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## **AUSTRALIAN CUSTOMS NOTICE NO. 2004/39**

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### **Australia - United States Free Trade Agreement – Rules of Origin**

Goods that originate in the United States of America (US) will be entitled to preferential rates of customs duty once the Australia - United States Free Trade Agreement (AUSFTA) enters into force.

AUSFTA is expected to enter into force on 1 January 2005. A COMPILE message will be issued when the exact date has been determined.

The purpose of this Australian Customs Notice (ACN) is to summarise the rules for determining whether a good originates in the US.

#### **Legislation**

##### ***Preferential rates of customs duty***

The *Customs Tariff Act 1995* (the Tariff), as amended by the *US Free Trade Agreement Implementation (Customs Tariff) Act 2004*, will provide preferential rates of customs duty for goods that are US originating goods.

The preferential rates of customs duty will apply to US originating goods that are imported into Australia from the day that AUSFTA enters into force.

Detailed information on the preferential rates of customs duty to apply to US originating goods will be the subject of a separate ACN, to be issued shortly.

##### ***Other duties and taxes***

While US originating goods will be eligible for preferential rates of duty, 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 US originating goods if they satisfy the requirements of:

- Division 1C of Part VIII of the *Customs Act 1901* (Customs Act), as inserted by Part 1 of Schedule 1 of the *US Free Trade Agreement Implementation Act 2004*; and
- the *Customs (Australia – US Free Trade Agreement) Regulations 2004* (AUSFTA Regulations).

There are rules of origin for the following categories of goods:

- goods that are wholly obtained or produced entirely in the US;

- goods that are produced entirely in the US, or in the US and Australia, exclusively from originating materials;
- goods, other than clothing and textiles, produced entirely in the US, or in the US and Australia, from non-originating materials, or a combination of non-originating and originating materials;
- chemicals, plastics or rubber; and
- clothing and textiles produced entirely in the US, or in the US and Australia, from non-originating materials, or a combination of non-originating and originating materials.

Detailed information on each category is provided below.

1. Goods wholly obtained or produced entirely in the US

Subdivision B of Division 1C sets out the rules in relation to goods that are wholly obtained or produced entirely in the US.

Subsection 153YB(1) provides that goods are *US originating goods* if they are wholly obtained or produced entirely in the US.

Subsection 153YB(2) provides that goods are wholly obtained or produced entirely in the US if, and only if, the goods are:

- (a) minerals extracted in the US; or
- (b) plants grown in the US, or in the US and Australia, or products obtained from such plants; or
- (c) live animals born and raised in the US, or in the US and Australia, or products obtained from such animals in the US, or in the US and Australia; or
- (d) goods obtained from hunting, trapping, fishing or aquaculture conducted in the US; or
- (e) fish, shellfish or other marine life taken from the sea by ships registered or recorded in the US and flying the flag of the US; or
- (f) goods produced exclusively from goods referred to in paragraph (e) on board factory ships registered or recorded in the US and flying the flag of the US; or
- (g) goods taken from the seabed, or beneath the seabed, outside the territorial waters of the US by the US or by a national of the US, but only if the US has the right to exploit that part of the seabed; or
- (h) goods taken from outer space by the US or by a national of the US; or
- (i) waste and scrap that has been derived from either production in the US or from used goods collected in the US, provided such goods are fit only for the recovery of raw materials; or
- (j) recovered goods derived in the US and used in the US in the production of remanufactured goods; or
- (k) goods produced entirely in the US exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.

2. Goods produced entirely in the US, or in the US and Australia, exclusively from originating materials

Subdivision C of Division 1C sets out the rules in relation to goods that are produced entirely in the US, or in the US and Australia, exclusively from *originating materials*.

Section 153YC provides that goods are *US originating goods* if they are produced entirely in the US, or entirely in the US and Australia, exclusively from originating materials.

*Originating materials* are defined in section 153YA as:

- (a) *US originating goods* used to produce other goods;
- (b) *Australian originating goods* used to produce other goods; and
- (c) *indirect materials*, including those used in the production, testing or inspection of other goods, but that are not physically incorporated in the other goods; or that are used in the operation or maintenance of buildings or equipment associated with the production of other goods.

An *Australian originating good* is a good that is an Australian originating good under a law of the US that implements the AUSFTA.

3. Goods (other than clothing and textiles) produced entirely in the US, or in the US and Australia, from non-originating materials

Subdivision D of Division 1C sets out the rules in relation to goods (except clothing and textiles) that are produced entirely in the US, or in the US and Australia, from non-originating materials only, or from non-originating materials and originating materials.

