



Australian Government

**Australian Customs and
Border Protection Service**

INSTRUCTIONS AND GUIDELINES
AUSTRALIA-CHILE FREE TRADE AGREEMENT

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AUSTRALIA-CHILE FREE TRADE AGREEMENT
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THIS INSTRUCTION AND GUIDELINE REFERS TO:

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SUBJECT:	Origin issues as they relate to the Australia-Chile Free Trade Agreement.
PURPOSE:	To specify the rules that need to be satisfied under the Australia-Chile Free Trade Agreement which are used to determine if a good is a Chilean originating good and therefore eligible for the free or preferential duty rate under the Agreement.
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The electronic version published on the intranet is the current Instruction and Guideline.

SUMMARY OF MAIN POINTS

This Instruction and Guideline outlines all the rules of origin under the Australia-Chile Free Trade Agreement.

INTRODUCTION

This Instruction and Guideline deals with origin issues as they relate to the Australia-Chile Free Trade Agreement (ACI-FTA). This agreement came into force on 6 March 2009.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: STRATEGIC MANAGEMENT – Policy - Guidelines

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Division 1: Introduction

1. Coverage of manual

- (1) This Instruction and Guideline deals only with origin issues as they relate to the Australia-Chile Free Trade Agreement (the Agreement or ACI-FTA). This Agreement came into force on 6 March 2009.

2. Abbreviations

The following abbreviations are used throughout this Instruction and Guideline:

Agreement	Australia-Chile Free Trade Agreement
ACI-FTA	Australia-Chile Free Trade Agreement
ACI-FTA Regulations	<i>Customs (Chilean Rules of Origin) Regulations 2008</i>
CTC	Change in Tariff Classification
Customs Act	<i>Customs Act 1901</i>
HS	Harmonized System
ROO	Rule(s) of Origin
RVC	Regional Value Content

Division 2: Legislation

1. General outline of legislation

The preferential tariff requirements of ACI-FTA are contained within the following documents:

- **Combined Australian Customs Tariff Nomenclature and Statistical Classification “Introduction”**
 - pages 1 and 2 (Application of Rates of Duty)
- **Customs Tariff Act 1995 (the Customs Tariff)**
 - Part 1 – Main amendments
 - Part 2 – Contingent amendments
 - Schedule 7
- **Customs Act 1901 (the Customs Act)**
 - Division 1F of Part VIII (sections 153ZJA to 153ZJI) – Chilean originating goods
 - Division 4E of Part VI (sections 126AKA to 126AKD) – Verification powers – the exportation of goods
- **Customs Regulations 1926 (the Customs Regulations)**
 - Regulations 105H and 105I and 126C
- **Customs (Chilean Rules Of Origin) Regulations 2008**

2. Operation of the legislation

Chapter 4 of ACI-FTA has been implemented under the following legislation:

- **Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008:**
 - Part 1 Chilean originating goods (incorporated into the Customs Act) - sections 153ZJA-153ZJI
 - Part 2 Verification powers (incorporated into the Customs Act) - sections 126AKA-126AKD
 - Part 3 Application provisions
- **Customs Tariff Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008:**
 - Part 1 Main amendments (incorporated into the Customs Tariff Act)
 - Part 2 Contingent amendments
- **Customs Amendment Regulations 2008 (No. 6) (incorporated into the Customs Regulations)**
- **Customs (Chilean Rules Of Origin) Regulations 2008**

Division 3: Overview of ACI-FTA

1. Geographical area covered by the Agreement
 - (1) The Agreement covers the territories of Australia and Chile.
2. Overview of goods covered by ACI-FTA
 - (1) All goods imported into Australia from Chile are covered by the ACI-FTA.
 - (2) Section 16 of the Customs Tariff Act provides that the rates of customs duty for Chilean originating goods are free unless otherwise specified in the third column of the Tariff Classification in Schedule 7 under which the goods are specified.
 - (3) Record keeping obligations are imposed on producers and exporters of goods to Chile. **See Division 12** of this Instruction and Guideline for more details.

Division 4: Principles of rules of origin

1. Explanation of concept of Chilean originating goods

- (1) ROO are necessary to provide objective criteria for determining whether or not imported goods are eligible for the preferential rates of duty available under the ACI-FTA.
- (2) The ACI-FTA grants benefits to all goods that “originate” in Chile, or in Chile and Australia. “Originating” is a term used to describe goods that meet the requirements of Article 4.2 of the Agreement. Article 4.2 establishes which goods are originating goods and precludes goods from other countries from obtaining those benefits by merely transiting through Australia or Chile.
- (3) The ROO define the methods by which it can be ascertained that a particular good has undergone sufficient work or processing, or has undergone substantial transformation, to obtain the benefits under the ACI-FTA.
- (4) Originating goods are those that satisfy the requirements of:
 - Division 1F of Part VIII of the Customs Act, as inserted by Part 1 of Schedule 1 of the *Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008*; and
 - the ACI-FTA Regulations.
- (5) The types of ROO to be used when determining if a good is an originating good are:
 - wholly obtained in Chile;
 - produced in Chile, exclusively from originating materials; and
 - goods produced in Chile or in Chile and Australia from non-originating materials, or a combination of non-originating and originating materials (these ROO are the product specific rules (PSR)).
- (6) Non-originating goods or materials are those which originate from outside Australia or Chile, or which are produced in Australia or Chile but, because of a high level of offshore material used to produce them, do not meet the ROO.

2. Harmonized system of tariff classification

- (1) Product specific ROO are based on tariff classifications under the internationally accepted HS. The HS organises products according to the degree of production, and assigns them numbers known as tariff classifications. The HS is arranged into 97 chapters covering all products. Each chapter is divided into headings. Headings can be divided into subheadings, and subheadings are divided into tariff classifications.

Example: Harmonized System of Tariff Classification

Chapter 62.....Articles of apparel and clothing accessories, not knitted or crocheted
 Heading 6209.....Babies' garments and clothing accessories
 Subheading 6209.20.....Of cotton
 Tariff classification 6209.20.20.....Clothing accessories

- (2) As shown above, chapter means the two-digit chapter number. Headings are identified with a four-digit number, subheadings have a six-digit number, and tariff classifications have an eight-digit number. Subheadings give a more specific description than headings, and tariff classifications give a more specific description than subheadings.
- (3) Under the HS, the chapter, heading, and subheading numbers for any good are identical in all countries using the HS. However, the last two digits of the tariff classification are not harmonized - each trading nation individually assigns them.
- (4) The PSR are organised using the HS classification numbers. Therefore, importers determine the HS classification of the imported good and use that classification to find the specific ROO in the applicable Annex to the Agreement. If the good meets the requirements of the ROO (and all other relevant requirements), it is an originating good.

3. Change in Tariff Classification

- (1) When a ROO is based on a CTC, each of the non-originating materials used in the production of the good must undergo the applicable change as a result of production occurring entirely in Chile or in Chile and Australia.
- (2) This means that the non-originating materials are classified to one tariff classification prior to processing and classified to another upon completion of processing. This approach ensures that sufficient transformation has occurred within Chile or Australia to justify a claim that the good is a legitimate product of Chile. The exact nature of the CTC required for a specific good can be found by referring to the PSR in Appendix 1 of these Instruction and Guidelines (printed as a separate document).

Example: Product specific rule requiring a CTC

Newsprint (HS 4801) is produced in Chile from mechanical wood pulp (4701) imported from Peru.

The product specific rule for 4801 is:

A change to heading 4801 from any other heading.

In the production of newsprint in Chile from wood pulp imported from Peru, the CTC is from 4701 to 4801.

The product specific rule for 4801 requires a CTC from any other heading. As 4701 is a different chapter to 4801, the good satisfies the CTC requirement and is therefore a Chilean originating good.

4. Regional Value Content

- (1) For some goods, the CTC ROO is supported by a local content threshold component called the RVC requirement. The purpose of the RVC is to ensure that a good is produced with a specified proportion of the final value of the good coming from Chile or Chile and Australia.
- (2) The RVC requirement can take the form of either an additional requirement to the specified CTC, or can provide an optional test, allowing the product to meet a lesser degree of tariff shift if the threshold is reached.
- (3) Article 4.11 of the Agreement provides the formulae to determine RVC.
- (4) Section 3 in Division 7 of this Instruction and Guideline provides a full explanation of RVC.

5. Types of originating goods under the ACI-FTA

- (1) The types of Chilean originating goods under ACI-FTA are dealt with in Division 5 to 8 of this Instruction and Guideline as outlined below:
 - wholly obtained goods of Chile - (**Division 5**);
 - goods produced in Chile from originating materials - (**Division 6**);
 - goods produced in Chile, or Chile and Australia from non-originating materials - (**Division 7**); and
 - other Chilean originating goods - (**Division 8**).

- (2) In deciding whether goods are Chilean originating goods the following concepts which are explained in this Instruction and Guideline must also be considered:
- CTC - (**Division 7, Section 2**);
 - Cumulation - (**Division 7, Section 2**);
 - *De minimis* rule - (**Division 7, Section 2**);
 - RVC - (**Division 7, Section 3**);
 - Goods that are chemicals, plastic or rubber - (**Division 7, Section 4**);
 - Goods put up in a set for retail sale - (**Division 7, Section 5**);
 - Composite goods - (**Division 7, Section 6**);
 - Packaging materials and containers - (**Division 8, Section 1**);
 - Accessories, spare parts, tools or instructional or other information resources - (**Division 8, Section 2**);
 - Non-qualifying operations - (**Division 8, Section 3**);
 - Consignment provisions - (**Division 8, Section 4**);
 - Fungible goods and materials - (**Division 10**);
 - Certificate of origin - (**Division 11**).

