



**Customs Amendment (Australia-Chile  
Free Trade Agreement Implementation)  
Act 2008**

**No. 127, 2008**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008**

**No. 127, 2008**

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

[Assented to 27 November 2008]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Customs Amendment (Australia-Chile  
Free Trade Agreement Implementation) Act 2008*.

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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.  | 27 November 2008    |
| 2. Schedule 1   | The later of:<br>(a) 1 January 2009; and<br>(b) the day on which the Australia-Chile Free Trade Agreement, done at Canberra on 30 July 2008, comes into force for Australia.<br><br>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.<br><br>The Minister must announce by notice in the <i>Gazette</i> the day on which the Agreement comes into force for Australia. |                     |

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Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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.

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## **Schedule 1—Amendments**

### **Part 1—Chilean originating goods**

#### *Customs Act 1901*

#### **1 After Division 1E of Part VIII**

Insert:

### **Division 1F—Chilean originating goods**

#### **Subdivision A—Preliminary**

#### **153ZJA Simplified outline**

The following is a simplified outline of this Division:

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

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

## 153ZJB Interpretation

### *Definitions*

(1) In this Division:

**Agreement** means the Australia-Chile Free Trade Agreement, done at Canberra on 30 July 2008, as amended from time to time.

Note: In 2008, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

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

**Certificate of Origin** means a certificate that is in force and that complies with the requirements of paragraph 2 of Article 4.16 of the Agreement.

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

**composite goods** has the same meaning as it has in the Agreement.

**Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983 [1988] ATS 30, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**customs value** of 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.

**indirect materials** means:

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

including:

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

**Interpretation Rules** means the General Rules (as in force from time to time) 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:

- (a) Chilean originating goods that are used in the production of other goods; or
- (b) Australian originating goods that are used in the production of other goods; or
- (c) indirect materials.

**person of Chile** means person of a Party within the meaning, insofar as it relates to Chile, of Article 2.1 of the Agreement.

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

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

*territory of Australia* means territory within the meaning, insofar as it relates to Australia, of Article 2.1 of the Agreement.

*territory of Chile* means territory within the meaning, insofar as it relates to Chile, of Article 2.1 of the Agreement.

*Regional value content of goods*

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

*Value of goods*

- (3) 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*

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

## **Subdivision B—Wholly obtained goods of Chile**

### **153ZJC Wholly obtained goods of Chile**

- (1) Goods are *Chilean originating goods* if:
- (a) they are wholly obtained goods of Chile; and
  - (b) the importer of the goods has, 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 Chile* if, and only if, the goods are:
- (a) minerals extracted in or from the territory of Chile; or

- (b) goods listed in Section II of the Harmonized System that are harvested, picked or gathered in the territory of Chile; or
- (c) live animals born and raised in the territory of Chile; or
- (d) goods obtained from live animals in the territory of Chile; or
- (e) goods obtained from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Chile; or
- (f) fish, shellfish or other marine life taken from the high seas by ships that are registered or recorded in Chile and are flying the flag of Chile; or
- (g) goods obtained or produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in Chile and are flying the flag of Chile; or
- (h) goods taken from the seabed, or beneath the seabed, outside the territorial sea of Chile:
  - (i) by Chile; or
  - (ii) by a person of Chile;but only if Chile has the right to exploit that part of the seabed in accordance with international law; or
- (i) waste and scrap that have been derived from production operations in the territory of Chile, or from used goods collected in the territory of Chile, and that are fit only for the recovery of raw materials; or
- (j) goods obtained or produced entirely in the territory of Chile exclusively from goods referred to in paragraphs (a) to (i).

### **Subdivision C—Goods produced in Chile from originating materials**

#### **153ZJD Goods produced in Chile from originating materials**

Goods are *Chilean originating goods* if:

- (a) they are produced entirely in the territory of Chile from originating materials only; and
- (b) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

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

**153ZJE Goods produced in Chile, or Chile and Australia, from non-originating materials**

- (1) Goods are *Chilean originating goods* if:
- (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 of the table in Schedule 1 to the *Customs (Chilean Rules of Origin) Regulations 2008*; and
  - (b) they are produced entirely in the territory of Chile, or entirely in the territory of Chile and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
  - (d) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

This subsection is subject to subsections (9) and (10).

