

AUSTRALIAN CUSTOMS AND BORDER PROTECTION NOTICE NO. 2012/69

Malaysia-Australia Free Trade Agreement – Rules of Origin

The Malaysia-Australia Free Trade Agreement (MAFTA) was signed on 22 May 2012 in Kuala Lumpur, Malaysia.

MAFTA will enter into force on 1 January 2013. Upon the entry into force of MAFTA, importers will be entitled to duty-free entry for goods imported from Malaysia, provided that the goods meet the MAFTA rules of origin requirements.

This Notice summarises the rules for determining whether a good originates in Malaysia for the purposes of MAFTA.

# ‘Free’ rates of customs duty

The *Customs Tariff Act 1995*, as amended by the *Customs Tariff Amendment (Malaysia- Australia Free Trade Agreement Implementation) Act 2012*, will allow the entry of Malaysian originating goods free of customs duty from the day that MAFTA enters into force. The preferential treatment will apply to Malaysian originating goods that are imported on or after the day that MAFTA enters into force, or goods imported before that day and entered for home consumption on or after that day.

Please refer to Australian Customs and Border Protection Notice No. 2012/65 for information on amendments to the Customs Tariff and related amendments to import declaration procedures for goods imported from Malaysia.

# Other duties and taxes

While Malaysian originating goods will be eligible for ‘Free’ rates of customs duty, other duties and taxes such as 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 Malaysian originating goods if they satisfy the requirements of:

* the new Division 1H of Part VIII of the *Customs Act 1901* (Customs Act), as inserted by the *Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Act 2012*; and
* the *Customs (Malaysian Rules of Origin ) Regulation 2012* (the MAFTA Regulations).

Division 1H sets out the rules of origin for the following categories of goods:

* goods that are wholly obtained or produced;
* goods that are produced entirely from originating materials only; and
* goods produced from non-originating materials only or from non-originating materials and originating materials.

1. *Goods that are wholly obtained or produced in Malaysia, or in Malaysia and Australia*

Under Subdivision B of Division 1H, goods are Malaysian originating goods if they are wholly obtained or produced in Malaysia, or in Malaysia and Australia. The importer of the goods must have, at the time the goods are imported, a Certificate of Origin, or a copy of such certificate, for the goods.

“*Wholly obtained or produced goods*” means:

* 1. minerals, or other naturally occurring substances, extracted or taken in the territory of Malaysia; or
  2. plants formed, naturally grown or planted in the territory of Malaysia or in the territory of Malaysia and the territory of Australia, or products obtained in the territory of Malaysia from such plants; or
  3. live animals born and raised in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia; or
  4. goods obtained from live animals in the territory of Malaysia; or
  5. goods obtained directly from hunting, trapping, fishing, gathering, capturing or aquaculture conducted in the territory of Malaysia; or
  6. fish, shellfish or plant or other marine life taken from the high seas by ships that are registered in Malaysia and are flying the flag of Malaysia; or
  7. goods obtained or produced from goods referred to in paragraph (f) on board factory ships that are registered in Malaysia and are flying the flag of Malaysia; or
  8. goods taken by Malaysia, or a person of Malaysia, from the seabed, or beneath the seabed, outside:
  9. the exclusive economic zone of Malaysia; and

1. the continental shelf of Malaysia; and
2. an area over which a third party exercises jurisdiction;

and taken under exploitation rights granted in accordance with international law; or

1. waste and scrap that has been derived from production or consumption in the territory of Malaysia and that is fit only for the recovery of raw materials; or
2. used goods that are collected in the territory of Malaysia and that are fit only for the recovery of raw materials; or
3. goods produced or obtained entirely in the territory of Malaysia, or in the territory of Malaysia and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.
4. *Goods that are produced in Malaysia, or in Malaysia and Australia, from originating materials*

Under Subdivision C of Division 1H, goods are Malaysian originating goods if they are produced entirely in Malaysia, or in Malaysia and Australia, 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 such certificate, for the goods.

