



AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2014/64

Japan-Australia Economic Partnership Agreement – Rules of Origin

The Japan-Australia Economic Partnership Agreement (JAEPA) was signed on 8 July 2014, during an official ceremony at Parliament House in Canberra.

JAEPA will enter into force on 15 January 2015. On entry into force importers will be entitled to duty-free entry for most goods imported from Japan, provided the goods meet the JAEPA Rules of Origin (ROO).

This Notice summarises the rules for determining whether a good originates in Japan for the purposes of JAEPA.

‘Free’ rates of customs duty

The *Customs Tariff Act 1995* (Customs Tariff), as amended by the *Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014*, will allow duty free entry of most Japanese originating goods when JAEPA is implemented. Preferential treatment will apply to Japanese originating goods that are imported on or after 15 January 2015, or to goods imported before that day and entered for home consumption on or after that day.

Other duties and taxes

While most Japanese originating goods will be eligible for ‘free’ rates of customs duty, other duties and taxes such as excise-equivalent duties, goods and services tax, dumping duties and other taxes and levies, including cost recovery charges, if relevant, will still be payable.

Rules of Origin

Goods will be Japanese originating goods if they satisfy the requirements of:

- Division 1K of Part VIII of the *Customs Act 1901* (Customs Act), as inserted by the *Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Act 2014*; and
- *Customs (Japanese Rules of Origin) Regulation 2014* (JAEPA Regulations).

Division 1K sets out the ROO for the following categories of goods:

- goods that are wholly obtained;
- goods that are produced from originating materials only; and
- goods produced from non-originating materials only or from non-originating materials and originating materials.

1. Goods wholly obtained in Japan

Under Subdivision B of Division 1K, goods are Japanese originating goods if they are wholly obtained in Japan and the importer of the goods has, at the time the goods are imported, a Certificate of Origin (COO) or an origin certification document, or a copy of one, for the goods.

Goods are wholly obtained in Japan if, and only if, the goods are:

- (a) live animals born and raised in the Area of the Party, excluding the sea outside the territorial sea of the Party;
- (b) animals obtained from hunting, trapping, fishing, gathering or capturing in the Area of the Party, excluding the sea outside the territorial sea of the Party;
- (c) goods obtained from live animals in the Area of Japan;
- (d) plants, fungi and algae, harvested, picked or gathered in the Area of Japan;
- (e) minerals and other naturally occurring substances, not included in subparagraphs (a) through (d), extracted or taken from the Area of the Party, excluding the seabed or subsoil beneath the seabed outside the territorial sea of Japan;
- (f) goods of sea-fishing and other goods taken by vessels of the Party from the sea outside the territorial sea of the Parties;
- (g) goods produced on board factory ships of the Party from the goods referred to in subparagraph (f);
- (h) goods taken by the Party or a person of the Party from the seabed or subsoil beneath the seabed outside the territorial sea of the Party, provided that the Party has rights to exploit such seabed or subsoil in accordance with international law;
- (i) articles collected in the Party which can no longer perform their original purpose nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of raw materials;
- (j) scrap and waste derived from manufacturing or processing operations or from consumption in the Party and fit only for disposal or for the recovery of raw materials;
- (k) raw materials recovered in the Party from articles which can no longer perform their original purpose nor are capable of being restored or repaired; and
- (l) goods obtained or produced in the Area of the Party exclusively from the goods referred to in subparagraphs (a) through (k).

2. Goods produced in Japan from originating materials

Under Subdivision C of Division 1K, goods are Japanese originating goods if they are produced entirely in Japan from originating materials only, and the importer of the goods has, at the time the goods are imported, a COO or an origin certification document, or a copy of one, for the goods.

“*Originating materials*” means:

- (a) Japanese 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.

An “Australian originating good” is a good that is considered an Australian originating good under a law of Japan that implements JAEPA.

The definition of “indirect materials” is contained in Division 1K.

3. Goods produced in Japan, or in Japan and Australia, from non-originating materials

Under Subdivision D of Division 1K, goods are Japanese originating goods if they are produced entirely in Japan, or in Japan and Australia, from non-originating materials only or from non-originating materials and originating materials and satisfy the applicable product specific rules (PSR) of origin. The importer of the goods must have, at the time the goods are imported, a COO or an origin certification document, or a copy of one, for the goods.

