



**Customs Amendment
(ASEAN-Australia-New Zealand Free
Trade Area Second Protocol
Implementation and Other Measures)
Act 2024**

No. 116, 2024

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**Customs Amendment
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Trade Area Second Protocol
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No. 116, 2024

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

[Assented to 10 December 2024]

The Parliament of Australia enacts:

No. 116, 2024 *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Area
Second Protocol Implementation and Other Measures) Act 2024* 1

1 Short title

This Act is the *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Act 2024*.

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.

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.	10 December 2024
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 Second Protocol:</p> <p>(i) to amend the agreement establishing the ASEAN-Australia-New Zealand Free Trade Area; and</p> <p>(ii) done on 21 August 2023 at Semarang, Indonesia;</p> <p>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 notifiable instrument, the day the Protocol enters into force for Australia.</p>	
3. Schedule 2	A single day to be fixed by Proclamation.	

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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.

3 Schedules

Legislation 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—ASEAN-Australia-New Zealand Free Trade Area Second Protocol amendments

Part 1—Proof of Origin

Customs Act 1901

1 Subsection 153ZKB(1) (definition of *Certificate of Origin*)

Repeal the definition.

2 Subsection 153ZKB(1)

Insert:

Proof of Origin means a certificate, or a declaration, that is in force and complies with the requirements of Rule 1 of Annex 3A to Chapter 3 of the Agreement.

3 Subparagraphs 153ZKC(1)(b)(i) and (ii)

Omit “Certificate of Origin”, substitute “Proof of Origin”.

4 Subparagraphs 153ZKD(b)(i) and (ii)

Omit “Certificate of Origin”, substitute “Proof of Origin”.

5 Subparagraphs 153ZKE(1)(d)(i) and (ii)

Omit “Certificate of Origin”, substitute “Proof of Origin”.

6 Application provision

The amendments made by this Part apply in relation to goods imported into Australia on or after the commencement of this Part.

Part 2—Harmonized System and Product-Specific Rules

Customs Act 1901

7 Subsection 153ZKB(1) (paragraph (b) of the definition of *Harmonized System*)

Repeal the paragraph, substitute:

(b) if either of the following events occurs:

- (i) Annex 3B to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the Harmonized Commodity Description and Coding System;
- (ii) there is a transposition (as mentioned in paragraph 4 of Article 19 of Chapter 3 of the Agreement) of Annex 3B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph;

the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

8 Subsection 153ZKB(1)

Insert:

Product-Specific Rules means the following:

- (a) Annex 3B to Chapter 3 of the Agreement, unless paragraph (b) applies;
- (b) if:
 - (i) there is a transposition (as mentioned in paragraph 4 of Article 19 of Chapter 3 of the Agreement) of Annex 3B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph; and

Schedule 1 ASEAN-Australia-New Zealand Free Trade Area Second Protocol
amendments

Part 2 Harmonized System and Product-Specific Rules

- (ii) that Annex has not been amended or replaced as a result of that transposition; and
- (iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System; that Annex as so transposed.

9 Paragraph 153ZKE(1)(a)

Omit “the table in Annex 2 to the Agreement”, substitute “the Product-Specific Rules”.

10 Paragraph 153ZKE(1)(c)

Omit “that Annex”, substitute “the Product-Specific Rules”.

11 Subsection 153ZKE(2)

Omit “the table in Annex 2 to the Agreement”, substitute “the Product-Specific Rules”.

12 Subsection 153ZKE(2)

Omit “that Annex”, substitute “the Product-Specific Rules”.

13 Application provision

The amendments made by this Part apply in relation to goods imported into Australia on or after the commencement of this Part.

Part 3—Verification and record keeping requirements

Customs Act 1901

14 After Division 4E of Part VI

Insert:

Division 4EAA—Exportation of goods to Parties to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area

126AKDA Definitions

In this Division:

AANZ customs official, for a Party, means a person representing the customs authority of that Party.

Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Thailand on 27 February 2009, as amended and in force for Australia from time to time.

Note: The Agreement is in Australian Treaty Series 2010 No. 1 ([2010] ATS 1) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

approved exporter database means the approved exporter database referred to in paragraph 3 of Rule 15 of Annex 3A to Chapter 3 of the Agreement.

customs authority has the meaning given by Article 3 of Chapter 4 of the Agreement.

