

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Customs Amendment (Regional
Comprehensive Economic Partnership
Agreement Implementation) Bill 2021**

No. , 2021

(Home Affairs)

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
Part 1—Regional Comprehensive Economic Partnership (RCEP) originating goods		3
<i>Customs Act 1901</i>		3
Part 2—Verification powers		14
<i>Customs Act 1901</i>		14
Part 3—Application provisions		17

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Customs Amendment (Regional Comprehensive*
6 *Economic Partnership Agreement Implementation) Act 2021*.

7 **2 Commencement**

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

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The later of: (a) the day this Act receives the Royal Assent; and (b) the day the Regional Comprehensive Economic Partnership Agreement, done on 15 November 2020, enters into force for Australia. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. The Minister must announce, by notifiable instrument, the day the Agreement enters into force for Australia.	

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

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Amendments**

2 **Part 1—Regional Comprehensive Economic**
3 **Partnership (RCEP) originating goods**

4 *Customs Act 1901*

5 **1 Subparagraph 105B(3)(b)(ii)**

6 Omit “or 13”, substitute “, 13 or 14”.

7 **2 Subsection 105B(4) (paragraph (b) of the definition of**
8 ***biofuel blend*)**

9 Omit “or 13”, substitute “, 13 or 14”.

10 **3 After Division 1M of Part VIII**

11 Insert:

12 **Division 1N—Regional Comprehensive Economic**
13 **Partnership (RCEP) originating goods**

14 **Subdivision A—Preliminary**

15 **153ZQA Simplified outline of this Division**

- | |
|---|
| <p>16 • This Division defines RCEP originating goods (short for
17 Regional Comprehensive Economic Partnership originating
18 goods). Preferential rates of customs duty under the <i>Customs</i>
19 <i>Tariff Act 1995</i> apply to such goods that are imported into
20 Australia.</p> <p>21 • Subdivision B provides that goods are RCEP originating
22 goods if they are wholly obtained or produced in a Party.</p> <p>23 • Subdivision C provides that goods are RCEP originating
24 goods if they are produced entirely in a Party from originating
25 materials only.</p> |
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- Subdivision D sets out when goods are RCEP originating goods because they are produced entirely in a Party from non-originating materials only or from non-originating materials and originating materials.
- Subdivision E deals with how the consignment of goods affects whether the goods are RCEP originating goods.
- Subdivision F allows regulations to make provision for and in relation to determining whether goods are RCEP originating goods.

10 **153ZQB Interpretation**

11 *Definitions*

12 (1) In this Division:

13 **Agreement** means the Regional Comprehensive Economic
14 Partnership Agreement, done on 15 November 2020, as amended
15 and in force for Australia from time to time.

16 Note: The Agreement could in 2021 be viewed in the Australian Treaties
17 Library on the AustLII website (<http://www.austlii.edu.au>).

18 **aquaculture** has the meaning given by Article 3.1 of Chapter 3 of
19 the Agreement.

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

23 Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988]
24 ATS 30) and could in 2021 be viewed in the Australian Treaties
25 Library on the AustLII website (<http://www.austlii.edu.au>).

26 **customs authority** has the meaning given by Article 4.1 of
27 Chapter 4 of the Agreement.

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

29 **factory ship of a Party** has the same meaning as it has in Chapter 3
30 of the Agreement.

1 ***Harmonized Commodity Description and Coding System*** means
2 the Harmonized Commodity Description and Coding System that
3 is established by or under the Convention.

4 ***Harmonized System*** means:

- 5 (a) the Harmonized Commodity Description and Coding System
6 as in force immediately before 1 January 2017; or
7 (b) if the table in Annex 3A to Chapter 3 of the Agreement is
8 amended or replaced to refer to Chapters, headings and
9 subheadings of a later version of the Harmonized Commodity
10 Description and Coding System—the later version of the
11 Harmonized Commodity Description and Coding System.

12 ***indirect materials*** means:

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

18 including:

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

27 ***Interpretation Rules*** means the General Rules (as in force from
28 time to time) for the Interpretation of the Harmonized System
29 provided for by the Convention.

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

32 ***non-Party*** has the same meaning as it has in Chapter 3 of the
33 Agreement.

34 ***originating materials*** means:

Schedule 1 Amendments

Part 1 Regional Comprehensive Economic Partnership (RCEP) originating goods

- 1 (a) goods that are originating goods, in accordance with
2 Chapter 3 of the Agreement, and that are used in the
3 production of other goods; or
4 (b) indirect materials.