“*Originating materials*” means:

* 1. Malaysian originating goods that are used in the production of other goods; or
  2. Australian originating goods that are used in the production of other goods; or
  3. indirect materials.

An “Australian originating good” is a good that is considered as Australian originating good under a law of Malaysia that implements MAFTA .

The definition of “indirect materials” is contained in Division 1H.

1. *Goods produced in Malaysia, or in Malaysia and Australia, from non-originating materials*

Under Subdivision D of Division 1H, goods are Malaysian originating goods if they are produced entirely in Malaysia, or in Malaysia and Australia, from non-originating materials only or from non-originating materials and originating materials and satisfy the applicable product specific rules of origin requirements in the MAFTA Regulations. The importer of the goods must have, at the time the goods are imported, a Certificate of Origin, or a copy of such certificate, for the goods.

The table in Schedule 1 to the MAFTA Regulations lists the product-specific rules of origin (PSR) applicable for a good specified at the four or six-digit level of the Harmonized System (HS). A PSR sets out the following criteria that apply either solely or in conjunction to a good:

* change of tariff classification (CTC);
* regional value content (RVC); or
* processing rules.

## Change in tariff classification

A good satisfies the CTC requirement if each non-originating material used in the production of the good undergoes the required change in tariff classification (the transformation test). 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.

*De Minimis rule*

In the event that one or more non-originating materials fail to meet the required tariff classification change, the CTC requirement can still be taken to be satisfied if 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.

For goods that are classified in Chapters 50 to 63 of the HS, the *de minimis* provision also applies if the weight of all non-originating materials that do not meet the transformation test does not exceed 10 per cent of the total weight of the good.

## Regional value content

Some of the goods in the table in Schedule 1 to the MAFTA Regulations may be required to satisfy the RVC requirement. This requirement is met using either the “build-up method” or the “build-down method”. Both methods require that an RVC of at least 40 per cent be obtained.

The calculation formulas are :

*Build-up Method*

RVC =

VOM

---------------- V

x 100

where:

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

V means the customs value of the goods worked out under Division 2 of Part VIII of the

*Customs Act 1901*.

VOM means the value of originating materials worked out under Part 4 of the MAFTA Regulations that are acquired, or self-produced, and used, or consumed, by the producer in the production of the goods.

*Build-Down Method*

RVC = V - VNM x 100

V

where:

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

V is the customs value of the goods, worked out under Division 2 of Part VIII of the

*Customs Act 1901*.

VNM is the value of non-originating materials, including materials of undetermined origin, worked out under Part 4 of the MAFTA Regulations that are acquired and used by the producer in the production of the goods.

Part 4 of the MAFTA Regulations sets out how to determine the value of materials.

## Processing rules

The table in Schedule 1 to the MAFTA Regulations may also require, for some goods, non- originating materials must satisfy specified processing requirements in either or both of Australia and Malaysia.

# Packaging materials and containers

Where goods are packaged for retail sale in packaging materials or containers, and the packaging materials or containers are classified with the good in accordance with Rule 5 of the Interpretation Rules for the HS, section 153ZLF of the new Division 1H provides for the packaging materials or containers to be disregarded when determining origin.

However, where the goods must satisfy a RVC requirement to be a Malaysian originating good, the value of the packaging materials or containers that are non-originating materials must be taken into account in satisfying the RVC requirement.

Part 4 of the MAFTA Regulations prescribes how the value of the non-originating packaging materials or containers are to be determined.

Under the provision of Article 3.8 of MAFTA, packaging materials for shipping and transport are not considered when determining the origin status for goods under MAFTA.

# Accessories, spare parts, tools or instructional or other information materials

Under new section 153ZLH, where goods are imported into Australia together with accessories, spare parts, tools or instructional or other information resources, those accessories, spare parts, tools or instructional or other information materials will be treated as Malaysian originating goods if:

1. they are accessories, spare parts, tools or instructional or other information materials in relation to the other goods; and
2. the other goods are Malaysian originating goods; and
3. the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the underlying goods; and
4. the quantities and the value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

However, if the other goods must satisfy a RVC requirement to be a Malaysian originating good, the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the RVC.