*Change in tariff classification*

- (2) The regulations may specify that each non-originating material used in the production of the goods is required to satisfy a specified change in tariff classification.
- (3) The regulations may also specify when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

*Regional value content*

- (5) The regulations may specify that the goods are required to have a regional value content of at least a specified percentage.
- (6) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information resources; and
  - (c) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the goods; and
  - (d) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the goods; and
  - (e) the accessories, spare parts, tools or instructional or other information resources are non-originating materials;
- then the regulations must require the value of the accessories, spare parts, tools or instructional or other information resources to be taken into account as non-originating materials for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information resources is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

- (7) For the purposes of subsection (6), disregard section 153ZJG in working out whether the accessories, spare parts, tools or instructional or other information resources are non-originating materials.

*No limit on regulations*

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

*Goods put up in a set for retail sale*

- (9) If:
- (a) the goods are put up in a set for retail sale; and
  - (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;

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**Part 1** Chilean originating goods

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the goods are Chilean originating goods under this section only if:

- (c) all of the goods in the set, considered individually, are Chilean originating goods under this Division; or
- (d) the total value of the goods in the set that are not Chilean originating goods under this Division does not exceed 25% of the customs value of the set of goods.

Note: The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

*Composite goods*

(10) If:

- (a) the goods are composite goods; and
- (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;

the goods are Chilean originating goods under this section only if:

- (c) all of the components of the composite goods, considered individually, are Chilean originating goods under this Division; or
- (d) the total value of the components of the composite goods that are not Chilean originating goods under this Division does not exceed 25% of the customs value of the goods.

Note: The value of the components of the composite goods is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

**153ZJF 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 Subdivision (with 1 exception).

*Exception*

(2) If:

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

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

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

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

### **Subdivision E—Goods that are accessories, spare parts, tools or instructional or other information resources**

#### **153ZJG Goods that are accessories, spare parts, tools or instructional or other information resources**

Goods are *Chilean originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information resources in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information resources; and
- (c) the other goods are Chilean originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the other goods; and
- (e) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the other goods.

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

#### **153ZJH Non-qualifying operations**

- (1) Goods are not Chilean originating goods under this Division merely because of the following operations:
  - (a) operations to preserve goods in good condition for the purpose of storage of the goods during transport;
  - (b) changing of packaging or the breaking up or assembly of packages;
  - (c) disassembly of goods;

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- (d) placing goods in bottles, cases or boxes or other simple packaging operations;
- (e) making up of sets of goods;
- (f) any combination of operations referred to in paragraphs (a) to (e).

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

**Subdivision G—Consignment**

**153ZJI Consignment**

- (1) Goods are not Chilean originating goods under this Division if:
  - (a) they are transported through a country or place other than Chile or Australia; and
  - (b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling, exhibition or any operation that is necessary to preserve them in good condition or to transport them to Australia).
- (2) This section applies despite any other provision of this Division.



## **Part 2—Verification powers**

### *Customs Act 1901*

#### **2 After Division 4D of Part VI**

Insert:

#### **Division 4E—Exportation of goods to Chile**

##### **126AKA Definitions**

In this Division:

*Chilean customs official* means a person representing the customs administration of Chile.

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

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

*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.

### **126AKC 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 126AKB 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 Chilean customs official*

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

### **126AKD 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 Chile; and
  - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile;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 Chilean customs official*

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

## **Part 3—Application provisions**

### **3 Application**

- (1) The amendment made by item 1 applies in relation to:
  - (a) goods imported into Australia on or after the commencement of this item; and
  - (b) goods imported into Australia before the commencement of this item, where the time for working out the rate of import duty on the goods had not occurred before the commencement of this item.
  
- (2) The amendment made by item 2 applies in relation to goods exported to Chile on or after the commencement of this item (whether the goods were produced before, on or after that commencement).

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*[Minister's second reading speech made in—  
House of Representatives on 16 October 2008  
Senate on 12 November 2008]*

(199/08)

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