

U.S.-Australia Free Trade Agreement Implementation Information

December 30, 2004

Background

The U.S.-Australia Free Trade Agreement Implementation Act (“the Act”; Public Law 108-206; 118 Stat. 919; 19 U.S.C. 3805 note) was signed on August 3, 2004. The Act allowed for the Agreement to take effect on or after January 1, 2005, with the actual implementation date to be determined by the President. Sections 201 and 203 of the Act authorize the President to proclaim the tariff modifications and provide the rules of origin for preferential tariff treatment with respect to goods of Australia provided for under the Agreement. The final text of the Agreement can be found on-line at the [U.S. Trade Representative \(USTR\)](#) website.

Presidential Proclamation 7857, dated December 20, 2004 and published in the Federal Register on December 23, 2004, implements the U.S.-Australia Free Trade Agreement (US-AFTA) for goods entered or withdrawn from warehouse for consumption on or after January 1, 2005. The Proclamation incorporated, by reference, Publication 3722 of the United States International Trade Commission (USITC). Annex I of Publication 3722 of the USITC, modifies the Harmonized Tariff Schedule (HTS) by adding a new General Note 28 containing specific information regarding the US-AFTA and a new Subchapter XIII to Chapter 99 to provide for temporary tariff rate quotas (TRQs) implemented by the US-AFTA.

Annex II of Publication 3722 modifies the HTS to provide for immediate and staged tariff reductions. Publication 3722 has been posted to the [USITC's](#) website.

The Agreement provides for the immediate or staged elimination of duties and barriers to bilateral trade in goods and services originating in the United States and/or Australia.

Title 19, Code of Federal Regulations (CFR) is being amended to implement the Agreement and the Act. Accordingly, these instructions are subject to change once the regulations are issued.

US-AFTA General Rules of Origin

Section 203 of the US-AFTA Implementation Act specifies the general rules of origin to be used in determining if a good qualifies for preferential tariff treatment under the Agreement. The HTS has been amended to include General Note 28, which contains Rules of Origin, definitions and other provisions to determine whether a good originates under the US-AFTA.

The methodology to determine whether a good qualifies for preferential tariff treatment is similar but not identical to that found in the US-Chile and US-Singapore Free Trade Agreements. An additional similarity is that the US-AFTA is an importer focused agreement where the responsibility is on the importer, rather than the exporter, to demonstrate that a good qualifies for preferential tariff treatment.

Generally, under the US-AFTA, a good is originating where:

- a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties (Australia, the U.S. or both);
- b) The good is produced entirely in the territory of one or both of the Parties and
 - (i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 28(n); or
 - (ii) The good otherwise satisfies any applicable regional value content; or
 - (iii) The good meets any other requirements specified in General Note 28(n), and all other applicable requirements are met; or
- c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials; or
- d) The good otherwise qualifies as an originating good pursuant to the Agreement.

The US-AFTA contains a de minimis provision of 10%, which applies to most goods, except those specifically enumerated in General Note 28. This provision is inapplicable to textile articles, which have their own de minimis rule provided for in General Note 28(d)(i). Under the de minimis rule provided for in General Note 28(e)(i), a non-textile good that contains materials that do not undergo a required change in tariff classification (tariff shift) specified in the rules of origin, may receive preferential tariff treatment if the value of all non-originating materials that do not undergo the required change in classification used to produce the good does not exceed 10% of the adjusted value of the good. This provision applies, provided that the value of such non-originating materials shall be included in the total value of non-originating materials for any applicable regional value content requirement.

A list of exceptions to the de minimis rule of origin may be found General Note 28(e)(ii).

Regional Value Content (RVC) Calculation Methods

For most goods, the Agreement provides for two methods for calculating regional value content: (1) the build-up method, based on the value of originating materials; and (2) the build-down method, based on the value of non-originating materials. However, the regional value content for certain automotive goods must be calculated using the net cost method. The following automotive goods are affected:

<u>HTS</u>	<u>General Description</u>
8407.20	Diesel Engines for Vehicles
8407.31 through 8407.34	Engines
8409	Parts of Engines
8701 through 8708	Motor Vehicles, Chassis, Bodies and Parts

US-AFTA Qualifying for Textiles and Apparel

Textiles and apparel products may qualify as originating under US-AFTA if they meet the requirements as specified in the Agreement. The duty rate for these goods will be identified in the “special” column. Although there are differences, these requirements are similar to the NAFTA.

Below is a summary of the type of processes required for some of the more basic products in order for them to be considered eligible for US-AFTA. There are exceptions even to these requirements, depending on the specific type of product. For more specific information refer to General Note 28(n).

- a) Yarn – generally, fiber must originate in Australia or U.S. in order to qualify for preferential tariff treatment.
- b) Fabric – generally, yarn must originate in Australia or U.S. to qualify for preferential tariff treatment. Cotton and man-made knit fabric are under fiber forward rules.
- c) Apparel – generally, yarn must originate in Australia or U.S. in order to qualify for preferential tariff treatment.