6. Origin Advice Rulings

- (1) Written advice on any origin matter will be provided by Customs and Border Protection in the form of an Origin Advice Ruling upon request. The Ruling exists to advise Australian importers, Chilean producers and Chilean 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 (**Division 9**).

Division 5: Wholly obtained goods of Chile

1. Statutory provisions

- (1) Section 153ZJC of the Customs Act contains provisions relating to goods wholly obtained in Chile:

153ZJC Wholly obtained goods of Chile

- (1) Goods are **Chilean originating goods** if:
- (a) they are wholly obtained goods of Chile; and
 - (b) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (2) Goods are **wholly obtained goods of Chile** if, and only if, the goods are:
- (a) minerals extracted in or from the territory of Chile; or
 - (b) goods listed in Section II of the Harmonized System that are harvested, picked or gathered in the territory of Chile; or
 - (c) live animals born and raised in the territory of Chile; or
 - (d) goods obtained from live animals in the territory of Chile, or
 - (e) goods obtained from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Chile; or
 - (f) fish, shellfish or other marine life taken from the high seas by ships that are registered or recorded in Chile and are flying the flag of Chile; or
 - (g) goods obtained or produced exclusively from goods referred to in paragraph (f) on board factory ships that are registered or recorded in Chile and are flying the flag of Chile; or
 - (h) goods taken from the seabed, or beneath the seabed, outside the territorial sea of Chile:
 - (i) by Chile; or
 - (ii) by a person of Chile,but only if Chile has the right to exploit that part of the seabed in accordance with international law; or
 - (i) waste and scrap that has been derived from production operations in the territory of Chile or from used goods collected in the territory of Chile, and that are fit only for the recovery of raw materials; or
 - (j) goods obtained or produced entirely in the territory of Chile exclusively from goods referred to in paragraphs (a) to (i).

- (2) In determining whether goods are wholly obtained or produced entirely in Chile the following definition in section 153ZJB will also need to be considered:

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

2. Policy and practice – wholly obtained goods

- (1) Section 153ZJC determines that goods are Chilean originating goods if they are wholly obtained in Chile because the goods fall into one of the following categories:

- minerals extracted in Chile (for example, silver mined in Chile); or
- goods listed in Section II of the HS that are harvested, picked or gathered in the territory of Chile (for example the fruit from fruit trees grown in Chile); or
- live animals born and raised in Chile; or
- goods obtained from live animals in Chile, or
- goods obtained from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in Chile; or
- fish, shellfish, or other marine life taken from the high sea by ships that are registered or recorded in Chile and are flying the flag of Chile (for example tuna caught by a Chilean registered fishing vessel); or
- goods obtained or produced exclusively from goods referred to in the paragraph above on board factory ships that are registered or recorded in Chile and are flying the flag of Chile; or
- goods taken from the seabed or the subsoil beneath the seabed of the territorial sea of Chile or of the continental shelf of Chile:
 - by Chile; or
 - by a person of Chile;but only if Chile has the right to exploit that part of the seabed in accordance with international law; or
- waste and scrap (see examples #1 and 2 in Policy and Practice below) that have either been derived from:
 - production operations in Chile and that are fit only for the recovery of raw materials; or
 - used goods that are collected in Chile and that are fit only for the recovery of raw materials; or
- goods produced entirely in Chile, exclusively from goods referred to in 2.1 of this Division.

3. Policy and practice - waste and scrap

- (1) There are two categories of waste and scrap which qualify as “goods wholly obtained” under section 153ZJC.
- (2) The first category is waste and scrap that results from production operations in Chile and that are fit only for the recovery of raw materials.

Example #1: Waste and Scrap

Galvanised pipe imported into Chile from Peru is used in the production of elbows and flanges.

The off-cuts and metal filings resulting from such a production process in Chile are waste and scrap that is fit only for the recovery of raw materials. Therefore, under 153ZJC(2)(i), the off-cuts and filings are considered to be “wholly obtained” goods and thus are Chilean originating goods.

- (3) The second category is waste and scrap that have been derived from used goods that are collected in Chile and those goods are only fit for the recovery of raw materials

Example #2: Waste and Scrap

Insulated copper wire is recovered in Chile from scrap telephone or electrical cables. This scrap wire is, vide 153ZJC(2)(i), considered to be Chilean originating regardless of where the cable was produced.

Division 6: Goods produced in Chile from originating materials

1. Statutory provisions

- (1) Section 153ZJD of the Customs Act contains provisions relating to goods produced in Chile from originating materials:

153ZJD Goods produced in Chile from originating materials

Goods are **Chilean originating goods** if:

- (a) they are produced entirely in the territory of Chile from originating materials only; and
- (b) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

- (2) In determining whether goods are produced entirely in Chile the following definitions in section 153ZJB will also need to be considered:

Agreement means the Australia-Chile Free Trade Agreement done at Canberra on 30 July 2008, as amended from time to time.

Note: In 2008, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Australian originating goods means goods that are Australian originating goods under a law of Chile that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of paragraph 2 of Article 4.16 of the Agreement.

Chilean originating goods means goods that, under this Division, are Chilean originating goods.

composite goods has the same meaning as it has in the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983 [1988] ATS 30, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

Harmonized System means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

indirect materials means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods:

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

originating materials means:

- (a) Chilean 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.

person of Chile means a person of a Party within the meaning, in so far as it relates to Chile, of Article 2.1 of the Agreement.

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

territory of Australia means territory within the meaning, insofar as it relates to Australia, of Article 2.1 of the Agreement.

territory of Chile means territory within the meaning, insofar as it relates to Chile, of Article 2.1 of the Agreement.

2. Policy and practice - general

- (1) If Australian originating materials are imported into Chile and used in the production of a good also incorporating Chilean originating material, the good produced is a Chilean originating good in accordance with paragraph (b) of the definition of “originating materials” above.

Example: Goods produced in Chile using a combination of Australian and Chile originating materials

A Chilean producer imports tanned sheep leather (classified to 4105.30.00) from Australia. This leather is an Australian originating material.

The leather is used in Chile to produce handbags and wallets using a number of Chilean originating materials (metal clasps, plastic zippers, cotton thread, etc).

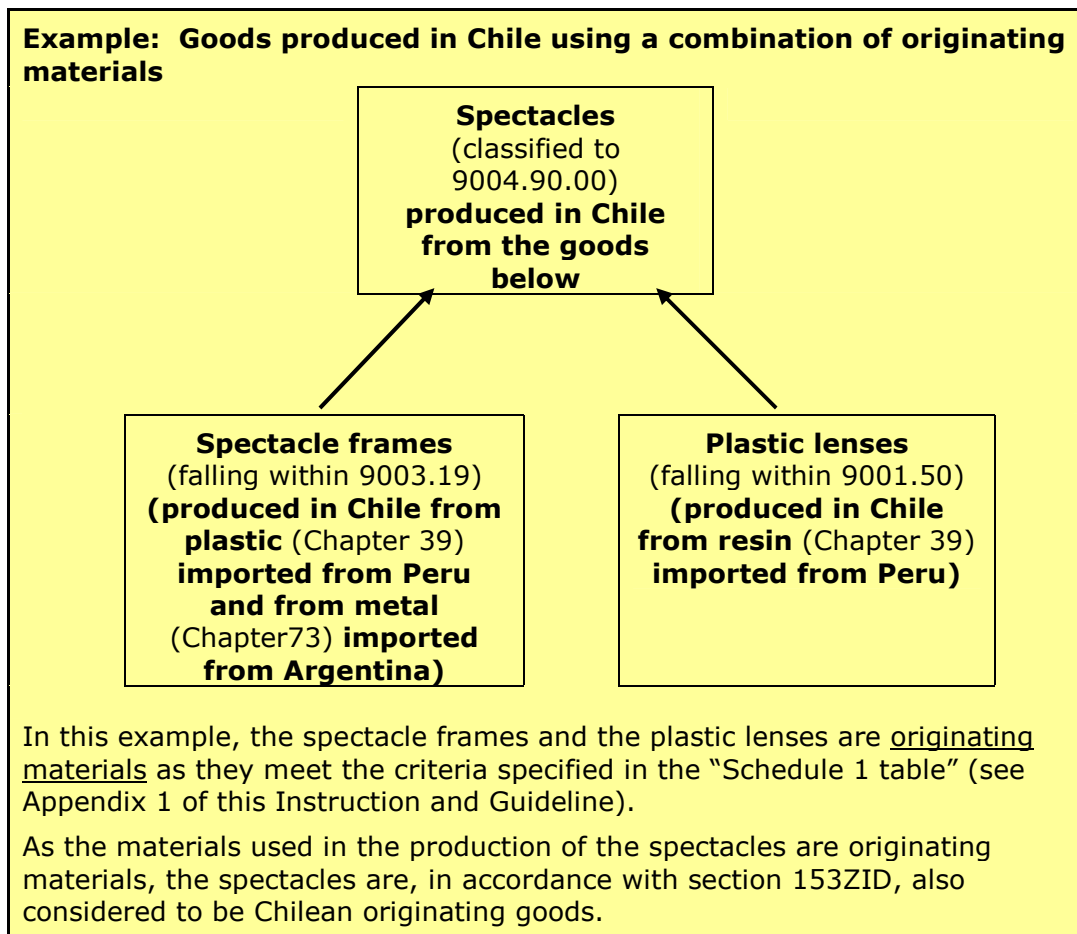
The finished handbags and wallets (classified within heading 4202) are Chile originating goods because they are produced from originating materials.