In this Subdivision, section 153YE provides that such goods are *US originating goods* if:

- (a) a tariff classification that is specified in column 2 of the Schedule 1 tariff table applies to the goods; and
- (b) any applicable requirement (see below) specified in column 3 of the Schedule 1 tariff table opposite the tariff classification for the goods is satisfied.

The Schedule 1 tariff table (Schedule 1) is the first schedule to the AUSFTA Regulations. Schedule 1 incorporates product-specific origin requirements relating to change of tariff classification (CTC), regional value content (RVC) and other rules for determining whether a good (other than clothing and textiles) is a *US originating good*.

*The first requirement* is the CTC requirement. This requirement is satisfied if each non-originating material used in the production of the good undergoes the required classification change (*the transformation test*), or the total value of the non-originating materials that do not meet the *transformation test* does not exceed 10% of the customs value of the good (*de minimis*).

The *transformation test* applies only to non-originating materials, and generally requires that the classification, under the Harmonized System, of a non-originating material is different from the classification of the good produced from that non-originating material.

*De minimis* does not, however, apply to those non-originating materials prescribed in the AUSFTA Regulations. Those non-originating materials will need to satisfy the CTC requirement even if they contribute 10% or less of the customs value of the good.

The *second requirement* is the RVC requirement. In respect of goods in Schedule 1, approximately one-sixth of those goods may also be required to satisfy the RVC requirement. The requirement is, in most cases, either 35% based on the build-up method or 45% based on the build-down method. In respect of some automotive goods, the requirement is 50% based on the net cost method.

The calculations for each of these methods are included at Part 2 and Part 3 of the AUSFTA Regulations. This requirement is satisfied if the required percentage is met.

Subregulation 2.2 (1) sets out the build-down method as the following formula:

$$RVC = \frac{AV - VNM}{AV} \times 100$$

Subregulation 2.3 (1) sets out the build-up method as the following formula:

$$RVC = \frac{VOM}{AV} \times 100$$

Subregulation 3.3 (1) sets out the net cost method as the following formula:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

AV is the *adjusted value*, which is the customs value of the good, worked out under Division 2 of Part VIII of the Customs Act.

VNM is the *value of non-originating materials* that are acquired and used in the production of the good.

VOM is the *value of originating materials* that are acquired, or self-produced, and used in the production of the good.

NC is the net cost as worked out using AUSFTA Regulations 3.3, 3.4 and 3.5. The net cost method is applicable to goods that are automotive components or motor vehicles as defined in AUSFTA Regulation 3.1.

Part 4 of the AUSFTA Regulations outlines how VNM and VOM are to be calculated.

The *third requirement* is that the good satisfies any other requirement that is specified, or referred to, in Schedule 1 for that good.

4. Goods that are chemicals, plastics or rubber

Section 153YF provides special rules that determine that a good which is classified within Chapters 28 to 40 (chemicals, plastics or rubber) of the Harmonized System can become a *US originating good* without having to fulfil the requirements of section 153YE.

These special rules are termed “process rules” as they require the materials to undergo a certain process to obtain US origin.

A good is a *US originating good* if:

- (a) a tariff classification that is specified in column 2 of Schedule 1 applies to the goods; and
- (b) before the tariff classifications in column 2 of that table in relation to Chapter 28 or 39 of the Harmonized System, the AUSFTA Regulations specify particular rules in column 3 of that table; and
- (c) those rules apply in relation to the tariff classification for the goods; and
- (d) the goods satisfy those rules.

5. Goods that are clothing and textiles produced entirely in the US, or in the US and Australia, from non-originating materials

Subdivision E of Division 1C relates to clothing and textiles. In this Subdivision, section 153YH sets out the rules in relation to a good that is produced entirely in the US, or in the US and Australia, from non-originating materials only, or from non-originating materials and originating materials. Such a good is a *US originating good* if:

- (a) a tariff classification that is specified in column 2 of the Schedule 2 tariff table applies to the good; and
- (b) any applicable requirement specified in column 3 of the Schedule 2 tariff table opposite the tariff classification for the good is satisfied.

The Schedule 2 tariff table is Schedule 2 to the AUSFTA Regulations (Schedule 2). Schedule 2 incorporates the product-specific rules for determining whether clothing and textiles are *US originating goods*.

The *first requirement* is the CTC requirement. This requirement is satisfied if each non-originating material used in the production of the good undergoes the required classification change (*the transformation test*), or the total weight of all the non-originating fibres or yarns does not exceed 7% of the total weight of the component that determines the tariff classification of the good being produced (*de minimis*).

