



DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION NOTICE

No.2017/13

Guidance on Refund Provisions under Australia's various Free Trade Agreements

The attached tables provide an overview of some considerations relating to the assessment of refunds applications under Australia's various free trade agreements.

Please note:

- (1) This document is merely intended as informal guidance to the trading community and does not purport to offer legal advice. Refund circumstances will continue to be assessed on the facts and merits of each case.
- (2) Traders must be familiar with the *Customs Act 1901*, Customs (International Obligations) Regulation 2015 and Customs Regulation 2015 to understand the legal basis for refunds.

(signed)
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Traveller, Customs and Industry Policy Division
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Chile: Refund circumstances for Chilean originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
23(a) Item 3 of the table(1)	Chilean originating goods.	Duty has been paid on the goods.	Must have had a Certificate of Origin for the goods at the time of importation.	Application lodged within 4(2) years from the payment of duties.
23(a) Item 4 of the table.	Goods that would have been Chilean originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods.	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a valid Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund. The Certificate of Origin must be "in force" to be valid – section 153ZJB <i>Customs Act 1901</i> .	If importer did not have a Certificate of Origin at the time of importation – refunds can be claimed up to one year from the date the Certificate of Origin issued. Article 4.16 of Chapter 4 of the ACFTA states that "a claim that a good should be treated as originating and accepted as eligible for a preferential tariff shall be supported by a Certificate of Origin". A Certificate of Origin is valid for one year from the date of issue- Article 4.16(4). Article 4.18 outlines the conditions to be met to claim preferential tariff treatment and Article 4.19 that outlines the period within which a refund may be sought.	Application lodged within one year from date the Certificate of Origin issued.

¹ All references to Regulation 23(a) are to Regulation 23 *Circumstances for Refunds, rebates and remissions of duty* in Part 5 of the Customs (International Obligations) Regulation 2015.

² See Regulation 28 *Period for making an application for refund, rebate or remission* in Part 5 of the Customs (International Obligations) Regulation 2015.

MAFTA: Refund circumstances for Malaysian originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
23(a) Item 5 of the table.	Malaysian originating goods.	Duty has been paid on the goods.	Must have had a Certificate of Origin for the goods at the time of importation.	Application lodged within 4 years from the payment of duties.
23(a) Item 6 of the table.	Goods that would have been Malaysian originating goods if, at the time the goods were imported, the importer held: (a) a Declaration of Origin, or a Certificate of Origin, for the goods; or (b) a copy of a document mentioned in paragraph (a).	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Declaration of Origin, or a Certificate of Origin for the goods, or a copy of either of those documents, at the time of making the application for the refund. The Certificate of Origin must be “in force” to be valid – section 153ZLB <i>Customs Act 1901</i> .	This regulation applies to situations where the Certificate of Origins issued retroactively. Article 3.15 (3) of Chapter 3 of MAFTA states that a Certificate of Origin will be valid for one year after the date on which it was issued. Please note, MAFTA requires Malaysian exporters and producers to obtain Certificate of Origins even if they already possess a DOO. Article 3.17 describes how to claim preferential tariff treatment. This article outlines the time limits to claim preferential tariff treatment. Rule 5(2) of the Annex on Operational Certification Procedures to the MAFTA provides for the retroactive issue of Certificate of Origins but not more than one year from the date of shipment.	Application lodged within one year after the Certificate of Origin was issued.

KAFTA: Refund circumstances for Korean originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
23(a) Item 9 of the table.	Korean originating goods.	Duty has been paid on the goods.	Must have had a Certificate of Origin for the goods at the time of importation.	Application lodged within 4 years from the payment of duties.
23(a) Item 10 of the table.	Goods that would have been Korean originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods.	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund. The Certificate of Origin must be “in force” to be valid – section 153ZMB <i>Customs Act 1901</i> .	A KAFTA Certificate of Origin is valid for 2 years from the date it was signed. Under KAFTA, there is no provision for the retrospective issue of Certificate of Origins. Article 3.15(6) outlines the period of validity of a Certificate of Origin and Article 3.18 outlines the conditions to be met to claim post importation preferential tariff treatment.	Application lodged within 2 years after the date the Certificate of Origin was signed.

