

Reprint
as at 1 September 2011

**Customs and Excise (Rules of
Origin for Australian Goods)
Amendment Regulations 2006**
(SR 2006/397)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 18th day of December 2006

Present:
His Excellency the Governor-General in Council

Pursuant to the Customs and Excise Act 1996, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

These regulations are administered by the New Zealand Customs Service.

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- 1 Title**
These regulations are the Customs and Excise (Rules of Origin for Australian Goods) Amendment Regulations 2006.

- 2 Commencement**
These regulations come into force on 1 January 2007.

- 3 Principal regulations amended**
These regulations amend the Customs and Excise Regulations 1996.

4 New regulations 32 to 39G substituted

Regulations 32 to 39 are revoked and the following regulations substituted:

“32 Interpretation

In regulations 32 to 39G, unless the context otherwise requires,—

“**adjusted value** means the value determined under articles 1 to 8, article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, as adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of goods from one party to the other

“**allocate** means to apportion in a manner appropriate under generally accepted accounting principles

“**allowable expenditure**, in relation to labour, means the sum of costs—

“(a) incurred by, or on behalf of, the principal manufacturer that relate, directly or indirectly, wholly or partly, to the processing of the goods in Australia and that can reasonably be allocated to the processing of the goods in Australia; and

“(b) that consist of 1 or more of the following:

“(i) the cost of wages and employee benefits:

“(ii) the cost of supervision and training:

“(iii) the cost of management of the process of manufacture:

“(iv) the cost of receipt and storage of materials:

“(v) the cost of quality control:

“(vi) the cost of packing goods into inner containers:

“(vii) the cost of handling and storing goods within the place or places in which a process, operated by the principal manufacturer in Australia, is performed

“**allowable expenditure**, in relation to overheads, means the sum of costs—

“(a) incurred by, or on behalf of, the principal manufacturer that relate, directly or indirectly, wholly or partly, to the processing of the goods in Australia and that can

reasonably be allocated to the processing of the goods in Australia; and

- “(b) that consist of 1 or more of the following:
 - “(i) the cost of inspecting and testing materials and goods:
 - “(ii) the cost of insurance of the following kinds:
 - “(A) insurance of plant, equipment, and materials used in the production of the goods:
 - “(B) insurance of work in progress and finished goods:
 - “(C) liability insurance:
 - “(D) accident compensation insurance:
 - “(E) insurance against consequential loss from accident to plant and equipment:
 - “(iii) the cost of dies, moulds, and tooling and the depreciation, maintenance, and repair of plant and equipment:
 - “(iv) the cost of interest payments for plant and equipment:
 - “(v) the cost of research, development, design, and engineering:
 - “(vi) the cost of the following items in respect of real property that is used, in Australia, in the manufacture of the goods:
 - “(A) insurance:
 - “(B) rent and lease payments:
 - “(C) mortgage interest:
 - “(D) depreciation on buildings:
 - “(E) maintenance and repair:
 - “(F) rates and taxes:
 - “(G) the cost of leasing of plant and equipment:
 - “(vii) the cost of energy, fuel, water, lighting, lubricants, rags, and other materials and supplies not directly incorporated in goods manufactured in the territory of the exporting party:
 - “(viii) the cost of storing goods at the place or places in which a process, operated by the principal manufacturer in Australia, is performed:

- “(ix) the cost of royalties or licences in respect of patented machines or processes used in the manufacture of the goods or in respect of the right to manufacture the goods:
 - “(x) the cost of subscriptions to standards institutions, and industry and research associations:
 - “(xi) the cost of the provision of medical care, cleaning services, cleaning materials and equipment, training materials, and safety and protective clothing and equipment:
 - “(xii) the cost of the disposal of non-recyclable waste:
 - “(xiii) the cost of subsidising a cafeteria in the place or places in which a process, operated by the principal manufacturer in Australia, is performed, to the extent not recovered by returned stock:
 - “(xiv) the cost of security in the place or places in which a process, operated by the principal manufacturer in Australia, is performed:
 - “(xv) the cost of computer facilities allocated to the process of manufacture of the goods:
 - “(xvi) the cost of contracting out, within the territories of either or both parties, part of the manufacturing process, including any associated transport or storage costs:
 - “(xvii) the cost of employee transport:
 - “(xviii) the cost of vehicle expenses:
 - “(xix) the cost of any fringe benefits tax or tax of a similar nature:
 - “(xx) the cost of transporting goods in Australia between places in which 1 or more processes are performed by, or on behalf of, the principal manufacturer; and
- “(c) does not include any of the following costs:
- “(i) any costs or expense relating to the general expense of doing business (including, but not limited to, any cost or expense relating to insurance or to executive, financial, sales, advertising, marketing, accounting, or legal services):