3. Policy and practice – Chilean originating materials

- (1) Section 153ZJD replicates the effect of paragraph 153ZJC(2)(J) to the extent that if a good is produced entirely in Chile from a good referred to in paragraph 153ZJC(2)(a) to paragraph 153ZJC(2)(i), inclusive (in other words, from wholly obtained Chilean goods), then that good is a Chilean originating good in accordance with paragraph (a) of the definition of “originating materials” above.

4. Policy and practice - goods produced in Chile using a combination of originating materials

- (1) Section 153ZID is broader than paragraph 153ZIC(2)(j) because, in addition to the above production scenarios, it also allows the production of goods to occur from materials that are originating materials because they have met the requirements of the table in Schedule 1 to the ACI-FTA Regulations (the Schedule 1 table).
- (2) A full explanation of the operation of the Schedule 1 table is contained in **Division 9** of this Instruction and Guideline.



5. Policy and practice - indirect materials

- (1) Indirect materials are defined in section 153ZJB which is reproduced above at 1.2.
- (2) All "indirect materials" which fall within paragraphs (a) and (b) of the definition of that term, used in the production of Chilean originating materials, are considered to be originating materials regardless of the origin of those indirect materials.

- (3) The list of indirect materials given in paragraphs (c) to (h) in the definition is not to be construed as an exhaustive list of such materials.

Example: Indirect materials

Tools and safety equipment, produced in China, are used by workers in Chile during the operation of equipment used to produce the spectacles in the above example. Such tools and safety equipment meet the terms of paragraph (b) of the definition of “indirect materials” and are thereby considered to be originating materials by virtue of paragraph (d) and (g) of the definition of “originating materials”.

The use of such indirect materials in the production of goods in Chile is permitted by virtue of paragraph (d) and (g) of the definition of “originating materials” and such goods are deemed to be Chilean originating materials.

Division 7: Goods produced in Chile or Chile and Australia from non-originating materials

Section 1: Statutory Provisions and Overview

1. Statutory provisions

- (1) Section 153ZJE of the Customs Act contains provisions relating to goods produced in Chile or Chile and Australia from non-originating materials, or from a combination of non-originating and originating materials.

153ZJE Goods produced in Chile or Chile and Australia from non-originating materials

- (1) Goods are **Chilean originating goods** if:
- (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 of the table in Schedule 1 to the *Customs (Chilean Rules of Origin) Regulations 2008*; and
 - (b) they are produced entirely in the territory of Chile, or entirely in the territory of Chile and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
 - (c) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
 - (d) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

This subsection is subject to subsections (9) and (10).

Change in tariff classification

- (2) The regulations may specify that each non-originating material used in the production of the goods is required to satisfy a specified change in tariff classification.
- (3) The regulations may also specify when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.

- (4) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; and
 - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

Regional value content

- (5) The regulations may specify that the goods are required to have a regional value content of at least a specified percentage.

- (6) If:
- (a) the goods are required to have a regional value content of at least a specified percentage; and
 - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information resources; and
 - (c) the accessories, spare parts tools or instructional or other information resources are not invoiced separately from the goods; and
 - (d) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the goods; and
 - (e) the accessories, spare parts, tools or instructional or other information resources are non-originating materials;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information resources to be taken into account as non-originating materials for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information resources is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

- (7) For the purposes of subsection (6), disregard section 153ZJG in working out whether the accessories, spare parts, tools or instructional or other information resources are non-originating materials.

No limit on regulations

- (8) Subsections (2) and (5) do not limit paragraph (1)(c).

Goods put up in a set for retail sale

- (9) If:
- (a) the goods are put up in a set for retail sale; and
 - (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;
- the goods are Chilean originating goods under this section only if:
- (c) all the goods in the set, considered individually, are Chilean originating goods under this Division; or
 - (d) the total value of the goods in the set are not Chilean originating goods under this Division does not exceed 25% of the customs value of the set of goods.
- Note: The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

Composite goods

- (10) If:
- (a) the goods are composite goods; and
 - (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;
- the goods are Chilean originating goods under this section only if:
- (c) all of the components of the composite goods, considered individually, are Chilean originating goods under this Division; or
 - (d) the total value of the components of the composite goods that are not Chilean originating goods under this Division does not exceed 25% of the customs value of the set of goods.
- Note: The value of the components of the composite goods is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

- (2) In determining whether goods are produced entirely in Chile or in Chile and Australia from non-originating materials only or from a combination of non-originating and originating materials, the following definitions in section 153ZJB will also need to be considered:

Agreement means the Australia-Chile Free Trade Agreement done at Canberra on 30 July 2008, as amended from time to time.

Note: In 2008, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

indirect materials means:

- (a) goods or energy used or consumed in the production, testing or inspection of goods, but not physically incorporated in their goods; or
- (b) goods or energy used or consumed in the operation or maintenance of buildings or equipment associated with the production of goods;

including

- (c) fuel (with its ordinary meaning); and
- (d) tools, dyes and moulds; and
- (e) spare parts; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies for any of these things; and
- (h) catalysts and solvents.

non-originating materials means goods that are not originating materials.

originating materials means:

- (a) Chilean originating goods that are used or consumed in the production of other goods; or
- (b) Australian originating goods that are used or consumed in the production of other goods; or
- (c) indirect materials.

- (3) Also relevant is Part 4, "Determination of Value", of the ACI-FTA Regulations.

- (4) Value is further defined in subsection 153ZJB(3), which states:

Value of goods

- (3) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

- (5) Also relevant is Part 3, "Regional Value Content", of the ACI-FTA Regulations.

- (6) Regional value content is defined in subsection 153ZJB(2), which states:

Regional value content of goods

- (2) The **regional value content** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

2. Policy and practice - general

- (1) Section 153ZJE of the Customs Act sets out the general rules for determining whether a good is Chilean originating, namely that those goods which are produced entirely in Chile, or entirely in Chile and Australia, from non-originating materials only, or from non-originating materials and originating materials.
- (2) Goods are Chilean originating goods if all the requirements of subsection 153ZJE(1) have been met. The requirements of this subsection, simply put, are:
- that the tariff classification of the goods as entered on a customs declaration corresponds with a heading or subheading in Column 1 of the Schedule 1 table; and
 - production of the final good occurred entirely in Chile or in Chile and Australia; and
 - each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
 - the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (3) The Schedule 1 table is the table in Part 2 of Schedule 1 to the ACI-FTA Regulations (reproduced at Appendix 1 to this Instruction and Guideline). Schedule 1 incorporates the product specific rules. The product specific rules specify the CTC requirement, RVC and any other requirements for the purpose of determining whether a good is a Chilean originating good. Column 1 of the Schedule 1 table rules sets out the Chapter reference of goods in the HS. Column 2 lists tariff classifications at the heading or subheading level, and Column 3 sets out the product specific rule relevant to the tariff classification in Column 2.
- (4) Some examples to illustrate the different types of rules appearing in the Schedule 1 table are:

SINGLE RULE

- **Simple rule = change of tariff classification only**

The rule may be at the heading level or at the subheading level and it may specify a change to a chapter, heading or subheading.

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 1 Live animals	0101	A change to heading 0101 from any other chapter.

- **Simple rule with exceptions = change of tariff classification except from certain classifications**

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 76 Aluminium and articles thereof	7608	A change to heading 7608 from any other heading except from heading 7609.

- **Simple rule with provisions = change of tariff classification provided certain requirements have been met**

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 63 Other made up textile articles; sets; worn clothing and worn textile articles; rags	6301	A change to heading 6301 from any other chapter, provided that where the starting material is fabric, the fabric is raw and fully finished in Chile or Chile and Australia

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- **Simple rule with provisions = change of tariff classification and RVC requirements have been met**

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 85 Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles	8544.70	A change to subheading 8544.70 from any other subheading provided there is a regional value content of not less than 40 per cent

CHOICE OF RULE

- **Choice of rule = change of tariff classification rule or a change of tariff classification and RVC requirements have been met**

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 90 Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus, parts and accessories thereof	9017.30	A change to subheading 9017.30 from any other heading; or A change to subheading 9017.30 from any other subheading provided there is a regional value content of not less than 40 per cent

- **Choice of rule = change of tariff classification rule or a RVC only**

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 31 Fertilisers	3102.90	A change to subheading 3102.90 from any other heading; or A regional value content of not less than 40 per cent whether or not there is also a change in tariff classification

3. The requirements

- (1) As stated in paragraph 2.3 of this Division, Column 3 of the Schedule 1 table sets out the PSR relevant to the tariff classification in Column 2.
- (2) The PSR will specify one or more requirements and each requirement specified must be satisfied for the good to be a Chilean originating good. If the ROO provides a choice of rule the good has to meet one of the choices available to be originating.
- (3) If any requirement is not satisfied, the good is a non-originating good.
- (4) Provided the criteria specified in paragraphs 153ZJE(1)(a), 153ZJE(1)(b), 153ZJE(1)(c) and 153ZJE(1)(d) are satisfied, the good will be a Chilean originating good and be afforded appropriate tariff treatment (provided all the other relevant requirements of Division 1F of the Customs Act are satisfied).