5 **Party** has the meaning given by Article 1.2 of Chapter 1 of the
6 Agreement.

7 Note: See also subsection (6).

8 **person of a Party** has the same meaning as it has in Chapter 3 of
9 the Agreement.

10 **production** has the meaning given by Article 3.1 of Chapter 3 of
11 the Agreement.

12 **Proof of Origin** means a document that is in force and that
13 complies with the requirements of Article 3.16 of Chapter 3 of the
14 Agreement.

15 **RCEP originating goods** means goods that, under this Division,
16 are RCEP originating goods.

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

19 **vessels of a Party** has the same meaning as it has in Chapter 3 of
20 the Agreement.

21 *Value of goods*

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

25 *Tariff classifications*

- 26 (3) In specifying tariff classifications for the purposes of this Division,
27 the regulations may refer to the Harmonized System.

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

1 *Incorporation of other instruments*

- 2 (5) Despite subsection 14(2) of the *Legislation Act 2003*, regulations
3 made for the purposes of this Division may make provision in
4 relation to a matter by applying, adopting or incorporating, with or
5 without modification, any matter contained in an instrument or
6 other writing as in force or existing from time to time.

7 *Notification of entry into force of Agreement for a Party*

- 8 (6) The Minister must announce, by notifiable instrument, the day on
9 which the Agreement enters into force for a Party (other than
10 Australia).

11 **Subdivision B—Goods wholly obtained or produced in a Party**

12 **153ZQC Goods wholly obtained or produced in a Party**

- 13 (1) Goods are *RCEP originating goods* if:
14 (a) they are wholly obtained or produced in a Party; and
15 (b) either:
16 (i) the importer of the goods has, at the time the goods are
17 imported, a Proof of Origin, or a copy of one, for the
18 goods; or
19 (ii) Australia has waived the requirement for a Proof of
20 Origin for the goods.
- 21 (2) Goods are *wholly obtained or produced* in a Party if, and only if,
22 the goods are:
23 (a) plants, or goods obtained from plants, that are grown and
24 harvested, picked or gathered in that Party (including fruit,
25 flowers, vegetables, trees, seaweed, fungi and live plants); or
26 (b) live animals born and raised in that Party; or
27 (c) goods obtained from live animals raised in that Party; or
28 (d) goods obtained from hunting, trapping, fishing, farming,
29 aquaculture, gathering or capturing conducted in that Party;
30 or
31 (e) minerals, or other naturally occurring substances, extracted or
32 taken from the soil, waters, seabed or subsoil beneath the
33 seabed in that Party; or

Schedule 1 Amendments

Part 1 Regional Comprehensive Economic Partnership (RCEP) originating goods

- 1 (f) goods of sea-fishing or other marine life taken by vessels of
2 that Party, or other goods taken by that Party or a person of
3 that Party, from the waters, seabed or subsoil beneath the
4 seabed outside the territorial sea of the Parties and
5 non-Parties provided that:
6 (i) for goods of sea-fishing or other marine life taken by
7 vessels of that Party (the *relevant Party*) from the
8 exclusive economic zone of any Party or non-Party—
9 the relevant Party has the rights to exploit that exclusive
10 economic zone in accordance with international law; or
11 (ii) for other goods taken by that Party or a person of that
12 Party—that Party or person has the rights to exploit the
13 waters, seabed or subsoil beneath the seabed in
14 accordance with international law; or
15 (g) goods of sea-fishing or other marine life taken by vessels of
16 that Party from the high seas in accordance with international
17 law; or
18 (h) goods processed or made on board a factory ship of that
19 Party, exclusively from goods covered by paragraph (f) or
20 (g); or
21 (i) either of the following:
22 (i) waste and scrap that has been derived from production
23 or consumption in that Party and that is fit only for
24 disposal, for the recovery of raw materials or for
25 recycling purposes;
26 (ii) used goods that are collected in that Party and that are
27 fit only for disposal, for the recovery of raw materials or
28 for recycling purposes; or
29 (j) goods obtained or produced in that Party solely from goods
30 referred to in paragraphs (a) to (i) or from their derivatives.

31 **Subdivision C—Goods produced from originating materials**

32 **153ZQD Goods produced from originating materials**

33 Goods are *RCEP originating goods* if:

- 34 (a) they are produced entirely in a Party from originating
35 materials only; and
36 (b) either:
-

- 1 (i) the importer of the goods has, at the time the goods are
2 imported, a Proof of Origin, or a copy of one, for the
3 goods; or
4 (ii) Australia has waived the requirement for a Proof of
5 Origin for the goods.