- “(ii) the cost of telephone, mail, or other means of communication:
- “(iii) the cost of international travel and expenses, including fares and accommodation:
- “(iv) the cost of the following items in respect of real property used by persons carrying out administrative functions:
 - “(A) insurance:
 - “(B) rent and lease payments:
 - “(C) mortgage interest:
 - “(D) depreciation on buildings:
 - “(E) maintenance and repair:
 - “(F) rates and taxes:
- “(v) the cost of conveying, insuring, or shipping the goods after manufacture:
- “(vi) the cost of shipping containers or packing the goods into shipping containers:
- “(vii) the cost of any royalty payment relating to a licensing agreement to distribute or sell the goods:
- “(viii) the profit of the principal manufacturer and the profit or remuneration of any trader, agent, broker, or other person dealing in the goods after manufacture:
- “(ix) any other costs incurred after the completion of all processes performed by, or on behalf of, the principal manufacturer:
- “(x) the cost of processing goods in a place that is not in the territory of a party

“**Customs Valuation Agreement** means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization 1994

“**factory cost** means the sum of the total expenditure on originating and non-originating materials, the allowable expenditure on labour and factory overheads, and the cost of inner containers

“**fungible goods or fungible materials** means goods or materials that are interchangeable for commercial purposes and

whose properties are essentially identical and between which it is impractical to differentiate by mere visual examination

“**generally accepted accounting principles** means principles with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements, being principles that reflect the recognised consensus, or that have substantial authoritative support, in Australia and that may encompass broad guidelines of general application as well as detailed standards, practices, and procedures

“**goods wholly obtained**, in relation to the territory of either or both parties, means goods that are—

- “(a) mineral goods extracted in the territory of a party:
- “(b) plants grown in the territory of a party, or products obtained from such plants:
- “(c) a live animal born and raised in the territory of a party:
- “(d) a product obtained from a live animal in the territory of a party:
- “(e) goods obtained from hunting, trapping, fishing, capturing, or aquaculture conducted in the territory of a party:
- “(f) fish, shellfish, and any other marine life taken from the sea by vessels registered or recorded with a party and flying its flag, or entitled to fly its flag:
- “(g) goods produced or obtained exclusively from products referred to in paragraph (f) on board factory ships registered or recorded with a party and flying its flag:
- “(h) goods taken by a party, or a person of the party, from the seabed or subsoil of the territorial sea or the continental shelf of that party, in accordance with that party’s rights under international law:
- “(i) waste and scrap derived from the production of goods in the territory of a party, or used goods collected in the territory of a party, if those goods are fit only for the recovery of raw materials:
- “(j) goods produced in the territory of a party exclusively from goods referred to in paragraphs (a) to (i), or from their derivatives, at any stage of production

“**indirect materials**—

- “(a) means goods used or consumed—

- “(i) in the production, testing, or inspection of goods but not physically incorporated into the goods; or
- “(ii) in the maintenance of buildings or the operation of equipment associated with the production of the goods; and
- “(b) includes—
 - “(i) fuel and energy:
 - “(ii) tools, dies, and moulds:
 - “(iii) spare parts and materials used in the maintenance of equipment and buildings:
 - “(iv) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings:
 - “(v) gloves, glasses, footwear, clothing, safety equipment, and supplies:
 - “(vi) equipment, devices, and supplies used for testing or inspecting the goods:
 - “(vii) catalysts and solvents:
 - “(viii) any other goods that are not incorporated into the goods but whose use in the production of the goods can reasonably be demonstrated to be a part of that production
- “**manufacture**—
 - “(a) means the creation of an article essentially different from the matters or substances that go into the article; but
 - “(b) does not include any of the following activities, whether performed alone or in combination with each other:
 - “(i) restoration or renovation processes, such as repairing, reconditioning, overhauling, or refurbishing:
 - “(ii) minimal operations of pressing, labelling, ticketing, packaging, or preparation for sale, conducted alone or in combination with each other:
 - “(iii) quality control inspections
- “**materials** means goods that are used or consumed in the production of other goods
- “**non-originating materials** means materials that are not originating materials

“**originating goods** means goods of a class specified in regulation 33(2) that meet all applicable criteria specified by regulations 33 to 39C

“**originating materials** means originating goods or indirect materials

“**party** means Australia or New Zealand

“**preferential treatment** means the application, under section 7(1)(a) of the Tariff Act 1988, of the Tariff to goods that are the produce or manufacture of Australia

