



## DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION NOTICE NO. 2015/41

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### China–Australia Free Trade Agreement – Rules of Origin

The China-Australia Free Trade Agreement (ChAFTA) was signed in Canberra on 17 June 2015 by the Minister for Trade and Investment Andrew Robb and Chinese Commerce Minister Gao Hucheng.

ChAFTA will enter into force on 20 December 2015. On entry into force importers will be entitled to duty-free entry or a reduced rate of tariff for goods imported from the People’s Republic of China (China). To be eligible for duty-free entry or a reduced rate of tariff, goods must meet the ChAFTA rules of origin (ROOs).

This Notice summarises the rules for determining whether a good originates in China for the purposes of ChAFTA.

#### **‘Free’ rates of customs duty**

The *Customs Tariff Act 1995* (Customs Tariff), as amended by the *Customs Tariff Amendment (China-Australia Free Trade Agreement Implementation) Act 2015* (the Act), will allow duty free entry of many Chinese originating goods when ChAFTA is implemented. Preferential treatment will apply to Chinese originating goods that are imported on or after the day ChAFTA enters into force, or to goods imported before that day and entered for home consumption on or after that day.

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

While most Chinese 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/countervailing duties and other taxes and levies, including cost recovery charges, if relevant, will still be payable.

#### **Rules of origin**

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

- the new Division 1L of Part VIII of the *Customs Act 1901* (Customs Act), as inserted by the Act; and

- the *Customs (Chinese Rules of Origin) Regulation 2015* (ChAFTA Regulations).

Division 1L sets out the ROOs for the following categories of goods:

- goods that are wholly obtained;
- goods that are produced entirely 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 China, or in China and Australia

Under Subdivision B of Division 1L, goods are Chinese originating goods if they are wholly obtained in China, or in China and Australia, and the importer of the goods has, at the time the goods are imported, a Certificate of Origin (CoO) or a Declaration of Origin (DoO), or a copy of such certificates, for the goods.

Goods are wholly obtained in China, or in China and Australia if, and only if, the goods are:

- live animals born and raised in the territory of China; or
- goods obtained in the territory of China from live animals referred to in paragraph (a); or
- goods obtained directly from hunting, trapping, fishing, aquaculture, gathering or capturing conducted in the territory of China; or
- plants, or plant products, harvested, picked or gathered in the territory of China; or
- minerals, or other naturally occurring substances, extracted or taken in the territory of China; or
- goods, other than fish, shellfish, plant or other marine life, extracted or taken from the waters, seabed or subsoil beneath the seabed outside the territory of China, but only if China has the right to exploit such waters, seabed or subsoil in accordance with international law and the law of China; or
- fish, shellfish, plant or other marine life taken from the high seas by a vessel registered with China and flying the flag of China; or
- goods obtained or produced from goods referred to in paragraph (g) on board factory ships that are registered with China and flying the flag of China; or
- waste and scrap that:
  - has been derived from production in the territory of China; or
  - has been derived from used goods that are collected in the territory of China and that are fit only for the recovery of raw materials; or
- goods produced entirely in the territory of China exclusively from goods referred to in paragraphs (a) to (i).

2. Goods produced in China, or in China and Australia, from originating materials

Under Subdivision C of Division 1J, goods are Chinese originating goods if they are produced entirely in China, or in China and Australia, from originating materials only; and the importer of the goods has, at the time the goods are imported, a CoO, or a copy of such certificate, for the goods, or Australia has waived the requirement for a CoO or a DoO.

‘Originating materials’ means:

- (a) Chinese 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 an Australian originating good under a law of China that implements ChAFTA.

The definition of ‘indirect materials’ is contained in Division 1L.

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

Under Subdivision D of Division 1L, goods are Chinese originating goods if they are produced entirely in China, or in China and Australia, from non-originating materials only or from non-originating materials and originating materials and satisfy the applicable product specific rules (PSR) requirements in the ChAFTA Regulations. The importer of the goods must have at the time the goods are imported a CoO or, if the goods are covered by an Advance Ruling, a DoO, or a copy of such document for the goods.

The table in Schedule 1 to the ChAFTA Regulations lists the PSR applicable for a good specified at the six-digit level of the Harmonized System (HS). A PSR sets out the following criteria that apply either solely or in conjunction to a good:

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

### **Change in tariff classification**

A good satisfies the CTC requirement 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 generally requires that the classification, under the HS, of a non-originating material is different from the classification of the good produced from 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 requirement 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.

## **Regional value content**

Goods in the table in Schedule 1 to the ChAFTA Regulations may be required to satisfy a RVC requirement. This requirement is met using the formula:

$$\text{RVC} = \frac{V - \text{VNM}}{V} \times 100$$

where:

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

“**V**” is the value of the good, as determined in accordance with the provisions of the Customs Valuation Agreement, adjusted on a Free-On-Board (FOB) basis; and

“**VNM**” is the value of the non-originating materials, including materials of undetermined origin.

Part 6 of the ChAFTA Regulations sets out how to determine the value of non-originating materials.

## **Processing rules**

The table in Schedule 1 to the ChAFTA Regulations may also require, for some goods, non-originating materials satisfy specified processing requirements in either or both of Australia and China.

## **Packaging materials and containers**

Where goods 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 153ZOF of the new Division 1L provides for the packaging materials or containers to be disregarded when determining origin.

