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NEW ZEALAND – CHINA FREE TRADE AGREEMENT (NZCFTA): INFORMATION ABOUT RULES OF ORIGIN — IMPORTS

This Fact Sheet outlines the rules of origin for goods imported into New Zealand that are the subject of a claim for the tariff preferences applied under Chapter 4 and Annex 5 to the New Zealand-China Free Trade Agreement (NZCFTA).

The Fact Sheet should be used only as a general guide. It does not set out every requirement of the rules of origin. Accordingly, it is strongly recommended that the Fact Sheet be read in conjunction with the Customs and Excise Act 1996, the Customs and Excise Regulations 1996 and Schedule 3A to those regulations: Product-specific rules of origin for Chinese goods (see www.customs.govt.nz/library/legislation).

Change in tariff classification (CTC) approach

In most cases when goods imported from China are not “wholly-obtained” (see “Goods wholly obtained” below), the principal requirement is that those goods must have undergone a process which resulted in a change in tariff classification as set out in Schedule 3A to the Customs and Excise Regulations 1996.

The CTC approach allows a good produced in New Zealand or in China to be treated as originating if it is classified in a different classification within the internationally-accepted Harmonized Commodity Description and Coding System (“HS”) from any non-originating materials (as defined in regulation 51Z) used in its production. Such goods can be traded between New Zealand and China at the applicable preferential tariff rate.

What are Originating Goods?

Goods imported into New Zealand from China are treated as originating, under the rules of origin regulations, if the goods:

- are goods wholly obtained or produced in New Zealand or China (see note below under “Goods wholly obtained”); or

- are goods produced entirely in New Zealand or in China or in both countries exclusively from materials whose origin conforms with the provisions of regulations 51ZB to 51ZL. (This includes neutral elements (indirect materials) such as fuel, tools, dies and moulds – even if those originating materials were made in part from non-originating materials) (for example: an item of agricultural machinery made in China from originating parts which were made with the aid of metals from a third country); or
- are goods produced entirely in New Zealand or in China or in both countries, using:
 - (A) non-originating materials that conform to a change in tariff classification; or
 - (B) a regional value content; or
 - (C) a process requirement; or
 - (D) other requirements;specified in Schedule 3A to the Regulations;

and the goods meet the other applicable provisions of regulations 51Z to 51ZL.

The following points below provide more detailed information on the methods of determining whether a good imported from China is originating.

Goods wholly obtained

The following goods are treated as wholly obtained or produced in New Zealand or China:

- (a) plant products harvested, picked, or gathered in New Zealand or China;
- (b) live animals born and raised in New Zealand or China;
- (c) goods obtained from live animals raised in New Zealand or China;
- (d) goods obtained from hunting, trapping, fishing, farming, gathering, or capturing conducted in New Zealand or China;
- (e) minerals and other naturally occurring substances, (not being goods referred to in paragraphs (a) to (d) above) extracted or taken from the soil, waters, seabed, or beneath the seabed of New Zealand or China;
- (f) goods extracted or taken, from the waters, seabed, or subsoil beneath the seabed within the exclusive economic zone as defined by the domestic law of New Zealand or China as the case may be;
- (g) fish, shellfish, plant, and other marine life taken from the high seas by a craft registered or recorded in New Zealand or China and flying, or entitled to fly, the flag of New Zealand or China;
- (h) goods processed or made (from goods referred to in paragraph (g) above) on board a craft registered or recorded in New Zealand or China and flying, or entitled to fly, the flag of New Zealand or China; or
- (i) scrap and waste derived from processing operations in New Zealand or China and fit only for the recovery of raw materials; or
- (j) used goods collected in New Zealand or China, where such goods are fit only for the recovery of raw materials (used machinery which can be repaired and reused would not satisfy this condition); or
- (k) goods obtained or produced in New Zealand or China solely from goods referred to in paragraphs (a) to (j) above.

Such goods are normally natural resource based goods obtained or produced in New Zealand or in China and final products made from them that do not include any non-originating materials. (Scrap and waste, and used goods, covered by (i) and (j) above, are an exception to this, and are treated for the purposes of the rules of origin as containing no non-originating materials.)