US-AFTA Qualifying Based on a Tariff Preference Level (TPL)

There have been no TPLs established for Australia. All claims for preferential treatment will have to meet the tariff shift rules as described in the Annexes above.

De Minimis (Textiles and Apparel Articles)

A textile or wearing apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 28(n), shall be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component.

Notwithstanding the preceding paragraph regarding de minimis, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory Australia or of the United States.

Treatment of Sets

Notwithstanding the specific rules of origin set out in General Note 28(n), textile or apparel goods classified under General Rule of Interpretation 3 of the HTS as goods put up in sets for retail sale shall not be regarded as originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the value of the set determined for purposes of assessing customs duties.

Agricultural Tariff Rate Quotas (TRQ)

The US-AFTA provides 17 quantitative restraints associated with a reduced duty rate for agricultural products such as beef, cheese, dairy products, avocados, peanuts, cotton, and tobacco. The quotas are provided for in Chapter 99, Subchapter XIII, Notes 3 through 20. The HTS numbers are 9913.02.05 through 9913.52.40.

Quota

For agricultural products subject to a tariff-rate quota, the Special Program Indicator (SPI) "AU" must be placed in front of the Heading 9913 HTS number when the entry is filed. In addition to the 9913 number, the appropriate Chapter 1-97 HTS number must be identified on the CBP form 7501. An export certificate is required to claim the in-quota rate for cheese and dairy products. An export certificate is required to claim both the in-quota and over-quota for beef. The export certificate number will be transmitted in the certificate field.

The application of tariff rate quotas for the U.S.-AFTA will be addressed in separate instructions issued in the form of QBTs by the Headquarters Quota Branch. These instructions are available to CBP field officers as well as the importing community and include the quota period, procedures for quota openings, restraint limits, applicable HTS numbers, and any special processing instructions. These messages are available on the CBP Internet site, on the [Quota Bulletins](#) page. In addition to QBTs, there is also a link to the Commodity Status Report. This weekly report lists the fill rates for the tariff rate quotas. The past four reports are maintained on the site.

Eligible Articles (Non-Textile and Textile) / Immediate and Staged Reductions

The list of HTS item numbers that are eligible for immediate duty free treatment can be found in Annex II of Publication 3722. Annex II of Publication 3722 has been posted to the USITC website.

Information Necessary to Make a Claim

A claim for preferential tariff treatment may be filed at the time of entry summary by placing the symbol "AU" as a prefix to the HTS subheading for each good or line item for which treatment is being claimed.

The importer may make a claim for preferential tariff treatment based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good according to the rules of origin. The importer must be prepared to submit upon CBP's request a statement setting forth the reasons that the good qualifies as originating. The statement need not be in a prescribed format, may be submitted electronically and may cover a single shipment or multiple shipments of identical goods not to exceed the time period of 12 months. The statement must not only include the reason the good qualifies as originating, but the importer must also be prepared to submit specific information or data elements pertaining to the importation of the good, which is outlined in Attachment A.

Importers are required to maintain for five years after the date of importation, all records relating to the importation of the good. In addition an importer may be required to

submit upon CBP's request records which are necessary to demonstrate that the good qualifies as originating. These include, but are not limited to, records concerning the purchase of, cost of, value of and payment for the good, the purchase of, cost of, value of and payment for all materials used in the production of the good and the production of the good in its exported form.

Verification by Customs and Border Protection

The US-AFTA places the burden of substantiating the validity of the claim for preferential tariff treatment on the importer. An importer may make a claim based on knowledge or information in his/her possession that the good qualifies as an originating good. CBP may verify the validity of the claim and will direct inquiries for verification via a CBP Form 28, Request for Information, to the importer.

The importer will substantiate a claim by submitting a statement or supporting documentation containing the required data elements of Attachment A specifying how the good qualifies as an originating good and shall include additional requested documentation above and beyond the statement. Such information may include information concerning the relevant shift in tariff classification or may include information concerning the RVC calculation used in the claim for preference such as the build up, build down or net cost methods outlined in General Note 28(g).

In addition, the importer shall provide relevant information from the exporter or producer of the good. In many instances, the exporter may be unwilling to provide cost and/or sourcing information to the importer. CBP will still work through the importer. The importer is expected to arrange for their foreign supplier to provide information directly to CBP.

The US-AFTA provides flexibility by not mandating the statement to be in a prescribed format, however, it must contain the data elements and certification as outlined in Attachment A. Upon CBP's issuance of the CBP Form 28 the importer shall provide the statement and any requested documentation to CBP no later than 30 days from the date of the request. The statement can be submitted to CBP electronically.

Examples of actions that CBP may take when verifying a claim:

1. Since the US-AFTA is an "importer-focused" agreement, a CBP Form 28 should be issued to the importer. If the requested information is not in the importer's possession, the importer may have the exporter or producer provide it directly to CBP. CBP, at its discretion, may issue a CBP Form 28 to the exporter/producer.
2. If the importer is unsuccessful either in obtaining the documentation from the exporter or producer or in arranging for the exporter/producer to provide CBP with the documentation, CBP will issue a negative determination to the importer.

