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## **AUSTRALIAN CUSTOMS NOTICE NO. 2009/11**

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### **Australia–Chile Free Trade Agreement – Rules of Origin**

Goods that originate in Chile will be entitled to preferential rates of customs duty when the Australia-Chile Free Trade Agreement (ACI-FTA) enters into force on the 06 March 2009.

The purpose of this Australian Customs Notice (ACN) is to summarise the rules for determining whether a good originates in Chile.

#### **Legislation**

##### **Preferential rates of customs duty**

The *Customs Tariff Act 1995* (the Tariff), as amended by the *Customs Tariff Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008*, will provide preferential rates of customs duty for goods that are Chilean originating goods.

The preferential rates of customs duty will apply to Chilean originating goods that are imported on or after the day that ACI-FTA enters into force, or goods imported before that day and entered for home consumption on or after that day.

Detailed information on the preferential rates of customs duty to apply to Chilean originating goods will be the subject of a separate ACN.

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

While Chilean originating goods will be eligible for preferential rates of duty, excise-equivalent duties, goods and services tax, dumping duties and other taxes and levies, including cost recovery charges, if relevant, will still be payable in relation to such goods.

##### **Rules of origin**

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

- Division 1F of Part VIII of the *Customs Act 1901* (Customs Act), as inserted by Part 1 of Schedule 1 of the *Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Act 2008*; and
- the *Customs (Chilean Rules of Origin) Regulations 2008* (the ACI-FTA Regulations).

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

- goods that are wholly obtained in Chile;
- goods that are 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.

**Detailed information on each category is provided below**

1. Goods that are wholly obtained in Chile

Subdivision B of Division 1F sets out the rules in relation to goods that are wholly obtained in the territory of Chile.

Subsection 153ZJC(1) provides that goods are *Chilean originating goods* if they are wholly obtained goods of Chile 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.

Subsection 153ZJC(2) provides that goods are wholly obtained 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 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 have 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. Goods that are produced in Chile, exclusively from originating materials

Subdivision C of Division 1F sets out the rules in relation to goods that are produced entirely in the territory of Chile, exclusively from *originating materials*.

Section 153ZJD provides that goods are *Chilean originating goods* if they are produced entirely in the territory of Chile, from originating materials only 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.

*Originating materials* are defined in section 153ZJB as:

- (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*.

An Australian originating good is a good that is an Australian originating good under a law of Chile that implements the Agreement.

3. Goods produced in Chile, or in Chile and Australia from non-originating materials, or a combination of non-originating and originating materials

Subdivision D of Division 1F sets out the rules in relation to goods that are produced entirely in Chile, from non-originating materials only, or from non-originating materials and originating materials.

In this Subdivision, subsection 153ZJE(1) provides that such goods are *Chilean originating goods* if:

- (a) they are classified to a heading or subheading of the Harmonized System (HS) 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.

The table in Schedule 1 to the ACI-FTA Regulations incorporates product-specific origin requirements relating to change of tariff classification (CTC), regional value content (RVC) and other rules for determining whether a good is a Chilean originating good.

#### **Change in tariff classification**

This requirement is satisfied if each non-originating material used in the production of the good undergoes the required classification change (the transformation test), or the total value of the non-originating materials that do not meet the transformation test does not exceed 10% of the customs value of the good (de minimis).

The transformation test applies only to non-originating materials, and generally requires that the classification, under the HS, of a non-originating material is different from the classification of the good produced from that non-originating material.

#### **Regional value content**

Some of the goods in the table in Schedule 1 to the ACI-FTA Regulations may be required to satisfy the RVC requirement. The requirement is 40% based on the build-down method. This requirement is satisfied if the required percentage is met.

Subregulation 3.2 (1) of the ACI-FTA Regulations sets out the build-down method as the following formula:

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

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

AV is the adjusted value, which is the customs value of the good, worked out under Division 2 of Part VIII of the *Customs Act 1901*.

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

Part 4 of the ACI-FTA Regulations outlines how VNM is to be calculated.

**Goods put up in a set for retail sale**

If the goods are put up in a set for retail sale and the goods are classified in accordance with Rule 3 of the Interpretation Rules to the HS, subsection 153ZJE(9) will allow those goods put up in a set for retail sale to be Chilean originating goods only if:

- (a) all of the goods in the set, considered individually, are Chilean originating goods under this Division; or
- (b) 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.

Part 4 of the ACI-FTA Regulations prescribes how the value of the non-originating goods in the set is to be determined.