Examples: Minerals mined in China, rice grown in China, and, silver jewellery made in China from silver mined in China are examples of goods qualifying as originating under these wholly-obtained provisions. Another example would be metal shavings from a machining process carried out in China when the product being machined does not originate in China.

Note: “Obtained” does not mean “purchased”. The term is used simply to acknowledge that origin can be conferred on goods that are naturally occurring as well as on goods that are produced by human endeavour.

Goods entirely produced

Goods are also treated as originating goods if they are produced entirely in New Zealand or China or in both countries, exclusively from materials that would themselves qualify as originating goods.

Goods that meet the requirements of a product-specific rule

Schedule 3A to the Customs and Excise Regulations 1996 sets out a product-specific rule of origin for each category of goods traded between China and New Zealand.

(a) Change in tariff classification (CTC) rule

Many goods imported from China will qualify under the rules of origin regulations for Chinese goods on the grounds that they can satisfy a change in tariff classification rule specified in Schedule 3A.

To use this approach, the importer must first determine the tariff classification of the final good imported into New Zealand and ascertain the applicable product-specific rule of origin set out in Schedule 3A in respect of that tariff classification.

(HS classifications are harmonised internationally at the HS 2-digit (chapter), 4-digit (heading) and 6-digit (subheading) levels.)

The following **examples** illustrate how a CTC rule operates in practice.

- I) A Chinese producer of beer of HS heading 22.03 uses non-originating malt.

The rule for **beer** of HS heading 22.03, set out in Schedule 3A, reads as follows:

“Change to heading 2203 from any other heading.”

The non-originating malt is classified in HS heading 11.07.

The result of this rule is that the beer is treated as originating in China. This is because the beer is classified within a different tariff heading (even a different HS chapter) from the non-originating malt.

- II) The two most common rules for **manufactured goods assembled in China from imported parts and components** are, “change from any other heading.” and “change from any other subheading.” (Note: an RVC rule is sometimes used alongside the basic CTC requirement).

The CTC rules will generally recognise assembly from imported parts and components as an origin-conferring event. The effect is that the assembly in China of products as diverse as (for example) padlocks, engines, pumps, rechargeable batteries and electric lamps from imported parts and components is typically recognised under the rules of origin as an origin-conferring event.

Some CTC rules include the phrase, “except from [heading/subheading specified]”. The “except-from” rules are intended to ensure that processing deemed to be of minimal significance does not, in itself, confer origin (e.g., simply cutting a material to length or width).

A comment on packaging materials and containers

If goods are subject to a CTC requirement (as set out in Schedule 3A) and the packaging materials and containers in which the goods are packaged for retail sale are classified with the goods (in accordance with Rule 5 of the General Rules for the Interpretation of the Harmonized System), the packaging materials and containers **must not** be taken into account when determining whether or not the required CTC has taken place.

A comment on accessories, spare parts, and tools

If goods are subject to a CTC requirement (as set out in Schedule 3A) any accessories, spare parts, tools, or instructional and information materials presented with the goods on importation **must not** be taken into account when determining whether or not the required CTC has taken place, if those items are classified with, and not invoiced separately, from the goods.

Note: This provision for accessories, spare parts, tools, or instructional and information materials only applies if the quantities and values of these items are customary for the goods they are imported with.

(b) The de minimis provision – an exception to the rule

While there is a product-specific rule for each category of good imported from China, as set out in Schedule 3A, it is possible for a good incorporating non-originating materials to qualify as originating under a de minimis provision (see regulation 51ZL).

Where goods do not meet the CTC requirements specified in Schedule 3A, the goods will still be treated as originating **if** the value of all non-originating materials (including materials of undetermined origin) does not exceed 10 percent of the FOB value of the finished goods, **and** the goods meet all other requirements under regulations 51ZA to 51ZL.

(c) Regional value content

For certain goods, the product-specific rule in Schedule 3A requires the use of a regional value content (RVC) rule linked to the FOB value of the finished goods.

Some goods, mostly goods classified in HS chapters 84-90, have an RVC requirement that the value of the goods include a minimum percentage content of value added in China or New Zealand. In most (not all) such cases, this RVC requirement will apply in addition to a CTC requirement. Once again, it is important to consult Schedule 3A for details.