“**principal manufacturer** means the person in the territory of a party who performs, or has had performed on its behalf, the last process of the manufacture of goods

“**producer** means a person who grows, farms, raises, breeds, mines, harvests, fishes for, traps, hunts, captures, gathers, collects, extracts, manufactures, processes, assembles, or disassembles goods

“**production** means growing, farming, breeding, capturing, gathering, collecting, extracting, raising, mining, harvesting, fishing for, trapping, hunting, manufacturing, processing, assembling, or disassembling goods

“**qualifying expenditure** means—

- “(a) total expenditure on originating materials; and
- “(b) allowable expenditure on labour and factory overheads incurred in the territory of either or both parties; and
- “(c) the cost of inner containers that originate in the territory of either or both parties

“**self-produced**, in relation to any materials, means materials that are produced by a producer of goods and used or consumed in the production of those goods

“**unmanufactured raw products** means natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, including any of the following

- “(a) animals:
- “(b) bones, hides, skins, and other parts of animals obtained by killing, including such hides and skins that have been sun-dried:
- “(c) greasy wool:

- “(d) plants and parts of plants, including raw cotton, bark, fruit, nuts, grains, seeds in their natural state, and unwrought logs:
- “(e) minerals in their natural state and ores:
- “(f) crude petroleum.

“33 Originating goods

- “(1) For the purposes of the Act and the Tariff Act 1988, goods imported from Australia are taken to be the produce or manufacture of Australia if they fall into 1 or more classes specified in subclause (2).
- “(2) The classes of goods are:
 - “(a) goods that are wholly obtained in the territory of either or both parties:
 - “(b) goods that are produced in the territory of either or both parties exclusively from originating materials:
 - “(c) goods that are produced in the territory of either or both parties and meet the requirements specified in Schedule 7 (which imposes change in tariff classification and, in some cases, regional content value requirements for goods produced from non-originating materials):
 - “(d) goods that are wholly manufactured in the territory of either or both parties from unmanufactured raw products or from materials wholly manufactured in the territory of either or both parties:
 - “(e) goods that are wholly manufactured in the territory of either or both parties from materials that have been imported (from a place outside the territories of the parties), and that the Chief Executive has classified, for the purposes of these regulations, as manufactured raw materials:
 - “(f) goods imported from Australia before 1 January 2012 that meet the following conditions:
 - “(i) the last process in the manufacture of the goods was performed in Australia; and
 - “(ii) the regional value content of the goods is not less than 50% based on the factory cost method:
 - “(g) goods that are taken to be originating goods under any of regulations 34 to 39C.

“(3) Originating materials from the territory of a party that are used or consumed in the production of goods in the territory of the other party are deemed to originate in the territory of the other party.

“**34 Third country transshipment**

“(1) Goods are not originating goods if, while outside the territories of the parties, they undergo any production or other operation.

“(2) Subclause (1) does not apply to operations that consist merely of 1 or more of the following:

“(a) unloading, reloading, and storing:

“(b) repacking:

“(c) relabelling:

“(d) any other operation necessary to preserve the goods concerned in good condition or to transport them to the territory of a party.

“**35 Goods where value of non-originating materials is 10% or less**

Goods partly produced from non-originating materials are taken to be originating goods, even though they do not satisfy a change in tariff classification required by Schedule 7, if—

“(a) the value of all non-originating materials used or consumed in the production of the goods does not exceed 10% of the adjusted value of the good; and

“(b) the goods meet all other applicable criteria of regulations 33 to 39C.

“**36 Regional value content**

“(1) In any case where Schedule 7 requires the regional value content of specified goods to be calculated by the build-down method, the value of that content is calculated as follows:

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

where—

RVC is the regional value content, expressed as a percentage

AV is the adjusted value

VNM is the value of non-originating materials (not including materials that are self-produced) that are acquired and used or consumed by the producer in the production of the goods.

- “(2) In any case where Schedule 7 requires the regional value content of specified goods to be calculated by the build-up method, the value of that content is calculated as follows:

$$\frac{RVC}{AV} = VOM \times 100$$

where—

RVC is the regional value content, expressed as a percentage

AV is the adjusted value

VOM is the value of originating materials that are acquired or self-produced, and used or consumed by the producer in the production of the goods.

- “(3) In any case where Schedule 7 requires the regional value content of specified goods to be calculated by the factory cost method or for the purposes of calculating the regional value content of goods by that method under regulation 33(2)(c) or 33(2)(f)(ii), the value of that content is calculated as follows:

$$RVC = \frac{QE}{FC} \times 100$$

where—

RVC is the regional value content, expressed as a percentage

QE is the qualifying expenditure on the goods

FC is the factory cost of producing the goods.