6 **Subdivision D—Goods produced from non-originating**
7 **materials**

8 **153ZQE Goods produced from non-originating materials**

- 9 (1) Goods are *RCEP originating goods* if:
10 (a) they are classified to a Chapter, heading or subheading of the
11 Harmonized System that is covered by the table in Annex 3A
12 to Chapter 3 of the Agreement; and
13 (b) they are produced entirely in a Party from non-originating
14 materials only or from non-originating materials and
15 originating materials; and
16 (c) the goods satisfy the requirements applicable to the goods in
17 that Annex; and
18 (d) either:
19 (i) the importer of the goods has, at the time the goods are
20 imported, a Proof of Origin, or a copy of one, for the
21 goods; or
22 (ii) Australia has waived the requirement for a Proof of
23 Origin for the goods.
- 24 (2) Without limiting paragraph (1)(c), a requirement may be specified
25 in the table in Annex 3A to Chapter 3 of the Agreement by using
26 an abbreviation that is given a meaning for the purposes of that
27 Annex.

28 *Change in tariff classification*

- 29 (3) If a requirement that applies in relation to the goods is that all
30 non-originating materials used in the production of the goods must
31 have undergone a particular change in tariff classification, the
32 regulations may prescribe when a non-originating material used in
33 the production of the goods is taken to satisfy the change in tariff
34 classification.

Schedule 1 Amendments

Part 1 Regional Comprehensive Economic Partnership (RCEP) originating goods

1 (4) If:
2 (a) a requirement that applies in relation to the goods is that all
3 non-originating materials used in the production of the goods
4 must have undergone a particular change in tariff
5 classification; and
6 (b) the goods are classified to any of Chapters 1 to 97 of the
7 Harmonized System; and
8 (c) one or more of the non-originating materials used in the
9 production of the goods do not satisfy the change in tariff
10 classification;
11 then the requirement is taken to be satisfied if the total value of the
12 non-originating materials covered by paragraph (c) does not exceed
13 10% of the customs value of the goods.

14 (5) If:
15 (a) a requirement that applies in relation to the goods is that all
16 non-originating materials used in the production of the goods
17 must have undergone a particular change in tariff
18 classification; and
19 (b) the goods are classified to any of Chapters 50 to 63 of the
20 Harmonized System; and
21 (c) one or more of the non-originating materials used in the
22 production of the goods do not satisfy the change in tariff
23 classification;
24 then the requirement is taken to be satisfied if the total weight of
25 the non-originating materials covered by paragraph (c) does not
26 exceed 10% of the total weight of the goods.

27 *Regional value content*

28 (6) If a requirement that applies in relation to the goods is that the
29 goods must have a regional value content of not less than a
30 particular percentage worked out in a particular way:
31 (a) the regional value content of the goods is to be worked out in
32 accordance with the Agreement; or
33 (b) if the regulations prescribe how to work out the regional
34 value content of the goods—the regional value content of the
35 goods is to be worked out in accordance with the regulations.

1 **153ZQF Packaging materials and containers**

2 (1) If:

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

5 (b) the packaging material or container is classified with the
6 goods in accordance with Rule 5 of the Interpretation Rules;
7 then the packaging material or container is to be disregarded for
8 the purposes of this Subdivision.

9 *Regional value content*

10 (2) However, if a requirement that applies in relation to the goods is
11 that the goods must have a regional value content of not less than a
12 particular percentage worked out in a particular way, the
13 regulations must provide for the following:

14 (a) the value of the packaging material or container to be taken
15 into account for the purposes of working out the regional
16 value content of the goods;

17 (b) the packaging material or container to be taken into account
18 as an originating material or non-originating material, as the
19 case may be.

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

22 **153ZQG Accessories, spare parts, tools or instructional or other**
23 **information materials**

24 (1) If:

25 (a) goods are imported into Australia with accessories, spare
26 parts, tools or instructional or other information materials;
27 and

28 (b) the accessories, spare parts, tools or instructional or other
29 information materials are presented with, and not invoiced
30 separately from, the goods; and

31 (c) the quantities and value of the accessories, spare parts, tools
32 or instructional or other information materials are customary
33 for the goods;

1 then the accessories, spare parts, tools or instructional or other
2 information materials are to be disregarded for the purposes of this
3 Subdivision.