Declaration of Origin means a Declaration of Origin referred to in paragraph 1 of Rule 1 of Annex 3A to Chapter 3 of the Agreement.

Party means a Party (within the meaning of the Agreement) for which the Agreement has entered into force.

producer means a person who engages in the production of goods.

production has the meaning given by Article 1 of Chapter 3 of the Agreement.

126AKDB Record keeping obligations

Regulations may prescribe record keeping obligations

- (1) The regulations may prescribe record keeping obligations that apply in relation to goods that are:
 - (a) exported to a Party; and
 - (b) claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

On whom obligations may be imposed

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

126AKDC 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 126AKDB 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 AANZ customs official

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

126AKDD 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 are:
- (a) exported to a Party; and
 - (b) claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party;
- 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 AANZ customs official

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

126AKDE Approved exporters and Declarations of Origin

- (1) If:
- (a) goods are exported to a Party; and
 - (b) the goods are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party; and
 - (c) the Party has not implemented paragraph 1(c) of Rule 1 of Annex 3A to Chapter 3 of the Agreement;
- the exporter of the goods must not complete a Declaration of Origin for the goods unless the exporter is, under the regulations, an approved exporter.
- (2) The regulations may make provision for and in relation to the approval of entities as approved exporters.
- (3) Without limiting subsection (2), the regulations may make provision for and in relation to the following:

- (a) the making of applications to the Comptroller-General of Customs by entities for approval as approved exporters and the withdrawal of those applications;
- (b) the eligibility criteria that an entity must meet in order for the Comptroller-General to approve the entity as an approved exporter;
- (c) the matters that the Comptroller-General must consider in deciding whether to approve an entity as an approved exporter;
- (d) the making of decisions by the Comptroller-General in relation to the applications;
- (e) the conditions that an approval of an entity as an approved exporter is subject to;
- (f) the variation, suspension or termination of an approval of an entity as an approved exporter;
- (g) the giving of notice of decisions made by the Comptroller-General;
- (h) the review of decisions made by the Comptroller-General.

126AKDF ASEAN Register of Approved Exporters

- (1) The Comptroller-General of Customs may maintain a register, to be known as the ASEAN Register of Approved Exporters, containing information (including personal information within the meaning of the *Privacy Act 1988*) that relates to the following:
 - (a) each entity approved as an approved exporter under regulations made for the purposes of section 126AKDE;
 - (b) the conditions that an approval of an entity as an approved exporter is subject to;
 - (c) the variation, suspension or termination of an approval of an entity as an approved exporter.
- (2) The Comptroller-General must make any register publicly available.
- (3) The register is not a legislative instrument.

126AKDG Inclusion of information in approved exporter database

The Comptroller-General of Customs may:

- (a) include information (including personal information within the meaning of the *Privacy Act 1988*) in the approved exporter database; or
- (b) disclose information (including personal information within the meaning of the *Privacy Act 1988*) to a person for the purpose of the information being included in the approved exporter database;

if the information covered by paragraph (a) or (b) relates to the following:

- (c) an entity approved as an approved exporter under regulations made for the purposes of section 126AKDE;
- (d) the conditions that an approval of an entity as an approved exporter is subject to;
- (e) the variation, suspension or termination of an approval of an entity as an approved exporter.

15 Application provision

The amendment made by this Part applies in relation to goods exported to a Party on or after the commencement of this Part (whether the goods were produced before, on or after that commencement).

Part 4—Miscellaneous

Customs Act 1901

16 Subsections 153ZKB(7) and (8)

Repeal the subsections, substitute:

Notification of entry into force of Agreement for a Party etc.

- (7) The Minister must announce, by notifiable instrument, the day on which the Agreement, or an amendment of the Agreement, enters into force for a Party (other than Australia).

17 Subparagraphs 153ZKJ(1)(b)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) the goods enter into commerce or free circulation in that country or place.

18 Application provision

The amendment of section 153ZKJ of the *Customs Act 1901* made by this Part applies in relation to:

- (a) goods imported into Australia on or after the commencement of this Part; and
- (b) goods imported into Australia before the commencement of this Part, where the time for working out the rate of import duty on the goods had not occurred before the commencement of this Part.

