

AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT (AUSFTA)

AUSFTA was signed on May 18, 2004 and entered into effect on January 1, 2005.

A. Tariff Reduction and Elimination Modality

Australia and the United States agreed to eliminate customs duties on all goods from the other Party. Australia eliminated 97% of tariffs on imports of non-agricultural products, excluding textiles and clothing, upon entry into force of the Agreement. The United States eliminated more than 99% of tariffs on imports of non-agricultural products from Australia upon entry into force. All tariffs for non-agricultural products will be zero by 2015 for both Parties.

Duty rates for the majority of products under HS Chapters 84, 85 and 87 were either already at zero percent prior to the entry into force of the Agreement or were reduced to zero upon AUSFTA's entry into force.

B. Rules of Origin

General Rules

AUSFTA follows a product-specific approach to rules of origin and adopts change in tariff classification (CTC) as the basis of origin determination. However, the amount of work required to qualify for origin is different from product to product. A summary of the rules of origin under AUSFTA is as follows:

Method of Determining Origin	Unique Origin Criteria
<ol style="list-style-type: none">Wholly obtained or producedProduct-specific based on change in tariff classification (CTC) Some goods have an alternative rule based on calculation of regional value content (RVC) (cumulative Australia and the US). The RVC requirement ranges from 35% to 50%. <u>Build-down method:</u> Set at 45%. Regional value content calculates the adjusted value of the good (approximate FOB) minus the value of non-Australia and non-US materials used as a percentage of the adjusted value of the good. <u>Build-up method:</u> Set at 35%. Regional value content calculates the value of Australia and/or US materials as a percentage of the adjusted value of the good.Process rule for products in HS Chapters 28 to 40 (chemicals, plastics and rubber) whereby the materials undergo a certain process to obtain origin.	<p>In respect of automotive goods, there is an RVC requirement of 50% based on the net cost method.</p> <p>Special rules involving two tests for clothing and textiles (yarn forward requirement) falling under HS Chapter 62 (refer to Part 4 of the AUSFTA Regulations).</p>

Regional value content tests (build-down method and the build-up method) apply to approximately 12% of tariff lines under AUSFTA. These cost thresholds are applied with great flexibility. In many cases, importers are given the option of choosing the approach that

best suits them. In fact, importers can test the product under the build-down method and if it does not meet the threshold amount, the importer can use the build-up method.

For automobiles and certain components,¹ however, AUSFTA adopts the net cost method to calculate the RVC. Net cost means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost.

AUSFTA imposes a very strict rule of origin on clothing and textiles called the “yarn forward requirement.” In order to qualify as an originating good, clothing and textiles must have been cut (or knit into shape) and sewn or otherwise assembled in the exporting country from yarn, or fabric made of yarn, that originates in the United States or Australia, or both. These rules are product specific and vary greatly depending on the particular good. Chapter rules in Annex 4A state that an importer needs to apply the rule of origin governing the component, which gives the article its essential characteristics, in determining the rule of origin to apply to an article of apparel.

Under AUSFTA, originating goods that are transshipped through third parties may maintain their originating status provided that they do not undergo any production or other operation outside the Parties other than those necessary to preserve the good’s condition during shipment.

Rules on Accumulation of Inputs

When a material or good qualifies as an originating material, its total value may be included for the purpose of the RVC calculation.

De Minimis

AUSFTA provides relief when a good does not qualify as an originating good only because some non-originating materials of little value fail to meet an HS classification change requirement. If the total value of the non-originating materials in question is no more than 10% of the value of the good, then the exporter or producer can consider the good to be an originating good.

C. Certification Rules

General Description

AUSFTA adopts a self-declaration system. Article 5.12 of AUSFTA Chapter 5 (Rules of Origin) specifies that an importer can claim preferential access for goods by making self-declaration of the country of origin based on the importer’s knowledge, or on information in the importer’s possession, that those goods meet the relevant rule of origin. There is no requirement for the importer to provide any separate documentation at the time of importation that certifies that the goods meet the relevant rules of origin. Because AUSFTA is importer-focused, exporters are not required to complete declaration of origin forms.