The table in Schedule 1 to the JAEPA Regulations lists the PSR applicable for a good. A PSR sets out the following criteria that apply either solely or in conjunction to a good:

- wholly obtained;
- change of tariff classification (CTC);
- regional value content (RVC); or
- processing rules.

Change in tariff classification (CTC)

A good satisfies the CTC rule if each non-originating material used in the production of the good undergoes the required change in tariff classification (the transformation test). The transformation test applies only to non-originating materials, and requires that the classification, under the Harmonized System (HS), of a non-originating material is different from the classification of the final good produced using that non-originating material.

***De minimis* rule**

In the event that one or more non-originating materials fail to meet the required tariff classification change, the CTC rule and the specific manufacturing or processing operation rule can still be taken to be satisfied if the total value of the non-originating materials that do not meet the transformation test does not exceed 10 per cent of the customs value of the good.

Article 3.4 of JAEPA sets out that the *de minimis* provision does not apply to goods classified in Chapters 1 through 24 of the HS, except where the non-originating material used in the production of the good is provided for in a different subheading than the good for which origin was claimed.

For goods that are classified in Chapters 50 through 63 of the HS, the *de minimis* provision applies if the weight of all non-originating materials that do not meet the transformation test does not exceed 10 per cent of the total weight of the good.

Regional value content (RVC)

Goods in the table in Schedule 1 to the JAEPA Regulations may be required to meet an RVC rule. The calculation formula is:

$$\text{RVC} = \frac{\text{Value} - \text{Value of non-originating materials}}{\text{Value}} \times 100$$

Where:

RVC is the regional value content, expressed as a percentage;

Value means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

Value of non-originating materials means the value, worked out under Part 4 of the JAEPA Regulations, of the non-originating materials, including materials of undetermined origin that are acquired and used by the producer in the production of the goods.

Part 4 of the JAEPA Regulations sets out how to determine the value of materials.

Processing rules

The table in Schedule 1 to the JAEPA Regulations may require that the non-originating materials undergo a specific manufacturing or processing operation in the Parties.

Packaging materials and containers

Where goods must satisfy a CTC rule and are packaged for retail sale in packaging materials or containers, and the packaging materials or containers are classified with the good in accordance with Rule 5 of the Interpretation Rules for the HS, Section 153ZNF of Division 1K provides for the packaging materials or containers to be disregarded when determining origin.

However, where the goods must meet an RVC rule to be Japanese originating goods, the value of the packaging materials or containers must be taken into account, as originating materials or non-originating materials, as the case may be, for the purposes of working out the RVC of the goods.

Part 4 of the JAEPA Regulations prescribes how the value of the packaging materials or containers is to be determined.

Accessories, spare parts or tools

Part 4 of the JAEPA Regulations, states that where goods are imported into Australia together with accessories, spare parts or tools, those accessories, spare parts or tools shall be disregarded if the imported good is subject to a CTC rule.

However, if the other goods must satisfy a RVC rule to be a Japanese originating good, the value of the accessories, spare parts or tools must be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the RVC.

Non-qualifying operations

Section 153ZNG of Division 1K provides that goods are not Japanese originating goods merely because of the following operations or processes:

- (a) operations to ensure the preservation of products in good condition during transport and storage (such as drying, freezing, keeping in brine) and other similar operations;
- (b) changes of packaging and breaking up and assembly of packages;
- (c) disassembly;
- (d) placing in bottles, cases, boxes and other simple packaging operations;
- (e) collection of parts and components classified as a good in accordance with Rule 2(a) of the General Rules for the Interpretation of the Harmonized System;
- (f) mere making-up of sets of articles;

- (g) mere reclassification of goods without any physical change; or
- (h) any combination of operations referred to in subparagraphs (a) through (g).

Consignment rule

Subdivision E of Division 1K provides that goods are not Japanese originating goods if they are transported through a country other than Japan or Australia and either or both of the following apply:

- (a) the goods undergo subsequent production or any other operation in that country (other than repacking, relabelling, splitting up of goods, unloading, reloading, storing or any operation that is necessary to preserve the goods in good condition or to transport them to Australia);
- (b) the goods do not remain under customs control at all times while they are in that country.

This rule applies despite any of the other rules that are set out above. Therefore, even if all of the other rules are satisfied, the goods are not Japanese originating goods if the consignment rule is breached.