Schedule 2—Other amendments

Part 1—Approved exporters for Regional Comprehensive Economic Partnership Agreement

Customs Act 1901

1 Section 126AQA

Insert:

approved exporter database means the approved exporter database referred to in paragraph 6 of Article 3.21 of Chapter 3 of the Agreement.

Declaration of Origin means a Declaration of Origin referred to in paragraph 1 of Article 3.16 of Chapter 3 of the Agreement.

2 At the end of Division 4L of Part VI

Add:

126AQE Approved exporters and Declarations of Origin

- (1) If:
 - (a) goods are exported to a Party; and
 - (b) the goods are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party; and
 - (c) the Party has not implemented paragraph 1(c) of Article 3.16 of Chapter 3 of the Agreement;the exporter of the goods must not complete a Declaration of Origin for the goods unless the exporter is, under the regulations, an approved exporter.
- (2) The regulations may make provision for and in relation to the approval of entities as approved exporters.
- (3) Without limiting subsection (2), the regulations may make provision for and in relation to the following:

Schedule 2 Other amendments

Part 1 Approved exporters for Regional Comprehensive Economic Partnership Agreement

- (a) the making of applications to the Comptroller-General of Customs by entities for approval as approved exporters and the withdrawal of those applications;
- (b) the eligibility criteria that an entity must meet in order for the Comptroller-General to approve the entity as an approved exporter;
- (c) the matters that the Comptroller-General must consider in deciding whether to approve an entity as an approved exporter;
- (d) the making of decisions by the Comptroller-General in relation to the applications;
- (e) the conditions that an approval of an entity as an approved exporter is subject to;
- (f) the variation, suspension or termination of an approval of an entity as an approved exporter;
- (g) the giving of notice of decisions made by the Comptroller-General;
- (h) the review of decisions made by the Comptroller-General.

126AQF RCEP Register of Approved Exporters

- (1) The Comptroller-General of Customs may maintain a register, to be known as the RCEP Register of Approved Exporters, containing information (including personal information within the meaning of the *Privacy Act 1988*) that relates to the following:
 - (a) each entity approved as an approved exporter under regulations made for the purposes of section 126AQE;
 - (b) the conditions that an approval of an entity as an approved exporter is subject to;
 - (c) the variation, suspension or termination of an approval of an entity as an approved exporter.
- (2) The Comptroller-General must make any register publicly available.
- (3) The register is not a legislative instrument.

126AQG Inclusion of information in approved exporter database

The Comptroller-General of Customs may:

- (a) include information (including personal information within the meaning of the *Privacy Act 1988*) in the approved exporter database; or
- (b) disclose information (including personal information within the meaning of the *Privacy Act 1988*) to a person for the purpose of the information being included in the approved exporter database;

if the information covered by paragraph (a) or (b) relates to the following:

- (c) an entity approved as an approved exporter under regulations made for the purposes of section 126AQE;
- (d) the conditions that an approval of an entity as an approved exporter is subject to;
- (e) the variation, suspension or termination of an approval of an entity as an approved exporter.

Part 2—Harmonized System and Product-Specific Rules

Customs Act 1901

3 Subsection 153ZKL(1) (paragraph (b) of the definition of *Harmonized System*)

Repeal the paragraph, substitute:

(b) if either of the following events occurs:

- (i) Annex 3-B to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the Harmonized Commodity Description and Coding System;
 - (ii) there are revisions (as mentioned in paragraph 1 of Article 29 of Chapter 3 of the Agreement) to Annex 3-B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revisions are endorsed and come into effect as mentioned in paragraph 3 of that Article;
- the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

4 Subsection 153ZKL(1)

Insert:

Product-Specific Rules means the following:

- (a) Annex 3-B to Chapter 3 of the Agreement, unless paragraph (b) applies;
- (b) if:
 - (i) there are revisions (as mentioned in paragraph 1 of Article 29 of Chapter 3 of the Agreement) to Annex 3-B to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revisions are endorsed and come into effect as mentioned in paragraph 3 of that Article; and

- (ii) that Annex has not been amended or replaced as a result of those revisions; and
- (iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System; that Annex as so revised.