How the regional value content rule operates

In any case where Schedule 3A requires or permits the use of RVC, the value is to be calculated as follows:

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

Where –

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

FOB is the FOB value of the goods (including the cost of transport to the port or site of final shipment abroad).

VNM is the CIF value of non-originating materials (including materials of undetermined origin).

The value of the non-originating materials is:

- the CIF value at the time of importation of the goods; or,
- the earliest ascertained price paid or payable for the non-originating materials (not including freight, insurance, packing costs, or any other costs incurred in transporting the material from the supplier’s warehouse to the producer’s location).

A comment on packaging materials and containers

If the goods are subject to an RVC requirement then the value of the packaging materials and containers used for retail sale **must** be taken into account as either originating or non-originating materials, as the case may be, when calculating the RVC of the goods.

A comment on accessories, spare parts, and tools

If the goods are subject to an RVC requirement, then the value of any accessories, spare parts, tools, or instructional and information materials presented with the goods on importation **must** be taken into account as originating materials, or non-originating materials, as the case may be, in calculating the RVC of the goods.

Note: This provision for accessories, spare parts, tools, or instructional and information materials only applies if the quantities and values of these items are customary for the goods they are imported with.

(d) Specified process rule

A so-called specified process rule, such as a chemical reaction rule, can be an alternative to a CTC rule. Examples of specified process requirements can be found in the origin rules relating to HS chapter 27 (mineral fuels/petroleum) and HS chapters 28-40 (chemicals).

Can goods be transported through a non-Party?

Goods that would otherwise qualify under the rules of origin laid down in the Regulations will be denied the tariff preference if they are transported from China to New Zealand through a non-Party to the NZCFTA (this includes Australia and Hong Kong, China); and

- the goods have entered into trade or commerce in that non-Party; or
- the goods have undergone any operation in the non-Party other than unloading and reloading, repacking, or any operation required to keep them in good condition.

Note: Goods that transit through a non-Party without entering trade or commerce in the non-Party and without undergoing any operation in the non-Party other than the operations specified immediately above, may remain in the non-Party for up to six (6) months.

What are the administration and enforcement requirements?

(a) Documentary evidence of origin

A certificate of origin is not required for imports of Chinese goods into New Zealand.

An importer in New Zealand may claim the tariff preference on the basis of:

- a certificate of origin issued by China's Administration of Quality Supervision, Inspection & Quarantine (AQSIQ); or
- a declaration (on the invoice or any other commercial document) provided by the exporter in China; or
- a declaration submitted by the exporter in China, providing reasons why the goods in question should be treated as qualifying as the origin of China.

However, if requested by New Zealand Customs Service, an importer who claims a preferential tariff rate for goods imported into New Zealand from China must be able to provide sufficient information to substantiate such a claim.

A claim for Chinese preference should not be made for goods if the necessary documentation and information to substantiate such a claim is not held (see sections 66 and 67 of the Customs and Excise Act 1996).

Note: See the separate Fact Sheet for the documentary requirements for exporting goods to China.

(b) Records

Importers, exporters and producers are required to retain origin documents for a period specified in their domestic legislation (seven years in the case of importers and exporters in New Zealand).

(c) Verification of origin

The Comptroller of Customs may decide to verify any claim for the NZCFTA tariff preference by taking any one or more of the following steps:

- Requesting written information from the importer in New Zealand; or
- Requesting written information from the exporter or producer in China; or
- Requesting the competent authorities in China to verify the origin of a good; or
- Taking such other procedures as the Customs administrations of New Zealand and China may jointly decide.

Note: These are reciprocal requirements.

How do I obtain further information?

For any rules of origin queries or questions, contact:

Valuation and Origin section
New Zealand Customs Service
PO Box 29
Shortland Street
Auckland 1140
Telephone: 09-359 6655
Facsimile: 09-359 6586
Email: v&o@customs.govt.nz

For further information, contact your nearest office of the New Zealand Customs Service, visit the Customs website www.customs.govt.nz, or call Customs on 0800-428 786 (0800 4 CUSTOMS).