JAEPA: Refund circumstances for Japanese originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
23(a) Item 11 of the table.	Japanese originating goods.	Duty has been paid on the goods.	Must have had a Certificate of Origin or origin certification document (OCD) for the goods at the time of importation.	Application lodged within 4 years from the payment of duties.
23(a) Item 12 of the table.	Goods that would have been Japanese originating goods if, at the time the goods were imported, the importer held: (a) a Certificate of Origin or origin certification document for the goods; or (b) a copy of a document mentioned in paragraph (a).	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin or origin certification document for the goods, or a copy of either of those documents, at the time of making the application for the refund. The Certificate of Origin must be “in force” to be valid – section 153ZNB <i>Customs Act 1901</i> .	Article 2.1 of the JAEPA <u>Implementing Agreement</u> states that in principle, a Certificate of Origin shall be issued by the time of shipment. There is an allowance under this article for exceptional cases where the Certificate of Origin has not been issued by the time of shipment. At the request of the exporter or producer, the Certificate of Origin may be issued retrospectively within 12 months from the date of shipment. Article 2.1(4) provides a Certificate of Origin issued retrospectively shall remain valid for a period of one year from the date of shipment.	Validity of the retrospective Certificate of Origin - one year from date of shipment.

ChAFTA: Refund circumstances for Chinese originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
23(a) Item 13 of the table.	Chinese originating goods.	Duty has been paid on the goods.	<p>Must have had a Certificate of Origin at the time of importation.</p> <p>If the trader is using a Declaration of Origin (DOO) to claim a refund, an Advance Ruling must be in place under this regulation. The Advance Ruling must have been in place when the goods were imported.</p>	Within 4 years after the day on which the duty was paid.
23(a) Item 14 of the table.	<p>Goods that would have been Chinese originating goods if, at the time the goods were imported, the importer held:</p> <p>(a) a Certificate of Origin, or a Declaration of Origin with an Advance Ruling for the goods; or</p> <p>(b) a copy of a document/the documents mentioned in paragraph (a).</p>	<p>Both of the following apply:</p> <p>(a) duty has been paid on the goods;</p> <p>(b) the importer holds a Certificate of Origin, or a Declaration of Origin (DOO) or a copy. Article 3.15 of ChAFTA provides that a DOO will be accepted provided an advance ruling is in place for the goods (see also Article 4.9 of ChAFTA), at the time of making the application for the refund. The Certificate of Origin must be “in force” to be valid – section 153ZOB <i>Customs Act 1901</i>. Article 3.14(4) of ChAFTA provides that a Certificate of Origin remains valid for 12 months from the date of issue. The same requirements and duration apply to a DOO.</p>	<p>This regulation applies to situations where the Certificate of Origin is issued retrospectively.</p> <p>In exceptional cases where the Certificate of Origin is not available at the time of exportation and is issued retrospectively, Article 3.14(5) provides that the Certificate of Origin is valid for 12 months from the date of shipment. Because the importer must have a valid Certificate of Origin at the time of applying for a refund, applications for a refund are limited to 12 months from the date of shipment. After this, the Certificate of Origin expires and no refund can be sought.</p>	Validity of the Certificate of Origin - 12 months from date of shipment.

SAFTA — Refund circumstances for Singaporean originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
<p>Customs Regulation 2015 Clause 1 Items 6 and 7 of Schedule 6 – Refunds, rebates and remissions of duty.</p>	<p>Goods that would have been Singapore originating goods.</p>	<p>The Customs (International Obligations) Regulation 2015 does not apply to refunds under the SAFTA.</p> <p>For refunds under SAFTA, Items 6 and 7 of Clause 1 of Schedule 6 of the Customs Regulation 2015 is used.</p> <p>A refund applies where duty has been paid on goods because of manifest error of fact or patent misconception of the law</p> <p>Goods claimed to the manufacture of Singapore must be accompanied by a valid Certificate of Origin in order (Section 153U and Section 153VE of the <i>Customs Act 1901</i>).</p>	<p>SAFTA Chapter 3 Article 12 provides a refund will only be granted where the importer possesses a valid Certificate of Origin (and DOO, where necessary) that was issued before the goods entered the territory of the importing Party (Article 11(6) of SAFTA). The Certificate of Origin is valid for one year from the date of issue –Article 11(9) of SAFTA. Article 11(10) provides that for multiple shipments the Certificate of Origin may be used within two years of the date of issue.</p> <p>Before seeking a refund, importers should take reasonable care to ensure that their goods meet the relevant rule of origin and the consignment rule.</p>	<p>Application lodged within 4⁽³⁾ years after the day on which the duty was paid as long as the Certificate of Origin, and/or DOO, was valid at the time duties were paid.</p>

³ See Regulation 28 *Period for making an application for refund, rebate or remission* in Part 5 of the Customs (International Obligations) Regulation 2015.

