



AUSTRALIAN CUSTOMS NOTICE NO. 2004/51

Thailand - Australia Free Trade Agreement - Rules of Origin

Goods imported into Australia that originate in Thailand will be entitled to preferential rates of customs duty on and from the day that the Thailand - Australia Free Trade Agreement (TAFTA) enters into force.

TAFTA 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 goods originate in Thailand.

Rules of origin

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

- wholly obtained goods of Thailand;
- goods produced entirely in Thailand or in Thailand and Australia; and
- goods that are chemicals, plastics or rubber.

Category 1: Wholly obtained goods of Thailand

Goods will be *Thai originating goods* if they are wholly obtained goods, and the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

Goods will be wholly obtained goods of Thailand if, and only if, the goods are:

- (a) minerals extracted in Thailand; or
- (b) agricultural goods harvested, picked or gathered in Thailand; or
- (c) live animals born and raised in Thailand; or
- (d) products obtained from live animals in Thailand; or
- (e) goods obtained directly from hunting, trapping, fishing, gathering or capturing carried out in Thailand; or
- (f) fish, shellfish, plant or other marine life taken:
 - (i) within the territorial sea of Thailand; or
 - (ii) within any other maritime zone in which Thailand has sovereign rights under the law of Thailand and in accordance with the United Nations Convention on the Law of the Sea (UNCLOS); or
 - (iii) from the high seas by ships flying the flag of Thailand; or
- (g) goods obtained or produced exclusively from goods referred to in paragraph (f) on board factory ships flying the flag of Thailand; or
- (h) goods taken from the seabed or the subsoil beneath the seabed of the territorial sea of Thailand or of the continental shelf of Thailand:
 - (i) by Thailand; or
 - (ii) by a national of Thailand; or
 - (iii) by a body corporate incorporated in Thailand; or
- (i) waste and scrap that has been derived from production operations in Thailand and that is fit only for the recovery of raw materials; or

- (j) used goods that are collected in Thailand that are fit only for the recovery of raw materials; or
- (k) goods produced entirely in Thailand exclusively from goods referred to in paragraphs (a) to (j).

Information on Certificates of Origin is provided under the heading “Certification” in this ACN.

Category 2. Goods produced entirely in Thailand or in Thailand and Australia

Goods will *Thai originating goods* if:

- the goods are produced entirely in Thailand, or entirely in Thailand and Australia, from originating or non-originating materials, or both;
- the goods satisfy the requirement or requirements that are specified in column 4 of the tariff classification for the goods in the tariff table contained in the *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004* (TAFTA Regulations) that apply to the goods; and
- the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for those goods.

Originating materials are defined as:

- (a) goods that are used in the production of other goods and that are *Thai originating goods*; or
- (b) goods that are used in the production of other goods and that are *Australian originating goods*.

Australian originating goods are goods that are *Australian originating goods* under a law of Thailand that implements TAFTA.

The tariff table is contained in Schedule 1 to the TAFTA Regulations. In that Schedule, one or more origin requirements are set out against each Harmonized System (HS) tariff classification. For a good to be a *Thai originating good*, it must satisfy the requirements set out against the HS tariff classification for that good. The requirements may involve a change of tariff classification (CTC), a regional value content (RVC) or other criteria.

- *CTC Requirement*

A good will satisfy a CTC requirement if:

- (a) each non-originating material used in the production of the good undergoes the required classification change specified against the HS tariff classification of the good in the Schedule 1 tariff table; or
- (b) the total value of the non-originating materials that do not meet the required classification change and that are used to produce the goods does not exceed 10% of the customs value of the good.

The CTC requirement applies only to non-originating materials used to produce the good, and requires the HS tariff classification of a non-originating material to differ from the HS tariff classification of the good produced from that non-originating material.

- *RVC Requirement*

For some goods, a RVC requirement is compulsory. For others, a RVC requirement is optional.

In most cases, the RVC is 40% or 45%. For textiles, clothing and footwear, the RVC is generally 55%.