Section 2: Change in Tariff Classification Requirement (CTC)

1. CTC requirement

- (1) Subsection 153ZJE(2) of the Customs Act states that the regulations may specify that each non-originating material used in the production of goods is required to satisfy a specified CTC. This requirement is set out in Part 2 of the ACI-FTA Regulations.
- (2) The concept of CTC applies only to non-originating materials. It means that non-originating materials that are sourced from outside or within Chile or Australia which are used to produce another good, must not have the same classification under the HS as the final good into which they are incorporated. This means that the tariff classification of the final good (after the production process) must be different to the tariff classification of each non-originating material (before the production process). This approach ensures that sufficient transformation of the materials has occurred within Chile, or within Chile and Australia, to justify the claim that the goods are the produce of Chile.

Example #1: CTC requirement

Frozen pork (HS 0203) is imported into Chile from Peru and combined with spices from the Caribbean (HS 0907-0910) and cereals produced in Chile to make pork sausages (HS 1601).

The applicable product specific rule for a good of 1601 is:

A change to heading 1601 from any other chapter.

As the frozen meat is classified to Chapter 2 and the spices to Chapter 9, these non-originating materials meet the transformation (CTC) requirement (the cereal is the produce of Chile and is therefore an originating material and is not required to change in classification). The pork sausages are therefore Chilean originating.

2. CTC requirement – transformation test

- (1) Subsections 153ZJE(2) and (3) directly address the transformation test.
- (2) Non-originating materials used directly in producing a good will satisfy the transformation test if they satisfy the CTC requirement that is specified in Column 3 of the Schedule 1 table opposite the final classification for the goods.

Example #2: CTC requirement (transformation test)

The example on page 26 addressed the production of pork sausages in Chile from imported frozen pork (HS 0203) which is combined with imported spices (HS 0907-0910) and cereals produced in Chile to make pork sausages (HS 1601).

The applicable product specific rule for a good of 1601 is:

A change to heading 1601 from any other chapter

The non-originating materials meet the transformation test and the pork sausages are therefore considered to be Chilean originating.

3. CTC requirement - cumulation

- (1) Subsection 153ZJE(3) states that the regulations may also specify when a non-originating material used or consumed in the production of the goods is taken to satisfy the CTC requirement.
- (2) If non-originating materials do not satisfy the specified CTC requirement for the final good, it is still possible for that requirement to be satisfied. This can only occur if the material was produced entirely in Chile, or entirely in Chile and Australia, from other non-originating materials and each of those materials satisfies the same transformation test for the final good (this requirement is also set out in Part 2 of the ACI-FTA Regulations).

Example #3: CTC requirement (cumulation)

A producer of suits in Chile purchases wool fabric from Australia. The wool fabric has met the rules of origin requirements for it to be determined as an originating good of Australia, therefore using the cumulation provisions it is also an originating good (for preferential duty and rules of origin purposes) of Chile.

4. *De minimis*

- (1) The CTC requirement under paragraph 153ZJE(2) is also taken to be satisfied if the good meets the requirement of paragraph 153ZJE(4). This is termed the *de minimis* rule, set out in Article 4.5 of the Agreement.
- (2) Although the requirement of a CTC is a very simple principle, it necessitates that all non-originating materials undergo the required change. A very low percentage of the materials used to produce a good may not undergo the required CTC, thus preventing the goods from being a Chilean originating good. Therefore, the Agreement incorporates a *de minimis* provision that allows a good to qualify as a Chilean originating good provided the total value of all non-originating materials that do not satisfy the CTC requirement used to produce the good does not exceed 10% of the customs value of the final good.

Example #4: CTC requirement (*de minimis*)

A good uses two materials, A and B, and both are non-originating materials. As a result of its transformation into the finished good, A makes the required HS classification change, but B does not.

Because B does not make the required change, the finished good will not qualify unless the value of B is no more than 10% of the good's value.

The good is valued at \$100 and the value of B is \$5. The value of B is 5% of the good's value, therefore the goods is considered originating.

Section 3: Regional Value Content (RVC) requirement

1. Statutory Provisions

153ZJB(2) Regional value content of goods

Regional value content of goods

The **regional value content** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

- (1) In calculating the RVC of goods, the definition of value in subsection 153ZJB(3) of the Customs Act is relevant. This provision states:

Value of goods

The value of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

- (2) Part 5 of the ACI-FTA Regulations sets out how that value of goods is to be worked out.

- (3) The definition of customs value in section 153ZJB(1) provides:

customs value of goods has the meaning given by section 159.

- (4) Part 3 of the ACI-FTA Regulations prescribe the RVC rule for the purposes of the Schedule 1 table as follows:

Build-down method

- (1) The build-down method is the formula:

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

where:

adjusted value means the customs value of the goods, as worked out under Division 2 of Part VIII of the Act.

value of non-originating materials means the value of non-originating materials that are acquired and used in the production of the goods.

- (2) RVC is to be expressed as a percentage.

2. Policy and practice - RVC requirement

- (1) For a number of goods, the product specific ROO found in the Schedule 1 tariff table may specify a RVC as:
 - a requirement additional to the CTC requirement; or
 - an optional alternative to a CTC requirement.
- (2) In cases where a RVC requirement is specified as additional to a CTC requirement, goods need to satisfy both the CTC requirement and the specified RVC requirement to qualify as Chilean originating goods.

Example: RVC requirement - additional to the CTC requirement

The product-specific ROO for electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles in the Schedule 1 tariff table is:

A change to subheading 8544.70 from any other subheading provided there is a regional value content of not less than 40 per cent

For goods falling to subheading 8544.70 to be Chilean originating goods they must satisfy the above two requirements.

- (3) In cases where the PSR provides for options to determine origin, all the requirements of the option selected (e.g. the CTC requirement only or a combination of RVC and CTC) must be met for the good to qualify as a Chilean originating good.

Example: Optional rules

The product-specific ROO for optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus, parts and accessories thereof (HS classification 9017.30) in the Schedule 1 tariff table is:

A change to subheading 9017.30 from any other heading; or

A change to subheading 9017.30 from any other subheading provided there is a regional value content of not less than 40 per cent

For goods falling within subheading 9017.30, to be Chilean originating goods they must satisfy either of the alternative ROO, namely:

- (1) a change to 9017.30 from any other heading; or
- (2) a change to 9017.30 from any other subheading provided there is a RVC of not less than 40 per cent

- (4) Subsection 153ZJE(6) of the Customs Act specifies how the RVC is to be calculated in relation to accessories, spare parts, tools or instructional or other information resources. This is further discussed under Division 7.

Build-down method

Under the build-down Method, the RVC calculation determines the percentage of non-originating materials which are used in the production of goods.

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

Where:

RVC is the regional value content of the good, expressed as a percentage;

AV is the adjusted value (value for customs purposes);

VNM is the value of non-originating materials that are acquired and used by the Chilean producer in the production of the good. VNM includes material of undetermined origin but does not include the value of a material that is self-produced.

Example: Build-down method

A Chilean producer sells a good to an Australian importer for \$200 in an arm's-length sale. The value of non-originating materials used in the good is \$60. Using the build-down method, the producer calculates the RVC as follows:

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

$$70\% = \frac{\$200 - \$60}{\$200} \times 100$$

Therefore, using the build-down method, the RVC of the good is 70%.

Section 4: Goods that are chemicals, plastics or rubber

1. Policy and practice – process rules

- (1) Preceding the PSR for Chapter 28 and Chapter 39 in the Schedule 1 table of the ACI-FTA Regulations are rules relating to all goods within these and other Chapters. These rules are termed “process rules” as they require the materials to undergo a certain process to obtain Chilean origin.
- (2) These process rules, if met, take precedence over the product specific rules for goods within these chapters. In other words, if the requirement of a particular process rule is met, then the goods are considered to be Chilean originating goods and the product specific rule is not required to be met.
- (3) Each of the process rules for goods classified within Chapters 28 to 40 of the HS is briefly explained below, as they apply to Section VI and Section VII of the HS:

(A) At the beginning of Chapter 28 (Section VI) in Column 1 in the product specific rules, the following rules are specified:

Section VI Products of the chemical industry or allied industries (Chapters 28-38)

1. Chemical Reaction Origin Rule

Any good of Chapters 28 through 38, except a good of heading 3823 that is the product of a chemical reaction shall be considered to be an originating good if the chemical reaction occurred in Chile or Chile and Australia.

Notwithstanding any of the line-by-line rules, the “chemical reaction” rule may be applied to any good classified in the above chapters.

Note: For purposes of this section, a “chemical reaction” is a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of the molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a product is an originating good:

- (a) dissolving in water or other solvents;
- (b) the elimination of solvents including solvent water; or
- (c) the addition or elimination of water of crystallization.

Notwithstanding any of the line-by-line rules, the “chemical reaction” rule may be applied to any good classified in the above chapters.

2. Purification Origin Rule

For the purposes of Chapters 28 through 35 and Chapter 38, purification is considered to be origin-conferring provided that one of the following criteria is satisfied:

- (a) purification of a good resulting in the elimination of 80% based on the content of existing impurities; or
- (b) the reduction or elimination of impurities resulting in a good suitable for one or more of the following applications:
 - (i) pharmaceutical, medicinal, cosmetic, veterinary, or food grade substances;
 - (ii) chemical products and reagents for analytical, diagnostic or laboratory uses;
 - (iii) elements and components for use in micro-elements;
 - (iv) specialised optical uses;
 - (v) non-toxic uses for health and safety;
 - (vi) biotechnical use;
 - (vii) carriers used in a separation process; or
 - (viii) nuclear grade uses.