In practice, many Australian importers and US manufacturers and exporters have prepared sample certificates of origin or declarations for possible use under AUSFTA as a means to provide more certainty when clearing goods. While these sample statements are designed

¹ This method is applicable to goods classified in any of the following headings or subheadings: 8408.20; 8407.31-8407.34; 8409, 8406, 8707 or 8708; and 8701, 8702, 8703, 8704 or 8705. Please refer to Articles 3.3 to 3.5 of the Customs (AUSFTA) Regulations 2004.

as a “guide only,” Australian Customs does accept such statements as *prima facie* evidence that the goods meet a rule of origin under AUSFTA.

Back-to-Back Certificate of Origin

Not applicable to AUSFTA.

Third-party Invoicing

Not applicable to AUSFTA.

Advance Ruling

AUSFTA provides for advance rulings on whether a good qualifies as an originating good under Article 6.3 and 6.4 relating to Customs Administration. The exporter, importer and producer may apply to the importing customs authority for an advance ruling prior to the importation of the good. The importing customs authority has 120 days to issue the written, binding advance ruling upon the receipt of all necessary information. Requests for an Origin Ruling should be submitted on the approved form, B178.

The importing customs authority may modify the advance ruling if (i) the ruling was based on incorrect fact or law, (ii) there is a change in the material facts or circumstances on which the ruling was made, or (iii) there is a change in domestic law consistent with AUSFTA. Regarding administrative penalties, from the time of registering an application until the decision of Customs, the applicant is indemnified from administrative penalty in respect of the duty short paid in relation to the claimed issue. However, the indemnity ceases when an application is withdrawn or where it is voided because of inadequacy with the application or supporting documentation.

Post-Exportation Examination

Importers must provide evidence that their goods meet the relevant provisions if requested by customs. The importing Party may also verify an imported good’s originating status through written requests for information to an exporter or producer in the exporting Party. The importing Party may also visit the premises of an exporter or producer in the other Party, subject to any jointly adopted procedures between the Parties.²

While the US importer is responsible for proving to US Customs that a good qualifies as “originating,” it is important that the Australian exporter provides sufficient documentation to the US importer to support the origin of the goods and to enable US Customs to prepare a binding origin ruling, should the US importer wish to obtain such a ruling. It is also recommended that an Australian exporter keep records of the origin(s) of its components and detailed costing information (where the goods must satisfy an RVC).

Document Retention Requirements

Importers are required to maintain records relating to the importation, exportation and production of the good for at least five years after the date of importation. This may include, among others, documentation detailing the purchase, cost and value of as well as payment for the good and all materials used in the good’s production. AUSFTA does not require that the statement conform to a specified format and allows the importer to submit the form electronically.

² Chapter 5, Section B, Article 5.15 of AUSFTA.

CBP will check to ensure that the information on the declaration contains at least the following:

- A description of the article, quantity, numbers, and marks of packages, invoice number, and bills of lading;
- A description of the operations performed in the production of the article in the exporting country and identification of the direct costs of processing operations;
- A description of any materials used in production of the article which are wholly the growth, product, or manufacture of the exporting country, and a statement as to the cost or value of such materials;
- A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in the exporting country so as to be materials produced in the exporting country; and
- A description of the origin and cost or value of any foreign materials used in the article, which have not been substantially transformed in the exporting country.
- The declaration shall be prepared, signed and submitted upon request to the CBP officer concerned.

D. Relevant FTA Provisions

- Legal Text:
http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html
- Tariff Schedules:
http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/Annex2b_Tariff_Elimination/Annex_2-B_Australia_Tariff_Schedule.pdf (Australia)
http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/Annex2b_Tariff_Elimination/Annex_2-B_US_Tariff_Schedule.pdf (United States)
- Rules of Origin, Chapter 5:
http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/chapter_5.html
- Product Specific Rules of Origin, Annex 5-A:
http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/Annex_05_roos.pdf