However, subsection 153ZOF(2) states that where the goods must satisfy a RVC requirement to be a China originating good, the value of the packaging materials or containers that are non-originating materials must be taken into account in satisfying the RVC requirement.

Part 5 of the ChAFTA Regulations prescribes how the value of the non-originating packaging materials or containers are to be determined.

## **Accessories, spare parts, tools or instructional or other information materials**

New section 153ZOG of the Customs Act provides that where goods are imported into Australia together with accessories, spare parts or tools those accessories, spare parts or tools will be treated as China originating goods if:

- (a) they are accessories, spare parts or tools in relation to the goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts or tools; and
- (c) the other goods are Chinese originating goods; and
- (d) the accessories, spare parts or tools are classified and invoiced with the other goods and are included in the price of the other goods; and
- (e) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
- (f) the quantities and the value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

However, if the other goods must satisfy a RVC requirement to be a Chinese 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 determining the RVC.

Part 6 of the ChAFTA Regulations sets out how to work out the value of the accessories, spare parts, tools or instructional or other information materials.

## **Non-qualifying operations**

New section 153ZOH of the Customs Act provides that goods are not China originating goods merely because of the following operations:

- (a) operations or processes to ensure preservation of goods in good condition for the purposes of transport or storage;
- (b) packaging and repackaging;
- (c) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (d) placing in bottles, cans, flasks, bags, cases or boxes, fixing on cards or boards, and other simple packaging operations;
- (e) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging; or
- (f) disassembly of goods.

## **Consignment rule**

New section 153ZOI of the Customs Act sets out the consignment provisions that apply to Chinese originating goods imported into Australia. It provides that goods transiting a non-Party cannot not undergo any operation other than unloading and reloading; repacking; re-labelling or splitting up of the goods for

further transport for the purpose of satisfying the requirements of the importing Party; or temporary storage. Temporary storage of ChAFTA goods in a non-Party must not exceed 12 months from the date of entry. ChAFTA Regulations, Part 7, requires that for goods transported through the customs territory of Hong Kong, China, these goods are regarded as being under customs control at all times while the goods are in the customs territory of Hong Kong.

**Important.** Subsection 153ZOI(2) of the Customs Act does not relieve the importer of the obligation to ensure that goods transiting, transshipping and warehousing through Hong Kong do not undergo any operation other than the approved minimal operations. Importers must ensure detailed records are maintained that can, if required, demonstrate compliance to 153ZOI.

### **Certificate of Origin and Declaration of Origin**

A CoO or DoO, or a copy of one, is required at the time the good is entered to qualify the good for ChAFTA preferential treatment. The CoO must be issued by a designated Issuing Authority in China, be in English and be stamped by the appropriate authority. The DoO requires an advance ruling be in place at the time the DoO is made.

A DoO can be used in place of a CoO for any consignment of goods covered by an advance ruling issued by the importing Party in accordance with ChAFTA Article 4.9, as long as the facts and circumstances on which the ruling was based remain unchanged. The DoO covers the goods presented under a single import customs declaration and remains valid for 12 months from the date of issue. A DoO cannot be issued outside the validity period of the advance ruling.

The Department may also request other supporting information relating to the claim for ChAFTA preference. A request for information to support a claim of eligibility for a China preferential duty rate may occur at the time of entry or at a time after the good has been delivered into home consumption.

### **Refund of customs duty**

Where duty has been paid on China originating goods, or on goods that would have been China originating goods except for the fact that the importer did not have a valid CoO or DoO, or a copy of one at the time the goods were imported, the importer will be able to claim a refund of customs duty paid on such goods under Schedule 6 of ChAFTA Regulations. In relation to the second circumstance, the importer must hold a valid CoO or DoO or copy of one at the time of applying for the refund.

### **How to claim ChAFTA preference on an Import Declaration**

Before claiming preference, importers should take reasonable care to ensure that their goods meet the relevant ROO and ensure that the consignment and non-qualifying operations rules are met.

For claiming China originating goods for the purposes of ChAFTA, the Preference Scheme **CFTA** 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;
- **WP** – goods produced entirely from originating materials only; 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 ChAFTA Regulations.

Where preference is claimed and the Department finds that the imported good does not meet the relevant rule of origin, or any other requirements such as the consignment or non-qualifying operations rule, the Department will demand the duty short-paid and may impose penalties. Additional action may be taken where fraud is indicated.

### **Origin advice service**

ChAFTA allows for Australian importers, China exporters and China producers of goods to obtain advance rulings from the Department for future importations of goods into Australia. Obtaining an advance ruling on a good's origin is a mandatory prerequisite for the use of a ChAFTA Declaration of Origin.

Upon application, the Department 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 text of the relevant legislation for ChAFTA is available on the ComLaw website [www.comlaw.gov.au](http://www.comlaw.gov.au) and the ChAFTA Instruction and Guideline can be accessed from the ChAFTA webpage on the Department's website, at [www.border.gov.au/Busi/Free/China](http://www.border.gov.au/Busi/Free/China).

A working PSR document will also be available at the above website. This document will list all goods and categories of goods for which a PSR applies, including those goods that are 'wholly obtained'.

Any enquiries in relation to this Notice should be directed by email to [chafta@border.gov.au](mailto:chafta@border.gov.au).

(signed)  
Christie Sawczuk  
A/g Assistant Secretary  
Trade and Customs Branch  
CANBERRA ACT

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