AUSFTA Refund circumstances for originating goods from the United States				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
Customs Regulation 2015 Clause 1 Items 6 & 7 of Schedule 6 – Refunds, rebates and remissions of duty.	Goods that would have been United States originating goods.	<p>Customs (International Obligations) Regulation 2015 does not apply to refunds under the AUSFTA.</p> <p>For refunds under AUSFTA, Items 6 and 7 of Clause 1 of Schedule 6 of the Customs Regulation 2015 is used.</p> <p>A refund applies where duty has been paid on goods because of manifest error of fact or patent misconception of the law.</p>	<p>A Certificate of Origin is not required under AUSFTA.</p> <p>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. Article 5.12 Chapter 5- Rules of Origin of the AUSFTA.</p> <p>The supporting information will need to be provided to the Department upon request. A request for information may occur at the time of entry or at a time after the good has been entered into home consumption.</p> <p>Before seeking a refund, importers should take reasonable care to ensure that their goods meet the relevant rule of origin. Importers should also be aware of the consignment rule (section 153YL of the <i>Customs Act 1901</i>).</p>	Application within 4 ⁽⁴⁾ years after the day on which the duty was paid.

⁴ See Regulation 28 *Period for making an application for refund, rebate or remission* in Part 5 of the Customs (International Obligations) Regulation 2015.

AANZFTA: Refund circumstances for ASEAN or New Zealand originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
23(a) Item 7 of the table.	AANZ originating goods (Division 1G of Part VIII of the <i>Customs Act 1901</i>).	Importer had a valid AANZFTA Certificate of Origin at the time of importation. Duty has been paid on the goods but importer did not claim preferential tariff treatment at the time of importation.	The refund application may be lodged within 4 years after the day on which duty was paid notwithstanding the Certificate of Origin is no longer in force (i.e. it has expired) at the time of making the refund application. This is because there was a valid Certificate of Origin in existence at the time of importation.	Application within 4 ⁽⁵⁾ years after the day on which the duty was paid.
23(a) Item 8 of the table.	Goods were AANZ originating goods according to the rules of the AANZFTA but the importer did not have a Certificate of Origin at the time of importation.	Both of the following apply: a) Duty has been paid on the goods; b) The importer holds a Certificate of Origin (or copy thereof) for the goods at the time of making the application for the refund The Certificate of Origin must be “in force” to be valid – section 153ZKB <i>Customs Act 1901</i> .	A Certificate of Origin can be “issued retroactively” at any time from 3 days to 12 months after the date of exportation where the failure to issue a Certificate of Origin within 3 days of exportation is due to involuntary errors or omissions or other valid causes. Rule 10(2) of the Annex on Operational Certification Procedures to the AANZFTA. The refund applicant must have a Certificate of Origin, or a copy of it, that is “in force” at the time the refund application was made. A Certificate of Origin remains in force for 12 months from the date of issue (Rule 13(i) of the Annex. A Certificate of Origin that is not “in force” (i.e. it has expired) at the time of making the refund application is not eligible for a refund (exceptional circumstances notwithstanding). This is because the Certificate of Origin must be “in force” at the time the time of making the application for the refund.	Application lodged no longer than 12 months from the date of issue of the “retrospective” Certificate of Origin.

⁵ See Regulation 28 *Period for making an application for refund, rebate or remission* in Part 5 of the Customs (International Obligations) Regulation 2015.

TAFTA: Refund circumstances for Thai originating goods				
Regulation	Class of goods	Circumstances	FTA requirements and provisions	Period of refund
23(a) Item 1 of the table.	Thai originating goods (Division 1D of Part VIII of the <i>Customs Act 1901</i>).	Duty has been paid on the goods but importer did not claim preferential tariff treatment at the time of importation.	A Certificate of Origin for the goods is required at the time of importation. The Certificate of Origin must not have been revoked. There is no expiry period on TAFTA Certificate of Origin.	Section 28(2) (6) provides that “An application for a refund or rebate of duty... must be made within 4 years after the day on which the duty was paid”.
23(a) Item 2 of the table.	Goods were Thailand originating goods according to the rules of the TAFTA but the importer did not have a Certificate of Origin at the time of importation.	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the application for the refund. The Certificate of Origin must be “in force” to be valid – section 153ZA <i>Customs Act 1901</i> .	A Certificate of Origin is regarded as ‘in force’ or ‘valid’ as long as it has not been revoked. There is no provision in the TAFTA for a Certificate of Origin to be issued retrospectively.	

⁶ Regulation 28 *Period for making an application for refund, rebate or remission* in Part 5 of the Customs (International Obligations) Regulation 2015.