5 Paragraph 153ZKO(1)(a)

Omit “the table in Annex 3-B to Chapter 3 of the Agreement”, substitute “the Product-Specific Rules”.

6 Paragraph 153ZKO(1)(c)

Omit “that Annex”, substitute “the Product-Specific Rules”.

7 Subsection 153ZKO(2)

Omit “the table in Annex 3-B to Chapter 3 of the Agreement”, substitute “the Product-Specific Rules”.

8 Subsection 153ZKO(2)

Omit “that Annex”, substitute “the Product-Specific Rules”.

9 Subsection 153ZLB(1) (paragraph (b) of the definition of *Harmonized System*)

Repeal the paragraph, substitute:

- (b) if either of the following events occurs:
 - (i) Annex 2 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the Harmonized Commodity Description and Coding System;
 - (ii) there is a revision (as mentioned in paragraph 2 of Article 3.24 of Chapter 3 of the Agreement) to Annex 2 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revision is endorsed and comes into effect as mentioned in that paragraph;

the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

10 Subsection 153ZLB(1)

Insert:

Product-Specific Rules means the following:

- (a) Annex 2 of the Agreement, unless paragraph (b) applies;
 - (b) if:
 - (i) there is a revision (as mentioned in paragraph 2 of Article 3.24 of Chapter 3 of the Agreement) to Annex 2 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the revision is endorsed and comes into effect as mentioned in that paragraph; and
 - (ii) that Annex has not been amended or replaced as a result of that revision; and
 - (iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System;
- that Annex as so revised.

11 Paragraph 153ZLE(1)(a)

Omit “the table in Annex 2 of the Agreement”, substitute “the Product-Specific Rules”.

12 Paragraph 153ZLE(1)(c)

Omit “that Annex”, substitute “the Product-Specific Rules”.

13 Subsection 153ZLE(2)

Omit “the table in Annex 2 of the Agreement”, substitute “the Product-Specific Rules”.

14 Subsection 153ZLE(2)

Omit “that Annex”, substitute “the Product-Specific Rules”.

15 Subsection 153ZQB(1) (paragraph (b) of the definition of *Harmonized System*)

Repeal the paragraph, substitute:

- (b) if either of the following events occurs:

- (i) Annex 3A to Chapter 3 of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the Harmonized Commodity Description and Coding System;
 - (ii) there is a transposition (as mentioned in paragraph 3 of Article 3.34 of Chapter 3 of the Agreement) of Annex 3A to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph;
- the version of the Harmonized Commodity Description and Coding System covered by whichever of those events occurred most recently.

16 Subsection 153ZQB(1)

Insert:

Product-Specific Rules means the following:

- (a) Annex 3A to Chapter 3 of the Agreement, unless paragraph (b) applies;
- (b) if:
 - (i) there is a transposition (as mentioned in paragraph 3 of Article 3.34 of Chapter 3 of the Agreement) of Annex 3A to Chapter 3 of the Agreement because of an updated version of the Harmonized Commodity Description and Coding System and the transposition is adopted as mentioned in that paragraph; and
 - (ii) that Annex has not been amended or replaced as a result of that transposition; and
 - (iii) that Annex has not been amended or replaced as a result of a further updated version of the Harmonized Commodity Description and Coding System;that Annex as so transposed.

17 Paragraph 153ZQE(1)(a)

Omit “the table in Annex 3A to Chapter 3 of the Agreement”, substitute “the Product-Specific Rules”.

Schedule 2 Other amendments

Part 2 Harmonized System and Product-Specific Rules

18 Paragraph 153ZQE(1)(c)

Omit “that Annex”, substitute “the Product-Specific Rules”.

19 Subsection 153ZQE(2)

Omit “the table in Annex 3A to Chapter 3 of the Agreement”, substitute “the Product-Specific Rules”.

20 Subsection 153ZQE(2)

Omit “that Annex”, substitute “the Product-Specific Rules”.

21 Application provision

The amendments made by this Part apply in relation to goods imported into Australia on or after the commencement of this Part.

*[Minister’s second reading speech made in—
House of Representatives on 7 November 2024
Senate on 28 November 2024]*

(131/24)

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Second Protocol Implementation and Other Measures) Act 2024*