Part 4 of the MAFTA Regulations sets out how to work out the value of the accessories, spare parts, tools or instructional or other information materials.

# Non-qualifying operations

New section 153ZLG provides that goods are not Malaysian originating goods merely because of the following operations:

* 1. operations to preserve goods in good condition for the purpose of transport or storage of the goods;
  2. operations to facilitate the shipment or transportation of goods;
  3. disassembly of goods;
  4. affixing of marks, labels or other distinguishing signs on goods or on their packaging;
  5. placing goods in bottles, cases or boxes or other simple packaging operations;
  6. changing of packaging or the breaking up or assembly of packages;
  7. the reclassification of goods without any physical change in the goods;
  8. any combination of things referred to in paragraphs (a) to (g).

# Consignment rule

In addition to the rules specified above, section 153ZLI of Division 1H provides that goods are not Malaysian originating goods if:

1. they are transported through a country or place other than Malaysia or Australia; and
2. 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 Malaysian originating goods if the consignment rule is breached.

# Certificate of origin

Upon entry into force of MAFTA, a Certificate of Origin (COO) is required to support the claim for MAFTA preferential treatment. The COO must be issued by a designated Issuing Authority in Malaysia.

A sample of a valid MAFTA COO and details of the Issuing Authority will be posted on the MAFTA webpage on the Customs and Border Protection website when notification is received from Malaysia.

Under Article 3.15 of MAFTA, Malaysia may elect to waive the Certificate of Origin requirement for goods exported from Malaysia and replace it with a Declaration of Origin requirement at any time in future. Customs and Border Protection will advise when notification is received from Malaysia.

Customs and Border Protection may also request other supporting information relating to the claim for MAFTA preference. A request for information to support a claim of eligibility for a Malaysian 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 Malaysian originating goods, or on goods that would have been Malaysian originating goods except for the fact that the importer did not have a valid COO or a copy of one at the time the goods were imported, the importer will be able to claim a refund of customs duty paid on such goods under regulation 126DA 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.

# How to claim MAFTA preference on an Import Declaration

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 “MY” should continue to be used for all goods from Malaysia.

For claiming Malaysian originating goods for the purposes of MAFTA, the Preference Scheme "MFTA" should be used on Customs Import Declarations to access the preferential rate of duty. It will be necessary to also quote the relevant Preference Rule Type on Import Declarations from one of the following:

* “WO” – wholly obtained goods;
* “POM” – goods produced entirely from originating materials only; or
* “PS” – goods produced from non-originating and/or originating materials and satisfy the applicable product specific rules of origin requirements as listed in the MAFTA Regulations.

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

# Origin advice service

MAFTA allows for Australian importers, Malaysian exporters and Malaysian producers of goods to obtain advance rulings from Customs and Border Protection regarding future importations of goods into Australia.

Upon application, Customs and Border Protection will provide written advice on origin matters through the provision of an Origin Advice (OA). The OA exists to advise the applicant 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.

Additional information

The text of the relevant legislation for MAFTA is available on the ComLaw website and can be accessed from the MAFTA webpage on the Customs and Border Protection website, at [http://www.customs.gov.au/site/trade\_malaysia.asp.](http://www.customs.gov.au/site/trade_malaysia.asp)

The text of MAFTA is available on the Department of Foreign Affairs and Trade website, at [www.dfat.gov.au.](http://www.dfat.gov.au/)

Any enquiries in relation to this Notice should be directed by email to [origin@customs.gov.au,](mailto:origin@customs.gov.au) or by telephone on (02) 6275 6556 to the National Trade Advice Centre.

(signed) Erin Dale

A/g National Manager Cargo Policy Branch CANBERRA ACT

18 December 2012