3. Conduct a joint visit (CBP and Australia Customs together), if consent is given, to the exporter or producer's premises after both parties adopt procedures for such a visit.

Determination of a Claim

If the importer forwards a statement and any records and information necessary to demonstrate that the goods imported qualify for preferential tariff treatment, CBP will notify the importer of a positive determination via a CBP Form 29, Notice of Action, stating that the goods qualify as originating. The CBP Form 29 will include the HTS number, description of the good and the relevant rule of origin applied to the good. If the importer fails to submit a statement or any relevant information, CBP will issue a negative determination via a proposed CBP Form 29, Notice of Action. The notice shall specify why the goods do not qualify for preferential tariff treatment and notify the importer that they have a minimum of 20 days from the date of the notice to provide the statement and/or any related documentation to CBP. The proposed CBP Form 29 will cite the appropriate statutes and/or regulations and detail the rate and/or value advance where appropriate. If the importer fails to comply with the proposed CBP Form 29 within 20 days of the date of the notice, a negative determination will be sent to the importer in the form of a CBP Form 29, Notice of Action Taken.

If the importer provides a statement and/or supporting documentation, and CBP determines, based on the information submitted, that the goods do not qualify for preferential tariff treatment, a negative determination will be sent to the importer in the form of a CBP Form 29, Notice of Action Taken. The notice will specify why the goods do not originate pursuant to the US-AFTA rules of origin, cite the appropriate statutes and/or regulations and detail the rate and/or value advance where appropriate.

In most cases, CBP will issue a copy of the CBP Form 29, Notice of Action only to the importer. In those cases, where there has been correspondence between CBP and the exporter or producer, a copy of the CBP Form 29 will be issued to the exporter/producer as well as the importer.

Claims for preferential tariff treatment may be based on a statement that pertains to a single shipment or a blanket statement covering shipments of identical goods for a period of up to 12 months. Where a negative determination is made with respect to a blanket statement, CBP shall deny preferential tariff treatment to all importations of identical merchandise covered by that blanket statement for all entries that have not reached final liquidation.

Corrected US-AFTA Claims

An importer is required to promptly make a corrected declaration if the importer is aware that the claim is not valid. Penalties will not be assessed if the importer voluntarily declares that imported goods were not originating according to the rules of origin, corrects the claim and pays any duty and MPF owed. Pursuant to Article 5.13.4(b) of the Agreement, the importer will not be subject to any penalty if the claim is promptly corrected and any duty and MPF owed is paid at least one year from submission of the invalid claim.

Petition and Protest Rights

Importers or other interested parties may avail themselves of post entry administrative and judicial procedures, such as 19 USC 1514 or the use of Supplemental Information Letters/Post Entry Adjustments to receive a refund of duties and/or merchandise processing fees for eligible goods entered, or withdrawn from warehouse, for consumption, on or after the effective date of the US-AFTA.

The Miscellaneous Trade and Technical Corrections Act of 2004, enacted on December 3, 2004 repealed 19 USC 1520(c) which provides for the reliquidation of an entry or reconciliation on the basis of a clerical error, mistake of fact or other inadvertence. Post entry petitions that would have been submitted under this provision requesting refunds on originating goods entered, or withdrawn from warehouse, for consumption on or after January 1, 2005 can be filed under 19 U.S.C. 1514 within 180 days after liquidation.

Importers or other interested parties may file a protest to contest a negative origin determination pursuant to 19 U.S.C. 1514 within 180 days of the date of liquidation or denial. The protest may enable the importer to receive a refund of duties and/or merchandise processing fees for eligible goods entered, or withdrawn from warehouse for consumption.

Merchandise Processing Fees and Harbor Maintenance Fee

In addition to the reduced and free rates of duty afforded by the US-AFTA, goods that qualify for preferential tariff treatment are not subject to merchandise processing fees.

In addition, merchandise is not exempt from the harbor maintenance fee.

Country of Origin Marking Rules

The US-AFTA does not have a specific provision or special rules governing country of origin marking for originating goods. The general marking regulations as set forth in 19 CFR 134 apply for originating goods under the US-AFTA.

Termination of the Agreement

There is no set expiration date for the US-AFTA. However, the provisions of and amendments made by the Act will cease to be effective upon the termination of the Agreement by written notification from either the U.S. or Australia. The US-AFTA will expire six months after the date of the notification.

Action

Effective January 1, 2005, importers and brokers may file claims for preferential tariff treatment on qualifying goods that originate in Australia. These claims shall be made at the time the entry summary is filed by placing on the CBP Form 7501 the Special Program Indicator (SPI) "AU" as a prefix to the HTS item number for each line on which preferential tariff treatment is claimed.

Currently, the program updates to the Automated Commercial System (ACS) which allow for automated processing have not been completed. Therefore, until further

notice from this office, importers claiming preference under the US-AFTA must file their entries manually. Importers will have the option to file ABI entries at release and follow through with manual entry summaries. This option is allowed only for Australia claims and will terminate once ACS programming to allow electronic filing is complete.