; or
- (e) goods obtained directly from hunting, trapping, fishing, gathering or capturing carried out in Thailand; or
- (f) fish, shellfish, plant or other marine life taken:
  - (i) within the territorial sea of Thailand; or
  - (ii) within any other maritime zone in which Thailand has sovereign rights under the law of Thailand and in accordance with UNCLOS; or
  - (iii) from the high seas by ships flying the flag of Thailand; or
- (g) goods obtained or produced exclusively from goods referred to in paragraph (f) on board factory ships flying the flag of Thailand; or
- (h) goods taken from the seabed or the subsoil beneath the seabed of the territorial sea of Thailand or of the continental shelf of Thailand:
  - (i) by Thailand; or
  - (ii) by a national of Thailand; or
  - (iii) by a body corporate incorporated in Thailand; or
- (i) waste and scrap that has been derived from production operations in Thailand and that is fit only for the recovery of raw materials; or
- (j) used goods that are collected in Thailand and that are fit only for the recovery of raw materials; or
- (k) goods produced entirely in Thailand exclusively from goods referred to in paragraphs (a) to (j).

## **Subdivision C—Goods produced entirely in Thailand or in Thailand and Australia**

### **153ZC Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision sets out when goods that are produced entirely in Thailand, or in Thailand and Australia, are Thai originating goods.
- The goods may be Thai originating goods under section 153ZD (which applies to all goods).
- The goods may also be Thai originating goods under section 153ZE (which applies only to goods that are chemicals, plastics or rubber).

### **153ZD Goods produced entirely in Thailand or in Thailand and Australia**

- (1) Subject to subsection (6), goods are ***Thai originating goods*** if:
  - (a) they are classified to a heading or subheading of the Harmonized System that is specified in column 1 or 2 of the tariff table; and
  - (b) they are produced entirely in Thailand, or entirely in Thailand and Australia, from originating materials or non-originating materials, or both; and
  - (c) the requirement or requirements that are specified in column 4 of the tariff table and that apply to the goods are satisfied; and
  - (d) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

#### *Change in tariff classification*

- (2) The regulations may make it a requirement (the ***tariff change requirement***) that each non-originating material (if any) used to produce the goods must satisfy a particular change in tariff

classification. The regulations may also set out when a non-originating material is taken to satisfy that change.

(3) The tariff change requirement is also taken to be satisfied if the total value of all the non-originating materials that:

- (a) do not satisfy the particular change in tariff classification; and
- (b) are used to produce the goods; does not exceed 10% of the customs value of the goods.

*Regional value content*

(4) The regulations may make it a requirement that the goods must satisfy a regional value content requirement. The regulations may prescribe different regional value content requirements for different kinds of goods.

*No limit on paragraph (1)(c)*

(5) Subsections (2) and (4) do not limit the requirements the regulations may specify under paragraph (1)(c).

*Dilution with water or another substance*

(6) However, the goods are not Thai originating goods under this section if:

- (a) they are classified to any of Chapters 1 to 40 of the Harmonized System; and
- (b) they are produced merely as a result of non-originating materials being diluted with water or another substance; and
- (c) that dilution does not materially alter the characteristics of the non-originating materials.

## **153ZE Goods that are chemicals, plastics or rubber**

Goods are *Thai originating goods* if:

- (a) they are produced entirely in Thailand or entirely in Thailand and Australia; and
- (b) they are classified to any of Chapters 28 to 40 of the Harmonized System; and

- (c) they are the product of a chemical reaction (within the meaning of the *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004*); and
- (d) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

### **Subdivision D—Other Thai originating goods**

#### **153ZF Standard accessories, spare parts and tools**

- (1) If goods (the *underlying goods*) are imported into Australia with standard accessories, standard spare parts or standard tools, then the accessories, spare parts or tools are *Thai originating goods* if:
  - (a) the underlying goods are Thai originating goods; and
  - (b) the accessories, spare parts or tools are not invoiced separately from the underlying goods; and
  - (c) the quantities and value of the accessories, spare parts or tools are the usual quantities and value in relation to the underlying goods.