**Composite goods**

If the goods are composite goods and the goods are classified in accordance with Rule 3 of the Interpretation Rules to the HS, subsection 153ZJE(10) will allow those goods put up in a set for retail sale to be Chilean originating goods only if:

- (a) all of the components of the composite goods considered individually, are Chilean originating goods under this Division; or
- (b) 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 goods.

Part 4 of the ACI-FTA Regulations prescribes how the value of the non-originating components of the composite goods is to be determined.

**Other legislative provisions****Packaging materials and containers**

Where goods are packaged for retail sale in packaging material or a container, and the packaging material or container is classified with the good in accordance with Rule 5 of the Interpretation Rules, section 153ZJF provides for the packaging material or container to be disregarded when determining origin.

However, where the goods must satisfy a RVC requirement to be a Chilean originating good, the value of the packaging material or container that is a non-originating material must be taken into account in satisfying that requirement.

Part 4 of the ACI-FTA Regulations prescribes how the value of the non-originating packaging material or container is to be determined.

**Accessories, spare parts, tools or instructional or other information resources**

Where goods are imported into Australia together with accessories, spare parts, tools or instructional or other information resources, section 153ZJG will allow those accessories, spare parts, tools or instructional or other information resources to be Chilean originating goods if:

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

In addition, where the other goods must satisfy a RVC requirement to be a Chilean originating good, the value of the accessories, spare parts, tools or instructional or other information resources that are non-originating materials (despite section 153ZJG) must be taken into account when satisfying that requirement.

Part 4 of the ACI-FTA Regulations prescribes how the value of the accessories, spare parts, tools or instructional or other information resources that are non-originating materials is to be determined.

## **Non-qualifying operations**

Section 153ZJH provides that goods are not Chilean originating goods 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).

## **Consignment rule**

In addition to the rules specified above, section 153ZJI provides that goods are not Chilean originating goods if:

- (a) they are transported through a country or place other than Australia from Chile; and
- (b) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing, repacking, relabelling, exhibition or any other operation that is necessary to preserve them in good condition or to transport them to Australia).

This rule applies despite any of the other rules that are set out above. Therefore, even if all of the other rules are satisfied, the goods will not be Chilean originating goods if the consignment rule is breached.

## **Administration**

### **Certificates of origin**

A Certificate of Origin (CoO) is required to support a claim for a Chilean preferential rate of duty. A good claiming a Chilean preferential rate of duty should be entered as a Chilean originating good only if the importer holds, at the time the goods are imported, a valid CoO, or a copy of one, which details the information, that the good qualifies as a Chilean originating good. The CoO shall be completed by the exporter and must be in force and contain a set of minimum requirements.

Supporting information may also need to be provided to the Australian Customs Service (Customs), upon request. A request for information to support a claim of eligibility for a Chilean preferential duty rate may occur at the time of entry or at a time after the good has been delivered into home consumption.

## Refund of customs duty

Where duty has been paid on Chilean originating goods, or on goods that would have been Chilean originating goods except for the fact that the importer did not have a valid CoO or copy of one at the time the goods were imported, the importer is able to claim a refund of duty on such goods under regulation 126C of *Customs Regulations 1926*. In relation to the second circumstance, the importer must hold a valid CoO or copy of one at the time of applying for the refund.

## Import declaration requirements

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

The Country Code "CL" should continue to be used for all goods from Chile.

Where goods are Chilean originating goods, the Preference Scheme "CL" should also be used on Customs Import Declarations to access the preferential rate of duty. It will be necessary to also quote a Preference Rule on Import Declarations.

Where goods are manufactured in Chile, but are not Chilean originating goods, the Preference Scheme "DCS" should be used where a Developing Country (DCS) rate of duty applies.

If no Preference scheme is quoted, the general rate of duty will apply.

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

## Origin advice service

ACI-FTA allows for Australian importers, Chilean exporters and Chilean producers of goods to obtain advance rulings from Customs regarding future importations of goods into Australia.

Customs will provide written advice on origin matters through the provision of an Origin Advice (OA). The OA 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.

The Australian Custom's Manual 8E, "Australia-Chile Free Trade Agreement", contains information on how the ACI-FTA will be administered by Customs. This Manual is available on the Customs website, [www.customs.gov.au](http://www.customs.gov.au).

## Additional information

The text of the ACI-FTA is available on the Department of Foreign Affairs and Trade website, [www.dfat.gov.au](http://www.dfat.gov.au). Any enquiries in relation to this ACN should be directed by email to [origin@customs.gov.au](mailto:origin@customs.gov.au) or by telephone on (02) 6275 6556 to Origin, Trade Services Branch.

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