The RVC is calculated by using the following formula:

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

where:

customs value means the customs value of the goods determined in accordance with Division 2 of Part VIII of the *Customs Act 1901*.

value of non-originating materials means each of the following:

- (a) the value of non-originating materials imported into Thailand by the producer of the goods and used in the production of the goods;
 - (b) the value of non-originating materials imported into Thailand, and acquired by the producer of the goods in the form in which they were imported into Thailand, and used in the production of the goods;
 - (c) the value of non-originating materials imported into Thailand by the producer in Thailand of other non-originating materials that are used in the production of the goods, and that are:
 - (i) produced using the imported non-originating materials; and
 - (ii) supplied directly to the producer of the goods;
 - (d) the value of non-originating materials imported into Thailand, and acquired, in the form in which they were imported into Thailand, by the producer in Thailand of other non-originating materials that are used in the production of the goods, and that are:
 - (i) produced using the imported non-originating materials; and
 - (ii) supplied directly to the producer of the goods.
- *Special provisions for certain textiles, clothing and footwear*

For goods classified in HS Chapters 50 to 64, the value of non-originating materials produced in developing countries can be deducted from the value of non-originating materials used to produce the goods, up to a maximum of 25% of the customs value of the goods. For the purpose of this provision, “developing countries” are those countries and places listed in Schedule 1 of the *Customs Tariff Act 1995* as at 1 January 2005.

- *Other Requirements*

The Schedule 1 tariff table in the TAFTA Regulations may also specify other requirements that must be met. As most of those requirements specify particular processes that must be performed in Thailand, or Thailand and Australia, they are often referred to as “process requirements”. Where specified, a process requirement will be either compulsory or optional.

Category 3: Goods that are chemicals, plastics or rubber

There are special rules to determine whether goods classified within HS Chapters 28 to 40 (chemicals, plastics or rubber) are *Thai originating goods*.

The special rules require the goods to be produced entirely in Thailand or entirely in Thailand or Australia and be the product of a chemical reaction, as defined in the TAFTA Regulations. The importer of the goods must also hold, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

Other provisions

1. Standard accessories, spare parts and tools

Where goods (underlying goods) are imported into Australia together with standard accessories, standard spare parts or standard tools, those accessories, spare parts or tools will be *Thai originating goods* if:

- (a) the underlying goods are *Thai originating goods*; and
- (b) the accessories, spare parts or tools are not invoiced separately from the underlying goods; and

- (c) the quantities and the value of the accessories, spare parts or tools are the usual quantities and value in relation to the underlying goods.

Where the underlying good must satisfy a RVC requirement to be *Thai originating goods*, the value of the accessories, spare parts or tools must be taken into account when satisfying that requirement. Regulation 4.1 of the TAFTA Regulations prescribes how the value of the accessories, spare parts or tools is to be determined.

The accessories, spare parts or tools will not be *Thai originating goods* if they are imported with the underlying goods solely for the purpose of artificially raising the RVC of the underlying goods.

2. Packaging materials and containers

Where goods are packaged for retail sale in packaging material or a container, and the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules of the Tariff, the packaging material or container is to be disregarded when determining origin, other than where an RVC requirement applies to the goods.

Where goods must satisfy a RVC requirement to be *Thai originating goods*, the value of the packaging material or container must be taken into account in satisfying that requirement. Regulation 4.1 of the TAFTA 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 *Thai originating goods*, goods must have been:

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

Under the consignment rule, goods stored in a country or place before being imported into Australia will not be *Thai originating goods* if that storage was unnecessary to preserve the goods in good condition or to transport the goods to Australia.

Certification

A valid Certificate of Origin is required for each shipment.

The Thai Department of Foreign Trade and any authorised Thai government body may issue Certificates of Origin.

An importer needs to hold a valid Certificate of Origin, or a copy of one, when claiming a preferential rate of customs duty.

An importer will need to provide a Certificate of Origin, or a copy of it, to the Australian Customs Service (Customs), upon request.

Administration

Before claiming preference, importers should take reasonable care to ensure that their goods meet the rules of origin, including the Certification and consignment provisions.

Additional information

The text of TAFTA is available on the Department of Foreign Affairs and Trade website, www.dfat.gov.au.

Detailed information on the rules of origin for TAFTA is provided in Division 1D of Part VIII of the Customs Act and in the TAFTA Regulations. A copy of that legislation will be available shortly on <http://scaleplus.law.gov.au>.

An Australian Customs Service Manual, Volume 8D, providing details on the TAFTA rules of origin, will be available shortly on the Customs website, www.customs.gov.au.

Information on the preferential rates of customs duty to apply to *Thai originating goods* is provided in ACN No. 2004/47 and 2004/50.

Any enquiries in relation to this ACN should be directed to the origin mailbox, origin@customs.gov.au, or to Origin, Trade Branch on telephone number (02) 6275 6556.

John Arndell
Acting National Manager
Trade Branch
CANBERRA ACT

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