ORIGIN RULINGS

PART 1: PROVISION OF BINDING ORIGIN RULINGS

1. Provisions

Articles 6.3 and 6.4 of the Australia-United States Free Trade Agreement, relating to Customs Administration, provide for advance rulings and appeal and review provisions regarding those rulings, and state:

ARTICLE 6.3: ADVANCE RULINGS

1. Each Party shall provide for the issuance of written advance rulings to a person described in subparagraph 2(a) concerning tariff classification, questions arising from the application of the Customs Valuation Agreement, country of origin, and the qualification of a good as an originating good under this Agreement.

2. Each Party shall adopt or maintain procedures for the issuance of advance rulings that:

(a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may request such a ruling prior to the importation in question;

(b) include a detailed description of the information required to process a request for an advance ruling; and

(c) provide that the advance ruling be based on the facts and circumstances presented by the person requesting the ruling.

3. Each Party shall provide that its customs authorities:

(a) may request, at any time during the course of evaluating a request for an advance ruling, additional information necessary to evaluate the request;

(b) shall issue the advance ruling expeditiously, and within 120 days after obtaining all necessary information; and

(c) shall provide an explanation of the reasons for the ruling.

4. Subject to paragraph 5, each Party shall apply an advance ruling to importations into its territory beginning on the date of issuance of the ruling or such date as may be specified in the ruling. The treatment provided by the advance ruling shall be applied to all importations regardless of the importer, exporter, or producer involved, provided that the facts and circumstances are identical in all material respects.

5. A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law, or where there is a change in law consistent with this Agreement, a material fact, or the circumstances on which the ruling is based. The issuing Party shall postpone the effective date of such modification or revocation for a period of not less than 60 days where the person to whom the ruling was issued has relied in good faith on that ruling.

ARTICLE 6.4: REVIEW AND APPEAL

1. With respect to determinations relating to customs matters, each Party shall provide that importers in its territory have access to:

(a) at least one level of administrative review of determinations by its customs authorities independent of the official or office responsible for the decision under review; and

(b) judicial review of decisions taken at the final level of administrative review.

2. Policy and practice

(1) Articles 6.3 and 6.4 of the Agreement allow for importers, exporters and producers of goods to obtain advance rulings from the customs administrations of Australia and US regarding the future importations of goods into each country.

(2) Customs, on request, provides written advice on origin matters through the provision of an Origin Advice (OA). Requests for an Origin Ruling should be submitted on the approved form, B178. The OA exists to advise Australian 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.

(3) 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.

(4) Requests for an OA will be accepted before trade in the good concerned begins.

3. Adequate applications

(1) An OA 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) Application can be made by completing an OA application form which is available electronically on this page of the Customs website. The completed form (together with supporting documentation) can be lodged at any Customs office but should preferably be forwarded to:

Manager Origin Rulings,
Trade Branch,
Australian Customs Service
5 Constitution Avenue
CANBERRA ACT 2600

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

5. Applications with more than one origin issue

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

6. Supporting information and documentation

(1) It is unrealistic to expect a correct and binding origin advice if inadequate or incomplete information is provided to Customs. 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) Part 2 of this document contains a guide to the minimum supporting documentation required to accompany an application for US 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 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 OA, Customs may request, at any time, additional information necessary to evaluate the application.

8. Administrative penalty – indemnity

(1) From the time of registering an application until the decision of Customs the applicant will be indemnified from administrative penalty in respect of duty short paid in relation to the claimed issue.

(2) However, the indemnity ceases when an application is withdrawn or where it is voided because of an inadequacy with the application or supporting documentation.

(3) The quotation of an OAN on entries is optional. Failure to quote an OAN will not affect the indemnity.

(4) When goods are being entered, the owners should not indicate or request “amber” treatment solely on the basis that it is the subject of an OA application or decision.

9. Withdrawal of application

An owner may withdraw an OA application by advising Customs at any time between registration of the application and the decision by Customs on the application. Withdrawal of the application has the effect of cancelling the application.

10. Payment of duty following advice

When Customs has finalised an OA application and notified the applicant of the decision and the reasons for that decision, any duty or GST short paid on entries becomes payable.