3. Mixtures and Blends Origin Rule

For the purposes of Chapters 30 and 31, heading 3302, subheading 3502.20, headings 3506, 3507 and heading 3707, the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications which results in the production of a good having physical or chemical characteristics which are relevant to the purposes or uses of the good and are different from the input materials is considered to be origin-conferring.

4. Change in Particle Size Origin Rule

For the purposes of Chapters 30 and 31:

- (a) the deliberate and controlled reduction in particle size of a good, other than by merely crushing (or pressing) resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials is considered to be origin-conferring; or

(b) the deliberate and controlled modification in particle size of a good, other than by merely pressing, resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials is considered to be origin-conferring.

5. Standards Materials Origin Rule

For the purposes of Chapters 28 to 32, 35 and 38, the production of standards materials is considered to be origin-conferring. For the purposes of this rule "standards materials" (including standard solutions) are preparations suitable for analytical, calibrating or referencing uses having precise degrees of purity or proportions which are certified by the manufacturer.

6. Isomer Separation Origin Rule

For the purposes of Chapters 28 to 32 and 35, the isolation or separation of isomers from mixtures of isomers is to be considered origin-conferring.

7. Separation prohibition

A non-originating material/component will not be deemed to have satisfied all applicable requirements of these rules by reason of change from one classification to another merely as the result of the separation of one or more individual materials or components from a man-made mixture unless the isolated material/component, itself also underwent a chemical reaction.

(B) At the beginning of Chapter 39 (Section VII) in Column 1 in the product specific rules, the following rules are specified:

Section VII Plastics and articles thereof; rubber and articles thereof (Chapters 39-40)

1. Chemical Reaction Origin Rule

Any good of Chapters 39 through 40 that is the product of a chemical reaction shall be considered to be an originating good if the chemical reaction occurred in Chile or Australia. Notwithstanding any of the line-by-line rules, the "chemical reaction" rule may be applied to any good classified in Chapters 39 through 40.

Note: For the purposes of this section, a “chemical reaction” is a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule. The following are not considered to be chemical reactions for the purposes of determining whether a product is an originating good:

- (a) dissolving in water or other solvents;
- (b) the elimination of solvents including solvent water; or
- (c) the addition or elimination of water of crystallization.

Notwithstanding any of the line-by-line rules the “chemical reaction” rule may be applied to any good classified in the above chapters.

2. Purification Origin Rule

For the purposes of Chapter 39, purification is considered to be origin-conferring, provided that one of the following criteria is satisfied:

- (a) purification of a good resulting in the elimination of 80% based on the content of existing impurities; or
- (b) the reduction or elimination of impurities resulting in a good suitable for one or more of the following applications:
 - (i) pharmaceutical, medicinal, cosmetic, veterinary, or food grade substances;
 - (ii) chemical products and reagents for analytical, diagnostic or laboratory uses;
 - (iii) elements and components for use in micro-elements;
 - (iv) specialised optical uses;
 - (v) non toxic uses for health and safety;
 - (vi) biotechnical use;
 - (vii) carriers used in a separation process; or
 - (viii) nuclear grade uses.

3. Mixtures and Blends Origin Rule

For the purposes of Chapters 39 and 40, the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications which results in the production of a good having physical or chemical characteristics which are relevant to the purposes or uses of the good and are different from the input materials is considered to be origin-conferring.

4. Change in Particle Size Origin Rule

For the purposes of Chapter 39:

- (a) the deliberate and controlled reduction in particle size of a good, other than by merely crushing or pressing resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials is considered to be origin-conferring; or
- (b) the deliberate and controlled modification in particle size of a good, other than by merely pressing, resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials is considered to be origin-conferring.

5. Isomer Separation Origin Rule

For the purposes of Chapter 39, the isolation or separation of isomers from mixtures of isomers is considered to be origin-conferring.

Section 5: Goods put up in a set for retail sale requirement

1. Statutory provisions

- (1) Section 153ZJE(9) of the Customs Act sets out the requirements that apply in respect of goods put up in a set for retail sale where they are imported into Australia. That provision states:

153ZJE(9) Goods put up in a set for retail sale

- (1) If:
 - (a) the goods are put up in a set for retail sale; and
 - (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;the goods are Chilean originating goods under this section only if:
 - (c) all the goods in the set, considered individually, are Chilean originating goods under this Division; or
 - (d) the total value of the goods in the set that are not Chilean originating goods under this Division does not exceed 25% of the customs value of the set of goods.

Note: The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

2. Policy and practice – general

- (1) Goods put up in a set for retail sale must be classified in accordance with Rule 3 of the Interpretation Rules to the HS.
- (2) However, to be Chilean originating goods under this section, all the goods in the set considered individually are Chilean originating goods or the total value of the goods in the set that are not Chilean originating goods does not exceed 25% of the customs value of the set of goods.
- (3) This means that, even though under Rule 3 of the Interpretation Rules to the HS the goods are classified under only one heading, in determining whether goods in a set are Chilean originating goods, each component of the set must be assessed individually.

Section 6: Composite goods requirement

1. Statutory provisions

- (1) Section 153ZJE(10) of the Customs Act sets out the requirements that apply in respect of composite goods imported into Australia. That provision states:

153ZJE(10) Composite goods

If:

- (a) the goods are composite goods; and
- (b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;

the goods are Chilean originating goods under this section only if:

- (c) all of the components of the composite goods, considered individually, are Chilean originating goods under this Division; or
- (d) the total value of the components of the composite goods that are not Chilean originating goods under this Division does not exceed 25% of the customs value of the set of goods.

Note: The value of the components of the composite goods is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

2. Policy and practice – general

- (1) Goods must be composite goods and classified in accordance with Rule 3 of the Interpretation Rules of the HS.
- (2) However, to be Chilean originating goods under this section, all the composite goods, considered individually are Chilean originating goods or the total value of the composite goods that are not Chilean originating goods does not exceed 25% of the customs value of the composite goods.
- (3) This means that, even though under Rule 3 of the Interpretation Rules of the HS, composite goods are classified under only one heading, in determining whether the components of the composite goods are Chilean originating goods, each component of the set must be assessed individually.
- (4) For the purposes of this originating rule, composite goods are those goods in which the components are attached to each other to form a practically inseparable whole. Composite goods are also those goods with separable components, provided these components are adapted one to the other and are mutually complementary, and that together they form a whole where the components would not normally be offered for separate sale. An example of the latter category of composite goods is an ashtray consisting of a stand incorporating a removable ash bowl.

Division 8: Other Chilean originating goods, provisions and operations

Section 1: Packaging materials and containers

1. Statutory provisions

- (1) Section 153ZJF of the Customs Act sets out the requirements that apply in respect of packaging materials and containers when Chilean originating goods are imported into Australia. That provision states:

153ZJF Packaging materials and containers

(1) If:

- (a) goods are packaged for retail sale in packaging material or a container; and
- (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;

then the packaging material or container is to be disregarded for the purposes of this Subdivision (with 1 exception).

Exception

(2) If:

- (a) the goods are required to have a regional value content of at least a particular percentage; and
- (b) the packaging material or container is a non-originating material;

the regulations must require the value of the packaging material or container to be taken into account as a non-originating material for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

2. Policy and practice – general

- (1) Whether packaging materials and containers in which a good is packaged for retail sale are originating or non-originating is not relevant in determining whether a good is an originating good.

- (2) However, if a good that is packaged for retail sale in packaging material or a container is subject to a RVC, the value of the packaging materials and containers must be taken into account as non-originating materials in calculating the RVC of the good.

Example: Packaging materials and containers

Dolls (9503) are made in Chile. The dolls are wrapped in tissue paper and packed in cardboard boxes described with the brand logo for retail sale. Both the tissue paper and the cardboard box are of Chinese origin.

The product specific ROO for 9503 is:

A change to heading 9503 from any other heading, or

A regional value content of not less than 40% whether or not there is also a change of tariff classification.

The tissue paper and cardboard box are disregarded for purposes of the CTC requirement; their value though must be counted as non-originating when calculating the RVC.

Section 2: Accessories, spare parts, tools or instructional or other information resources

1. Statutory provisions

- (1) Section 153ZJG of the Customs Act sets out the requirements that apply in respect of accessories, spare parts, tools or instructional or other information resources imported into Australia with the goods to which they are accessories, spare parts, tools or instructional or other information resources. That provision states:

153ZJG Goods that are accessories, spare parts, tools or instructional or other information resources

Goods are ***Chilean originating goods*** if:

- (a) they are accessories, spare parts, tools or instructional or other information resources in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information resources; and
- (c) the other goods are Chilean originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the other goods; and
- (e) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the other goods.

- (2) Also relevant is subsection 153ZJE(6) which states:

(6) If:

- (a) the goods are required to have a regional value content of at least a particular percentage; and
- (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information resources ; and
- (c) the accessories, spare parts, tools or instructional or other information resources are not invoiced separately from the goods; and
- (d) the quantities and value of the accessories, spare parts, tools or instructional or other information resources are customary for the goods; and
- (e) the accessories, spare parts, tools or instructional or other information resources are non-originating materials;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information resources to be taken into account as non-originating materials for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information resources is to be worked out in accordance with the regulations: see subsection 153ZJB(3).