Certificate of origin or origin certification document

A COO or origin certification document is required to support a claim for JAEPA preferential treatment.

The COO must be issued by an authorised body or other certification body of the exporting Party, following a written application submitted by an exporter, producer or their authorised representative and must comply with the requirements set out in Article 3.15 and Annex 3 Data Elements for Documentary Evidence of Origin.

The origin certification document may be completed by an importer, exporter or producer and must comply with the requirements set out in Article 3.16 and Annex 3 Data Elements for Documentary Evidence of Origin.

A link to a sample of a valid JAEPA COO and origin certification document can be found on the JAEPA webpage of the Australian Customs and Border Protection Service (ACBPS) website.

Under Article 3.18 of JAEPA, Australia may elect to waive the COO or origin certification document requirement for goods exported from Japan. ACBPS will advise if this requirement is waived.

ACBPS may request supporting information relating to a claim for JAEPA preference. A request for information to support a claim for a preferential duty rate under JAEPA may occur at the time of entry or at a time after the good has entered into home consumption.

Refund of customs duty

Where duty has been paid on Japanese originating goods, or on goods that could have claimed Japanese origin except for the fact that the importer did not have a valid COO or origin certification document, or a copy of one, at the time the goods were imported, the importer may claim a refund of customs duty paid on such goods under regulation 126DAA of the *Customs Regulations 1926*. The importer must hold a valid COO or origin certification document or copy of one at the time of applying for the refund.

How to claim JAEPA preference on an import declaration

Before claiming preference, importers should take reasonable care to ensure that their goods meet the requirements of the JAEPA including, as appropriate, the relevant PSR and ensure that the consignment and non-qualifying operations rules are met.

The country code "JP" should continue to be used for all goods from Japan.

When claiming Japanese originating goods for the purposes of JAEPA, the preference scheme "JEPA" should be used on customs import declarations to access the preferential rate of duty. It will be necessary to also quote the relevant preference rule type on import declarations from one of the following:

- "WO" – wholly obtained goods;
- "PE" – goods produced entirely from originating materials; or
- "PSR" – goods produced from non-originating and/or originating materials and satisfy the applicable product specific rules of origin requirements as listed in the JAEPA Regulations.

If no preference scheme is quoted, the general rate of duty will apply.

Where preference is claimed and ACBPS finds that the imported goods do not meet the relevant PSR, or other requirements such as the consignment provision or the non-qualifying operations rule, ACBPS will demand the duty short-paid and may impose penalties. Additional action may be taken where fraud is indicated.

Origin advice service

JAEPA allows for Australian importers and Japanese exporters and producers to obtain advance rulings from ACBPS regarding future importations of goods to Australia.

Upon application, ACBPS will provide written advice on origin matters through the provision of an origin advice (OA). The OA exists to advise the applicant on specific issues relating to the origin of their goods for the purposes of determining eligibility for preferential duty rates for goods imported into Australia.

Additional information

The texts of relevant legislation for JAEPA are available on the ComLaw website and can be accessed from the [JAEPA webpage](#).

The official JAEPA text is available on the [JAEPA website](#) of the Department of Foreign Affairs and Trade.

Changes to the Customs Tariff to implement JAEPA

The *Customs Tariff Amendment (Japan – Australia Economic Partnership Agreement Implementation) Act 2014* (the Act) amended the Customs Tariff to implement the duty reductions contained in JAEPA.

The amendments to the Customs Tariff:

- provide free rates of customs duty for goods that are Japanese originating goods in accordance with new Division 1K;
- amend Schedule 4 to the Customs Tariff to maintain customs duty rates for certain Japanese originating goods in accordance with the applicable concessional item;

- phase the preferential rates of customs duty for certain goods to free by 2021; and
- insert a new Schedule 11 in the Customs Tariff to accommodate the preferential and phasing rates of duty and to maintain excise-equivalent rates of duty on certain alcohol, tobacco and petroleum products. These rates are equivalent to the rates of excise duty payable when locally manufactured.

The Act also provides that preferential rates for Japanese originating goods will apply to goods imported before 15 January 2015 but entered for home consumption on or after that date.

Any enquiries in relation to this Notice should be directed by email to origin@customs.gov.au, or by telephone on 1800 053 016 to the National Trade Advice Centre.

Anita Langford
A/g Assistant Secretary, Trade
CANBERRA ACT

22 December 2014