11. Validity of advice

(1) Advices are valid for all ports in Australia for five (5) years from the date of notification of the advice. After that time the OA will be cancelled. If an advice is still required a new application must be made.

(2) Customs may cancel or amend an OA within its five-year life, where particular circumstances warrant. Such circumstances include, but are not limited to:

- an amendment is made to the legislation which has relevance to the advice;
- incorrect information was provided to Customs or relevant information was withheld;
- Customs decision is changed as a result of legal precedent;
- the facts and conditions of the origin application have changed;
- Customs has issued conflicting advices.

12. Cancelled or amended advice

Where Customs cancels or amends an OA, in-transit provisions may be applied at the discretion of Customs.

13. In-transit provisions

Where in-transit provisions apply, the cancelled or amended OA 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 to honour advice

An OA is not legally binding on Customs. However, Customs will honour an OA 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 advice

Should an applicant hold or be aware of any conflicting OA from Customs for an origin issue, they are to be treated as being void and Customs is to be notified immediately.

16. Appeals against Customs advice

(1) Where a Customs decision in an OA 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, 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 an OA in itself is not a decision which is reviewable by the AAT or the Federal Court.

PART 2: INFORMATION REQUIREMENTS

1. The application

An OA will be issued to importers, exporters or any other person who require an OA on goods imported into Australia under the AUSFTA ROO provisions.

Requests for an Origin Ruling should be submitted on the approved form, B178.

2. Subject matter of advance rulings

Advance rulings may be sought on various AUSFTA issues including, but not limited to:

(a) whether a good qualifies as an originating good being wholly obtained or produced in the US;

(b) whether a good qualifies as an originating good produced entirely in the US or in US and Australia;

(c) whether imported goods qualify as recovered goods;

(d) whether non-originating materials used in the production of a good imported into Australia undergo the applicable CTC;

(e) whether a good satisfies a RVC requirement under the build-down, build-up or net cost method;

(f) the appropriate basis for determining the value of originating and non-originating materials;

(g) the application of *de minimis* provisions for general goods and textiles.

3. Content of application - general

The following relevant information should be attached to the OA application form:

- the specific subject matter to which the request relates;
- a complete statement of all relevant facts relating to the AUSFTA 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 goods.

4. Content of application – specific

(i) Goods wholly obtained or produced entirely in the US

Where goods have been obtained or produced entirely in the US, or in US and Australia, a complete description of the goods shall be supplied, including:

- a description of how the goods were obtained;
- details of all processing operations employed in the production of the goods;
- 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 goods; and
- evidence of the origin of materials used in the production of the goods.

(ii) Change in tariff classification of a material

Where the request for an OA involves the application of a Rule of Origin that requires an assessment of whether the materials used in the production of the imported good undergo an applicable change in tariff classification, the OA application must list each material used in the production of the goods 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 goods, the location of each operation and the sequence in which the operations occur.

(iii) Regional Value Content – Build-Down and Build-Up methods

Where the OA involves the issue of whether a good satisfies a regional value content under the Build-Down or Build-Up methods, as detailed in Part 2 of the AUSFTA regulations, 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. This information is of the type outlined in Division 7 of Customs Manual Volume 8 (Valuation);
- 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 (Build-Down Method); and
- provide a complete description of each material that is claimed to be an originating material and that is used in the production of the good, including the basis for the claim as to originating status (Build-Up Method).

(iv) *De minimis*

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 and the non-originating material used to produce those goods;
- identify each material which is claimed to be an originating material and provide a complete description of each such material, including the basis for the claim as to originating status;
- 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 if known; and
- in the case of textiles and apparel goods, provide the total weight of the component of the goods that determines the tariff classification of the goods and the total weight of the goods.

(v) Tariff Classification

Where no tariff ruling has been made by Customs 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 goods, including, where relevant, the composition of the goods, a description of the process by which the goods are manufactured, a description of the packaging in which the goods are contained, the anticipated use of the goods and their commercial, common or technical designation. Where product literature, drawings, photographs or other material are available they should accompany the application.