#### *Exception*

- (2) However, the accessories, spare parts or tools are not Thai originating goods under this section if:
  - (a) the underlying goods must satisfy a regional value content requirement under section 153ZD to be Thai originating goods; and
  - (b) the accessories, spare parts or tools are imported solely for the purpose of artificially raising the regional value content of the underlying goods.

#### *Underlying goods*

- (3) If:
  - (a) the underlying goods must satisfy a regional value content requirement under section 153ZD to be Thai originating goods; and
  - (b) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the underlying goods;

then the regulations must require the value of the accessories, spare parts or tools to be taken into account for the purposes of that requirement.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZA(2).

## **Subdivision E—Packaging materials and containers**

### **153ZG Packaging materials and containers**

(1) If:

- (a) goods are packaged for retail sale in packaging material or a container; and
- (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Division (with 1 exception).

(2) The exception is that in working out if the goods are Thai originating goods, if the goods must satisfy a regional value content requirement under section 153ZD, the regulations must require the value of the packaging material or container to be taken into account for the purposes of that requirement.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZA(2).

## **Subdivision F—Consignment**

### **153ZH Consignment**

(1) Goods are not Thai originating goods under this Division if:

- (a) they are transported through a country or place other than Thailand or Australia; and
- (b) either:
  - (i) they undergo any process of production or other operation in that country or place (other than any operation to preserve them in good condition or any operation that is necessary for them to be transported to Australia); or
  - (ii) they are traded or used in that country or place.

**Schedule 1** Amendments

**Part 1** Thai originating goods

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(2) This section applies despite any other provision of this Division.

## **Part 2—Verification powers**

### ***Customs Act 1901***

#### **2 Before Division 5 of Part VI**

Insert:

### **Division 4C—Exportation of goods to Thailand**

#### **126AF Definitions**

In this Division:

*producer* has the same meaning as in Division 1D of Part VIII.

*Thai customs official* means a person representing the customs administration of Thailand.

#### **126AG 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 Thailand; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Thailand.

*On whom obligations may be imposed*

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

#### **126AH 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 126AG to produce to the officer such of those records as the officer requires.

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

*Disclosing records to Thai customs official*

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Thailand, disclose any records so produced to a Thai customs official.

**126AI Power to ask questions**

*Power to ask questions*

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

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

*Disclosing answers to Thai customs official*

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Thailand, disclose any answers to such questions to a Thai customs official.

## **Part 3—Other amendments**

### ***Customs Act 1901***

#### **3 Subsection 4(3C)**

Omit “or in the third column of Schedule 3 or 4 to that Act”, substitute “, in the third column of Schedule 3 or 4 to that Act or in the third column of the table in Schedule 5 or 6 to that Act”.

#### **4 Subsection 4(3C)**

Omit “or in the third column of Schedule 3 or 4 to that Act”, substitute “, in the third column of Schedule 3 or 4 to that Act or in the third column of the table in Schedule 6 to that Act”.

#### **5 Subsection 4(3C)**

Omit “Schedule 6”, substitute “Schedule 5 or 6”.

#### **6 Subsection 4(3D)**

After “*Customs Tariff Act 1995*”, insert “or in the third column of the table in Schedule 5 or 6 to that Act”.

#### **7 Subsection 4(3D)**

After “*Customs Tariff Act 1995*”, insert “or in the third column of the table in Schedule 6 to that Act”.

#### **8 Subsection 4(3D)**

Omit “Schedule 6”, substitute “Schedule 5 or 6”.

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*[Minister's second reading speech made in—  
House of Representatives on 17 November 2004  
Senate on 17 November 2004]*

(187/04)

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16        *Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Act*  
2004      *No. 130, 2004*