(3) For the purposes of subsection 153ZJE(6), the ACI-FTA Regulations state:

4.2 Value of spare parts, accessories, tools or instructional or other information resources

- (1) For subsection 153ZJE(6) of the Act, if goods are:
- (a) required to have a regional value content under Subdivision D of Division 1F of Part VIII of the Act; and;
 - (b) imported into Australia with spare parts, accessories, tools or instructional or other information resources in the circumstances mentioned in subsection 153ZJE(6) of the Act;
- in working out the regional value content of the goods, the value of the spare parts, accessories, tools or instructional or other information resources that are not Chilean originating goods must be included in the value of non-originating materials used in the production of the goods.
- (2) For subregulation (1), the value of the spare parts, accessories, tools or instructional or other information resources is to be worked out under regulation 4.1 as if the spare parts, accessories, tools or instructional or other information resources were non-originating materials used in the production of the goods.

2. Policy and practice - general

- (1) Section 153ZJG provides that if an originating good is imported into Australia with spare parts, accessories, tools or instructional or other information resources, then the spare parts, accessories, tools or instructional or other information resources are also Chilean originating goods if:
- they are standard for the goods;
 - they are imported with the goods and those goods are originating goods;
 - they are not imported merely to artificially raise the RVC of the originating goods;
 - the accessories, spare parts, tools or instructional or other information resources have not been invoiced separately from the originating goods; and

- the quantities and value of the accessories, spare parts, tools or instructional or other information resources is customary for the goods.
- (2) If the above requirements have been met, then the spare parts, accessories, tools or instructional or other information resources do not separately have to undergo the CTC requirement that the originating goods had to undergo, or any other CTC requirement.
 - (3) Subsection 153ZJE(6) provides that, when working out if the good is a Chilean originating good, if the product specific ROO requires that a good must satisfy a RVC requirement, the value of spare parts, accessories, tools or instructional or other information resources that are non-originating materials must be taken into account for the purposes of that requirement.
 - (4) Detailed information regarding RVC is to be found in Division 7 of this Instruction and Guideline.

Section 3: Non-qualifying operations

1. Statutory provisions

- (1) Section 153ZJH of the Customs Act sets out the non-qualifying operations which apply to Chilean originating goods imported into Australia, and states:

153ZJH Non-qualifying operations

- (1) Goods are not Chilean originating goods under this Division merely because of the following operations:
- (a) operations to preserve goods in good condition for the purpose of storage of the goods during transport;
 - (b) changing of packaging or the breaking up or assembly of packages;
 - (c) disassembly of goods;
 - (d) placing goods in bottles, cases or boxes or other simple packaging operations;
 - (e) making up of sets of goods;
 - (f) any combination of operations referred to in paragraphs (a) to (e)
- (2) This section applies despite any other provisions of this Division.

2. Policy and practice – general

- (1) The non-qualifying operation provision over-rides the PSR schedule and aims to ensure that operations undertaken to non-originating goods results in a substantial change. The provision seeks to ensure that work undertaken on non-originating goods is significant in nature.

Section 4: Consignment provisions

1. Statutory provisions

- (1) Section 153ZJI of the Customs Act sets out the consignment provisions which apply to Chilean originating goods imported into Australia, and states:

153ZJI Consignment

- (1) Goods are not Chilean originating goods under this Division if:
- (a) they are transported through a country or place other than Chile or Australia; and
 - (b) they undergo subsequent production or other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling, exhibition or any operation that is necessary to preserve them in good condition or to transport them to Australia).
- (2) This section applies despite any other provision of this Division.

2. Policy and practice – general

- (1) The consignment provision is not a mandatory direct shipment provision. The provision seeks to ensure that the benefits of the Agreement go to the seller in the exporting country. This may not be so if the goods are further processed in another country before importation into Australia.
- (2) An exported good will lose its status as a Chilean originating good if it undergoes any process of production en route from Chile to Australia, other than necessary unloading, reloading, storing, repacking, relabelling, exhibition or any operation that is necessary to preserve them in good condition or to transport them to Australia. In other words, a partially completed product could not be completed in a third country following export from Chile to Australia.

Example #1: Consignment provisions

Surgical instruments, cotton gowns and bandages, made in Chile from Chile originating materials, are sent to Singapore where they are packaged together in a set and then sterilized for use in operating rooms. They are then sent to Australia.

Upon their arrival in Australia, the medical sets are not eligible for preferential treatment because they underwent operations in Singapore that are not covered by the exceptions in section 153ZJI.

Example #2: Consignment Provisions

Motor homes manufactured in Chile are sent by ship to Australia. Before departure, they are coated with a protective veneer to inhibit damage to painted surfaces during transit on the vessel.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Fiji so that the protective veneer can be reapplied to ensure that the vehicles are preserved in good condition for the remainder of the voyage to Australia.

This process would not affect the origin status of the vehicles as it fits within the exceptions to section 153ZJI.

Division 9: Origin advice rulings

Section 1: Provision of binding Origin Advice Rulings

1. Provisions

- (1) The Agreement does not require either Australia or Chile to provide Origin Advice Rulings.

2. Policy and practice – general

- (1) Notwithstanding the above, Australian Customs and Border Protection, on request, will provide written advice on origin matters through the provision of a Ruling. The Ruling exists to advise importers, producers and 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.
- (2) Assessments of the origin of a good will be issued as soon as possible but no later than 30 days after a request for such advice provided that all necessary documentation has been submitted.
- (3) Requests for a Ruling will be accepted before trade in the good concerned begins.

3. Adequate applications

- (1) A Ruling will only be given where:
 - evidence is presented of a commitment or firm intent to import or export;
 - the application contains adequate and correct information; and
 - supporting evidence of the facts of the application is provided with the application.
- (2) Inadequate applications will be rejected.

4. How to lodge an application

- (1) Applications (with supporting documentation) should be forwarded to:

Valuation and Origin Section
Trade Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2600

- (2) At the time an application is made for a Ruling, Customs and Border Protection will register the application with a unique Origin Advice Number and the applicant will be advised of this number.

5. Applications with more than one origin issue

- (1) Each application must be for a single origin issue. Where there is more than one issue, separate applications must be lodged for each.

6. Supporting information and documentation

- (1) It is unrealistic to expect a correct and binding origin advice ruling if inadequate or incomplete information is provided to Customs and Border Protection. The essential principle to be followed is that all information that is relevant to the request for advice should be supplied with the application.
- (2) Section 2 of this Division sets out a guide to the supporting documentation required to accompany an application for Chilean origin rulings. The list is not exhaustive; if there are any other relevant documents and information, it must also be supplied with the application.

7. Advice conditional on data provided

- (1) The Customs and Border Protection decision will be made only on the basis of the statements and supporting documentation provided, and accordingly, the validity of the advice is conditional upon correct and complete information being provided.
- (2) In the course of processing an application, Customs and Border Protection may request, at any time, additional information necessary to evaluate the application.

8. Penalty action – false or misleading statements

- (1) From the time of registering an application until the decision of Customs and Border Protection, the applicant may still be subject to penalty provisions under subsection 243T(1) in respect of any duty short paid on any import declaration.
- (2) If an applicant is uncertain about a claim of preference made on any import declaration, and considers that including that information may be false or misleading, then that person should lodge that declaration “amberline”.
- (3) Subsection 243T(1) may not apply where, in lodging the declaration “amberline”, a person specifies the information included in the import declaration that might be false or misleading in a particular. Further, that person must also set out the reasons why there is uncertainty about the information.
- (4) Whilst quoting an origin advice number on an import declaration is optional, if there is any doubt about a claim for preference a person should follow the above guidelines.

9. Withdrawal of application

- (1) An owner may withdraw an application by advising Customs and Border Protection at any time between registration of the application and the decision by Customs and Border Protection on the application. Withdrawal of the application has the effect of cancelling the application.

10. Payment of duty following ruling

- (1) When Customs and Border Protection has finalised an application and notified the applicant of the Ruling and the reasons for that decision, any duty or GST short paid on entries becomes payable.

11. Validity of advice

- (1) Rulings are valid for all ports in Australia for five (5) years from the date of notification of the advice. After that time the Ruling will be cancelled. If a Ruling is still required a new application must be made.
- (2) Customs and Border Protection may cancel or amend a Ruling within its five-year life, where particular circumstances warrant. Such circumstances include, but are not limited to situations in which:
 - an amendment is made to the legislation which has relevance to the advice;
 - incorrect information was provided to Customs and Border Protection or relevant information was withheld;
 - Customs and Border Protection's decision is changed as a result of legal precedent;
 - the facts and conditions of the origin application have changed;
 - Customs and Border Protection has issued conflicting advices.

12. Cancelled or amended advice

- (1) Where Customs and Border Protection cancels or amends a Ruling, in-transit provisions may be applied at the discretion of Customs and Border Protection.

13. In-transit provisions

- (1) Where in-transit provisions apply, the cancelled or amended Ruling continues to apply in relation to goods that:
 - were imported into Australia on or before the date on which the cancellation or amendment came into effect and were entered for home consumption before, on, or within 30 days after that date; or
 - had left the place of export on or after that date and were entered for home consumption before, on, or within 30 days after the date on which they were imported into Australia.

14. Customs and Border Protection to honour advice

- (1) A Ruling is not legally binding on Customs and Border Protection. However, Customs and Border Protection will honour a Ruling unless it was provided on the basis of false or misleading information or where the applicant failed to provide all the relevant information and documentation that was available.