4 *Regional value content*

5 (2) However, if a requirement that applies in relation to the goods is
6 that the goods must have a regional value content of not less than a
7 particular percentage worked out in a particular way, the
8 regulations must provide for the following:

- 9 (a) the value of the accessories, spare parts, tools or instructional
10 or other information materials to be taken into account for the
11 purposes of working out the regional value content of the
12 goods;
- 13 (b) the accessories, spare parts, tools or instructional or other
14 information materials to be taken into account as originating
15 materials or non-originating materials, as the case may be.

16 Note: The value of the accessories, spare parts, tools or instructional or other
17 information materials is to be worked out in accordance with the
18 regulations: see subsection 153ZQB(2).

19 **153ZQH Non-qualifying operations or processes**

- 20 (1) Goods are not RCEP originating goods under this Subdivision
21 merely because of the following operations or processes:
- 22 (a) preserving operations to ensure that the goods remain in good
23 condition for the purpose of transport or storage of the goods;
- 24 (b) packaging or presenting the goods for transportation or sale;
- 25 (c) simple processes, consisting of sifting, screening, sorting,
26 classifying, sharpening, cutting, slitting, grinding, bending,
27 coiling or uncoiling;
- 28 (d) affixing or printing of marks, labels, logos or other like
29 distinguishing signs on the goods or on their packaging;
- 30 (e) mere dilution with water or another substance that does not
31 materially alter the characteristics of the goods;
- 32 (f) disassembly of products into parts;
- 33 (g) slaughtering (within the meaning of Article 3.6 of Chapter 3
34 of the Agreement) of animals;
- 35 (h) simple painting or polishing operations;

- 1 (i) simple peeling, stoning or shelling;
2 (j) simple mixing of goods, whether or not of different kinds;
3 (k) any combination of things referred to in paragraphs (a) to (j).
4 (2) For the purposes of this section, *simple* has the same meaning as it
5 has in Article 3.6 of Chapter 3 of the Agreement.

6 **Subdivision E—Consignment**

7 **153ZQI Consignment**

- 8 (1) Goods are not RCEP originating goods under this Division if the
9 goods are transported through one or more Parties (other than the
10 Party from which the goods are exported or Australia) or
11 non-Parties and either or both of the following apply:
12 (a) the goods undergo further processing in those Parties or
13 non-Parties (other than logistics activities such as unloading,
14 reloading, storing or any other operation that is necessary to
15 preserve the goods in good condition or to transport the
16 goods to Australia);
17 (b) while the goods are in those Parties or non-Parties, the goods
18 do not remain under the control of the customs authorities of
19 those Parties or non-Parties at all times.
20 (2) This section applies despite any other provision of this Division.

21 **Subdivision F—Regulations**

22 **153ZQJ Regulations**

23 The regulations may make provision for and in relation to
24 determining whether goods are RCEP originating goods under this
25 Division.

1 **Part 2—Verification powers**

2 *Customs Act 1901*

3 **4 After Division 4K of Part VI**

4 Insert:

5 **Division 4L—Exportation of goods to Parties to the**
6 **Regional Comprehensive Economic Partnership**
7 **Agreement**

8 **126AQA Definitions**

9 In this Division:

10 *Agreement* means the Regional Comprehensive Economic
11 Partnership Agreement, done on 15 November 2020, as amended
12 and in force for Australia from time to time.

13 Note: The Agreement could in 2021 be viewed in the Australian Treaties
14 Library on the AustLII website (<http://www.austlii.edu.au>).

15 *customs authority* has the meaning given by Article 4.1 of
16 Chapter 4 of the Agreement.

17 *Party* has the meaning given by Article 1.2 of Chapter 1 of the
18 Agreement.

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

21 *production* has the meaning given by Article 3.1 of Chapter 3 of
22 the Agreement.

23 *RCEP customs official*, for a Party, means a person representing
24 the customs authority of that Party.

1 **126AQB Record keeping obligations**

2 *Regulations may prescribe record keeping obligations*

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

9 *On whom obligations may be imposed*

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

12 **126AQC Power to require records**

13 *Requirement to produce records*

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

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

22 *Disclosing records to RCEP customs official*

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

26 **126AQD Power to ask questions**

27 *Power to ask questions*

- 28 (1) An authorised officer may require a person who is an exporter or
29 producer of goods that:

Schedule 1 Amendments
Part 2 Verification powers

- 1 (a) are exported to a Party; and
2 (b) are claimed to be originating goods, in accordance with
3 Chapter 3 of the Agreement, for the purpose of obtaining a
4 preferential tariff in the Party;

5 to answer questions in order to verify the origin of the goods.

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

10 *Disclosing answers to RCEP customs official*

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

1 **Part 3—Application provisions**

2 **5 Application provisions**

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