The *second requirement* is that the good satisfies any other requirement that is specified, or referred to, in Schedule 2 for that good.

Section 153YI provides special rules that are relevant to goods that are classified to Chapter 62 of the Harmonized System.

Those goods are *US originating goods* if either:

- a) the goods satisfy Chapter Rule 2 for Chapter 62 that is set out in Schedule 2; or
- b) in the case of goods classified to subheading 6205.20 or 6205.30 of Chapter 62 of the Harmonized System—the goods satisfy the subheading rule for that subheading that is set out in Schedule 2.

Clothing and textiles put up in a set for retail sale and classified in accordance with Rule 3 of the Interpretation Rules of the Tariff are *US originating goods* if all of the goods in the set are *US originating goods*, or if the total value of the non-originating goods in the set does not exceed 10% of the customs value of the set of goods. Part 4 of the AUSFTA Regulations prescribes how the value of each individual clothing or textile good put up in the set is to be determined.

### ***Other legislative provisions***

#### ***1. Standard accessories, spare parts and tools***

Where a good (underlying good) is imported into Australia together with standard accessories, standard spare parts or standard tools, section 153YJ will allow those accessories, spare parts or tools to be *US originating goods* if:

- (a) the underlying good is a *US originating good*; and
- (b) the accessories, spare parts or tools are not invoiced separately from the underlying good; and
- (c) the quantities and the value of the accessories, spare parts or tools are usual for the underlying good.

Where the underlying good must satisfy a RVC requirement to be a *US originating good*, the value of the accessories, spare parts and tools must be taken into account when satisfying that requirement. Part 4 of the AUSFTA Regulations prescribes how the value of the accessories, spare parts and tools is to be determined.

#### ***2. Packaging materials and containers***

Where a good is packaged for retail sale in packaging material or a container, and the packaging material or container is classified with the good in accordance with Rule 5 of the Interpretation Rules of the Tariff, subsection 153YK(1) provides for the packaging material or container to be disregarded when determining origin.

Where the good must satisfy a RVC requirement to be a *US originating good*, the value of the packaging material or container must be taken into account in satisfying that requirement. Part 4 of the AUSFTA Regulations prescribes how the value of the packaging material or container is to be determined.

### 3. Consignment rule

In addition to the rules specified above, to be a *US originating good*, a good must have been:

- (a) transported directly to Australia from the US; or
- (b) transported through another country or place, provided the good does not in that country or place undergo operations other than packing, packaging, unloading, reloading or operations to preserve it in good condition or any other operation that is necessary for the good to be transported to Australia.

#### **Administration**

##### **(i) Certificates of origin**

A certificate of origin is not required to support a claim for a US preferential rate of duty. A good should be entered as a *US originating good* only if the importer possesses information, or has the knowledge, that the good qualifies as a *US originating good*.

The supporting information will need to be provided to the Australian Customs Service (Customs), upon request. A request for information to support a claim of eligibility for a US preferential duty rate may occur at the time of entry or at a time after the good has been delivered into home consumption.

##### **(ii) Import entry requirements**

Before claiming preference, importers should take reasonable care to ensure that their goods meet the relevant rule of origin and the consignment rule.

When claiming a preferential rate of customs duty for a good that is a *US originating good* under Division 1C, the preference code "U" must be input in the preference indicator field on the import entry.

Where preference is claimed and Customs finds that the imported goods do not meet the relevant rule of origin and the consignment rule, Customs will demand the duty short-paid and may impose penalties. Additional action may be taken where fraud is indicated.

Where a good is produced in the US but does not meet the AUSFTA rules of origin, "X" will need to be entered in the preference indicator field on the import entry.

##### **(iv) Origin Advice Service**

AUSFTA allows for Australian importers, US exporters and US producers of goods to obtain advance rulings from Customs regarding future importations of goods into Australia.

Customs will provide written advice on origin matters through the provision of an Origin Advice (OA). The OA exists to advise Australian importers, US producers and US exporters 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.

Australian Customs Manual Volume 8C, Division 10, contains information on how the AUSFTA will be administered by Customs. This manual is available on the Customs website, [www.customs.gov.au](http://www.customs.gov.au).

**Additional information**

The text of the AUSFTA is available on the Department of Foreign Affairs and Trade website, [www.dfat.gov.au](http://www.dfat.gov.au).

Any enquiries in relation to this ACN should be directed by email to [origin@customs.gov.au](mailto:origin@customs.gov.au) or by telephone to the Manager Origin, Trade Branch, on (02) 6275 5821.

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