15. Conflicting rulings

- (1) Should an applicant hold or be aware of any conflicting Rulings from Customs and Border Protection for an origin issue, they are to be treated as being void and Customs and Border Protection is to be notified immediately.

16. Appeals against Customs and Border Protection rulings

- (1) Where a Customs and Border Protection decision in a Ruling is disputed, it should first be discussed with the decision maker. If the advice is still disputed, a further appeal to the Director Valuation and Origin, Trade Services Branch, Canberra may be requested.
- (2) This appeal mechanism does not preclude the right to external review – for example, to the Administrative Appeals Tribunal (AAT), after there has been a payment under protest. It should be noted that a Ruling in itself is not a decision which is reviewable by the AAT or the Federal Court.

Section 2: Origin Advice Rulings – information requirements

1. Application

- (1) An Origin Advice Ruling will be issued to importers, exporters or any other person who requires a Ruling on goods imported into Australia under the ACI-FTA ROO provisions. Section 1 of this Division sets out the procedures for lodging a Ruling.

2. Subject matter of rulings

- (1) Rulings may be sought on various ACI-FTA issues including, but not limited to:
 - whether a good qualifies as an originating good being wholly obtained or produced in Chile;
 - whether a good qualifies as an originating good produced entirely in Chile or in Chile and Australia;
 - whether non-originating materials used in the production of a good imported into Australia undergo the applicable CTC;
 - whether a good satisfies a RVC requirement under the build-down method;
 - the appropriate basis for determining the value of originating and non-originating materials; and
 - the application of *de minimis* provisions.

3. Content of application - general

- (1) The following relevant information should be included in the application:
 - the specific subject matter to which the request relates;
 - a complete statement of all relevant facts relating to the ACI-FTA transaction which must state that the information presented is accurate and complete;
 - the names, addresses and other identifying information of all interested parties; and
 - copies of any other origin advice, tariff classification advice or valuation advice that has been issued in relation to the imported good.

4. Content of application – specific

- (1) Where a good has been wholly obtained or produced entirely in Chile a complete description of the good shall be supplied, including:
 - a description of how the good was obtained;
 - details of all processing operations employed in the production of the good;
 - the location where each operation was undertaken;
 - the sequence in which the operations occurred;
 - a list of all materials used in the production of the good; and
 - evidence of the origin of materials used in the production of the good.
- (2) Where the request for a Ruling involves the application of a ROO that requires an assessment of whether the materials used in the production of the imported good undergo an applicable CTC, the advice must list each material used in the production of the good and must:
 - identify each material which is claimed to be an originating material, providing a complete description of each such material including the basis for claiming origin status;
 - identify each material which is a non-originating material, or for which the origin is unknown, providing a complete description of each such material, including its tariff classification; and
 - describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.
- (3) Where the origin advice involves the issue of whether a good satisfies a RVC requirement the advice must:
 - provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act;
 - provide information which is sufficient to identify and calculate the value of each non-originating material, or material the origin of which is unknown, used in production of the good.
- (4) If a *de minimis* exception to a HS classification is claimed, the advice must:
 - provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act;
 - identify each material which is claimed to be an originating material and provide a complete description of each such material;
 - identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification and value.

- (5) Where no tariff ruling has been made by Customs and Border Protection in relation to the goods, sufficient information must be supplied to enable tariff classification of the goods. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation. Where product literature, drawings, photographs or other material are available they should accompany the application.

Division 10: Fungible goods and materials

1. Provisions

- (1) Fungible goods are generally accepted as those goods and materials that are interchangeable for commercial purposes and whose properties are essentially identical.
- (2) The treatment of fungible goods and materials is covered by Article 4.7 of the Agreement, which states:

Fungible Goods and Materials

1. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the materials, or through the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party.

2. A Party shall provide that an inventory management method selected under paragraph 1 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout its fiscal year.

2. Policy and practice - general

- (1) Many materials involved in production processes are interchangeable for commercial purposes, in that they have essentially identical properties (e.g. ball bearings, nuts, bolts, screws etc). These materials are considered to be fungible materials.
- (2) A producer may choose to physically separate in different containers the fungible materials obtained from different countries. In many cases this may not be practical and the producer stores all the fungible materials in one container.
- (3) When a producer mixes originating and non-originating fungible materials, so that physical identification of the actual materials used is impossible, the producer may determine the origin of the materials used based on one of the standard inventory accounting methods (e.g. last-in first-out, or first-in first-out) allowed under generally accepted accounting principles.
- (4) It is important to note that once a party has decided on an inventory management method for a particular fungible good or material, that method must continue to be used throughout the whole of the financial year.

Example #1: Fungible goods and materials

Amongst the materials used by a Chilean producer of machinery parts are ball bearings. Depending on pricing and supply availability, it may source the ball bearings from within Chile, from Malaysia, or from China. All of the ball bearings are of identical size and construction.

On January 1, the producer buys 1 tonne of ball bearings of Chilean origin, and on January 3 buys 1 tonne of ball bearings of Chinese origin.

The ball bearings have been stored in the one container at the producer's factory. The form of storage of the intermingled ball bearings makes those of Chilean origin indistinguishable from those sourced from China.

An Australian company places an order on the Chilean producer for machinery parts which require the use of 800kg of ball bearings.

If the producer elects "first-in first-out" inventory procedures, the 800kg of ball bearings used to fill the Australian order are considered to be Chilean originating, regardless of their actual origin.

Example #2: Fungible goods and materials

Continuing the above scenario, a second Australian company places an order on the same Chilean producer for machinery parts which requires the use of 500kg of the same ball bearings.

The producer, as stated above, has elected to adopt a "first-in first-out" inventory procedure.

In this example there now remains 1200kg of the original 2000kg, the first 200kg of ball bearings used are considered to be Chilean originating materials. The remaining quantity of ball bearings used (300kg) are considered to be non-originating materials and the ball bearings must undergo the CTC requirement specified in the PSR for the final good.

- (5) In considering the origin of fungible materials, if the producer determines that they are Chilean originating, they do not need to undergo any CTC.
- (6) Alternately, if the origin of fungible materials used in a production process is non-originating, those fungible materials must undergo the CTC requirement appropriate for the good being produced.

Division 11: Certificate of origin

1. Policy and practice - general

- (1) Article 4.16 of the ACI-FTA states that an importer can only make a claim for preferential treatment under ACI-FTA based on having a Certificate of Origin (CoO) completed by the exporter.
- (2) The CoO must comply with the requirements of paragraph 2 of Article 4.16 of the Agreement.
- (3) An example of an acceptable CoO is located at **Appendix 2** along with instructions for completing the CoO.
- (4) The CoO made by the exporter of goods imported into Australia must be used to support a preference claim, provided:
 - the CoO clearly identifies the goods to which it applies; and
 - the declaration specifies the particular provisions in Division 1F of Part VIII of the Customs Act that the goods meet; and
 - there is no reason to doubt the veracity or reliability of the declaration.
- (5) Where duty has been paid on Chilean originating goods because a valid CoO or copy of one was not available at the time the goods were imported, the importer is able to claim a refund of duty provided the importer holds a valid CoO or copy of one at the time the refund is sought under regulation 126C of *Customs Regulations 1926*.

2. Procedures

- (1) Customs and Border Protection may seek further evidence of preference entitlement for any specific reason or a simple intuitive selection, irrespective of the existence of a CoO. Where there is insufficient evidence to establish that preference applies, the general rate of duty is payable.
- (2) Where a customs declaration states that a preference rate of duty applies, this will be taken to indicate that the owner of the goods possesses evidence that the stated facts are correct. The criteria for eligibility for Chilean preference rates of duty are set out in Division 1F of Part VIII of the Customs Act.

Note: Goods from Chile may be eligible for Developing Country (DC) preferential rates of duty.
- (3) Each shipment should be accompanied by a CoO. An importer may be required to produce this either at the time of importation, or at some later date.

- (4) If Customs and Border Protection finds that preference is inapplicable or that there is insufficient evidence to justify the claim for preferential rates of duty, there will be a liability for the payment of any Customs duty and GST that has been short paid. In these circumstances, an offence may be committed against subsections 243T(1) or 243U(1) of the Customs Act and an administrative penalty under the *Taxation Administration Act 1953* (Taxation Administration Act) may apply where there is a shortfall amount of GST. It should be noted that an infringement notice may be served in lieu of prosecution for an offence against subsections 243T(1) or 243U(1) of the Customs Act.
- (5) If, after the time of the customs declaration, evidence becomes available to the owner that the goods are ineligible for preferential rates of duty, the owner should, as soon as practicable after becoming aware of the error, amend the import declaration and tender to Customs and Border Protection any short paid Customs duty and GST. This action may protect a person against any liability for an offence under subsections 243T(1) or 243U(1) of the Customs Act if the amendment is considered a voluntary disclosure as explained in ACN 2004/05. Furthermore, this action may result in the reduction or remission of an administrative penalty that may apply under the *Taxation Administration Act 1953*.
- (6) Where a duty or GST short payment results from incorrectly claimed preferential duty rates, a person may be protected from liability for an offence against subsection 243T(1) or 243U(1) of the Customs Act, or an administrative penalty under the Taxation Administration Act, if, at the time of entry of the goods, the person holds:
- a CoO from the overseas manufacturer that stated that a particular preference criterion of Division 1F of Part VIII of the Customs Act had been met; or
 - evidence of the relevant factory processes and costs of the overseas manufacturer that indicated that the goods in question were eligible for preferential rates of duty.
- (7) The protection may not apply, however, where:
- other information available to the person indicated that the statement on the CoO from the exporter was incorrect or unreliable;
 - the party signing the CoO was not the overseas exporter - for example, Customs and Border Protection may give no weight to a CoO that is from a supplier who was not the manufacturer of the goods; or
 - the CoO could not be clearly related to the goods in question.

3. Minimum requirements

(1) The CoO shall be completed by the exporter and contain a set of minimum requirements that:

- specify that the goods enumerated therein are the origin of the Chile and meet the terms of Chapter 4 of the Agreement;
- be made in respect of one or more goods and may include a variety of goods;
- be completed in English or Spanish.

Note: If the CoO is provided in Spanish and Customs and Border Protection requires the CoO, the importer will be required to obtain a translated copy of the CoO.

(2) The minimum requirements required on the CoO are:

- Exporter name and address;
- Consignee name and address;
- Marks and numbers;
- Number and kind of packages;
- Description of goods;
- Harmonized system code;
- The applicable rule of origin;
- Declaration certifying the goods meet the applicable rule of origin;
- Name, title and signature of person completing the CoO;
- Date of issue; and
- Number of CoO.

4. Validity

(1) The CoO shall remain valid for a period of one year from the date the document was issued.

5. Exceptions

(1) A CoO is not required for imports when:

- the total customs value of the originating goods does not exceed \$1,000, Provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of the Agreement.

Note: For custom clearance purposes the importer will be required to complete either:

- a **Self Assessed Clearance** if the customs value does not exceed \$1,000 and a CoO is not required; or
- an **Import Declaration** when the customs value exceeds \$1,000.

Division 12: Verification power - exportation of goods to Chile

1. Statutory provisions

- (1) Section 126AKA defines the meanings of *Chilean customs official* and *producer* for the purpose of new Division 4E - Exportation of goods to Chile.
- (2) Section 126AKB of the Customs Act sets out the record keeping obligations that apply in respect of goods that are exported from Australia to Chile and that are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile.

126AKB Record keeping obligations

Regulations may prescribe record keeping obligations

- (1) The regulations may prescribe record keeping obligations that apply in relation to goods that:
 - (a) are exported to Chile; and
 - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile.

On whom obligations may be imposed

- (2) Regulations for the purposes of subsection (1) may impose such obligations on a producer or exporter of goods.
- (3) Customs regulation 105H prescribes the types of records required to be kept by an exporter who is not also the exporter or producer of goods mentioned in subsection 126AKB(1). Regulation 105I similarly prescribes the types of records required to be kept by an exporter who is the producer.
- (4) Section 126AKC of the Customs Act imposes a power to require records to be produced to an authorised officer.

126AKC Power to require records

Requirement to produce records

- (1) An authorised officer may require a person who is subject to record keeping obligations under regulations made for the purposes of section 126AKB to produce to the officer such of those records as the officer requires.

Note: Failing to produce a record when required to do so by an officer may be an offence: see section 243SB. However, a person does not have to produce a record if doing so would tend to incriminate the person: see section 243SC.

Disclosing records to Chilean customs official

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Chile, disclose any records so produced to a Chilean customs official.
- (5) Section 126AKD of the Customs Act gives an authorised officer power to ask questions.

126AKD Power to ask questions*Power to ask questions*

- (1) An authorised officer may require a person who is an exporter or producer of goods that:
 - (a) are exported to Chile; and
 - (b) are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile;to answer questions in order to verify the origin of the goods.

Note: Failing to answer a question when required to do so by an officer may be an offence: see section 243SA. However, a person does not have to answer a question if doing so would tend to incriminate the person: see section 243SC.

Disclosing answers to Chilean customs official

- (2) An authorised officer may, for the purpose of verifying a claim for a preferential tariff in Chile, disclose any answers to such questions to a Chilean customs official.

2. Policy and practice – general

- (1) An Australian exporter or producer who exports goods to Chile that are claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Chile is required to keep certain records. Section 126AKB imposes those obligations. Customs regulations 105H and 105I prescribe what records are obliged to be kept.
- (2) Under Article 4.22 and 4.23 of the Agreement, Australia or Chile may take action to verify the eligibility of goods for preferential treatment, including requesting the supply of records relating to the production, manufacture or export of the goods. New section 128AKC gives effect to this in respect of goods exported to Chile, and are claimed to be Australian originating goods for the purpose of obtaining preferential tariff treatment in Chile.
- (3) Section 126AKD provides that an authorised officer (which is defined in section 4 of the Customs Act) may require a person who is an exporter or producer to answer questions in order to verify the origin of goods.
- (4) The power to ask questions in the circumstances set out in this section is a necessary adjunct to the power to require records in new section 126AKC.

- (5) Subsection 126AKD(2) provides that an authorised officer may disclose any answers to such questions to a Chilean customs official for the purposes of verifying a claim for a preferential tariff in Chile.
- (6) Answers to questions obtained by an authorised officer under new section 126AKD would also be protected information within the meaning of section 16 of the *Customs Administration Act 1985*.
- (7) Such information therefore cannot be disclosed to Chile except as allowed by section 16. By including an express provision in the Customs Act allowing for this information to be disclosed to a Chilean customs official, the disclosure is required or authorised by any other law for the purposes of paragraph 16(2)(d) of the *Customs Administration Act 1985*.
- (8) Under existing section 243SA of the Customs Act, it is an offence to fail to answer a question in accordance with section 126AKD. The offence is not a strict liability offence. Similarly under section 243SB of the Customs Act it is an offence to fail to produce documents or records required to be produced under section 126AKC of the Customs Act.

Appendix 1: Schedule 1 Tariff table

This table is attached as an associated document.

Appendix 2: Example - Certificate of origin

AUSTRALIA-CHILE FREE TRADE AGREEMENT / TRATADO DE LIBRE COMERCIO CERTIFICATE OF ORIGIN / CERTIFICADO DE ORIGEN				
Certificate / Certificado No.				
1. Exporter / Exportador				
2. Consignee / Consignatario				
3. Marks and Numbers / Marcas y Números	4. Number and Kind of Packages / Número y clase de bultos	5. Description of Goods / Descripción de las Mercancías	6. Rule of Origin / Regla de Origen	7. Harmonized System Code / Clasificación Sistema Armonizado
8. Remarks / Observaciones				
9. Declaration by the exporter / Declaración del exportador:				
I, the undersigned, declare that the above details are true and accurate and the good(s) described above meet the condition(s) required for the issuance of this certificate / El que suscribe declara que la(s) mercancía(s) arriba descrita(s) cumple(n) la(s) condición(es) exigida(s) para la emisión del presente certificado.				
Country of origin / País de origen.....				
Place and date / Lugar y fecha.....				
Name / Nombre.....				
Title / Cargo.....				
Signature / Firma.....				

INTERNAL AND EXTERNAL USE

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**AUSTRALIA-CHILE FREE TRADE AGREEMENT
CERTIFICATE OF ORIGIN INSTRUCTIONS**

For purposes of obtaining preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the Customs Import Declaration is made. Please print or type.

Certificate No: Provide a unique number for the Certificate of Origin.

Field 1: State the full legal name, address (including country) and legal tax identification number of the exporter. Legal tax identification number is: in Australia, the Australian Business Number; in Chile, the Unique Tax Number ("Rol Unico Tributario").

Field 2: State the full legal name, address (including country) of the consignee.

Field 3: Marks and numbers on the packages.

Field 4: Number and kind of packages.

Field 5: Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (HS) description of the good. If the Certificate of Origin covers a single shipment of a good, include the invoice number as shown on the commercial invoice.

Field 6: For each good described in Field 5, state which criterion (A through D) is applicable. The rules of origin are contained in Chapter 4 and Annex 4-C of the Agreement. NOTE: Indicate at least one of the preference criteria below.

Preference Criteria:

- A The good is a wholly obtained good of a Party.
- B The good is produced entirely in the territory of the Party exclusively from originating material.
- C Satisfies all applicable requirements of Annex 4-C (Rules of Origin Schedule), as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.
- D Otherwise qualifies as an originating good under the Rules of Origin Chapter.

Field 7: For each good described in Field 5 identify the HS tariff classification to 6 digits.

Field 8: Remarks. For example, if a good is invoiced by a non-Party operator, indicate "Invoice by a non-Party".

Field 9: This field must be completed, signed and dated by the exporter. The date must be the date the Certificate of Origin was completed and signed. Title refers to the title or position within the company of the person who completes and signs the certificate of origin.

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RELATED POLICIES AND REFERENCES

Practice Statement – Rules of Origin

Instructions and Guidelines – Australia-New Zealand Closer Economic Relations Trade Agreement

Instructions and Guidelines – Australia-United States Free Trade Agreement

Instructions and Guidelines – Preferential Rules of Origin (General)

Instructions and Guidelines – Singapore-Australia Free Trade Agreement

Instructions and Guidelines – Thailand-Australia Free Trade Agreement

KEY ROLES AND RESPONSIBILITIES

The policy owner of this Instruction and Guideline is:

Director Valuation and Origin Section
Trade Services Branch
Australian Customs and Border Protection Service

CONSULTATION**Industry Consultation**

Not required.

Internal Consultation

The following internal stakeholders have been consulted in the development of this Instruction and Guideline:

- Customs Legal Unit
- Compliance Division

APPROVAL

Approved on 6 July 2009 by:

Sue Pitman
National Director Trade
Australian Customs and Border Protection Service

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