“37 **Tolerance in cases where 50% regional value content required**

- “(1) This regulation applies in cases where these regulations require a regional value content of at least 50% based on the factory cost method.

- “(2) The Chief Executive may state in writing that the Chief Executive is satisfied that the following circumstances exist:

- “(a) the regional value content of particular goods from Australia is 48% or more, but less than 50%; and

- “(b) the regional value content of those goods would be at least 50% if an unforeseen circumstance had not occurred; and
 - “(c) the situation caused by the unforeseen circumstance is unlikely to continue.
- “(3) When the Chief Executive makes a statement under subclause (2), the following goods are deemed to have a regional value content of at least 50%:
- “(a) the goods in respect of which the statement was made:
 - “(b) any similar goods in a subsequent shipment that are also affected by the unforeseen circumstance described under subclause (2)(b).
- “(4) The Chief Executive may at any time amend or revoke any statement made under subclause (2) to reflect changed circumstances.
- “(5) For the purposes of subclause (3), **similar goods**, in relation to goods in a particular shipment, means goods that—
- “(a) are contained in another shipment that is imported by the same importer from the same manufacturer; and
 - “(b) contain the same materials and undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.

“**38 Value of materials**

- “(1) For the purpose of calculating the regional value content of goods in accordance with regulations 33 to 37 and Schedule 7, the value of materials used or consumed in the production of the goods is as follows:
- “(a) for materials imported by the producer of the goods, the adjusted value of the materials:
 - “(b) for materials acquired in the territory where the goods are produced, the cost of acquisition and the cost of transporting the materials to the producer of the goods if that cost is not included in the cost of acquisition:
 - “(c) for materials that are self-produced, the sum of all expenses incurred in the production of the materials, including general expenses, and an amount for profit equivalent to the profit added in the normal course of trade.

- “(2) The value of originating materials obtained under subclause (1) may be adjusted by adding to that value any of the following items if they have not been included under that subclause:
- “(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the materials within or between the territories of the parties to the location of the producer:
 - “(b) duties, taxes, and customs brokerage fees on the materials paid in the territory of either or both parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable:
 - “(c) the cost of waste and spoilage resulting from the use of the materials in the production of the goods, less the value of renewable scrap or by-products.
- “(3) The value of non-originating materials obtained under subclause (1) may be adjusted by subtracting from that value any of the following items if they have been included under that subclause:
- “(a) the costs of freight, insurance, packing, and all other costs incurred in transporting the materials within or between the territories of the parties to the location of the producer:
 - “(b) duties, taxes, and customs brokerage fees on the materials paid in the territory of either or both parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable:
 - “(c) the cost of waste and spoilage resulting from the use of the materials in the production of the goods, less the value of renewable scrap or by-products:
 - “(d) the cost of processing incurred in the territory of a party in the production of the non-originating materials:
 - “(e) the cost of any originating materials used or consumed in the production of the non-originating materials in the territory of a party.

“39 Standard accessories, spare parts, and tools as originating goods

- “(1) Accessories, spare parts, or tools delivered with originating goods that form part of the standard accessories, spare parts, or tools for those goods must be treated as originating goods and must be disregarded in determining whether all the non-originating materials used in the production of the originating goods undergo any applicable change in tariff classification, if—
- “(a) the accessories, spare parts, or tools are not invoiced separately from the originating goods; and
 - “(b) the quantities and value of the accessories, spare parts, or tools are customary for the originating goods; and
 - “(c) in any case where the goods are subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the goods.
- “(2) Subclause (1) does not apply if the accessories, spare parts, or tools have been added solely for the purpose of artificially raising the regional value content of the goods.

“39A Fungible goods or materials as originating goods

- “(1) The determination of whether fungible goods or materials are originating goods is made—
- “(a) by physical separation of each of the goods or materials; or
 - “(b) through the use of any inventory management method, such as averaging, last in and first out, or first in and first out, as recognised in generally accepted accounting principles.
- “(2) An inventory management method selected under subclause (1)(b) for particular fungible goods or materials must continue to be used for those fungible goods or materials throughout the fiscal year of the producer that selected the inventory management method.

“39B Packaging materials and containers

- “(1) Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, are not included in determining whether non-originating materials used in the production of those goods have undergone the applicable change in tariff classification as set out in Schedule 7.
- “(2) If goods described in subclause (1) are subject to a regional value content requirement, the value of the packaging materials and containers used for retail sale are taken into account as originating or non-originating, as the case may be, in calculating the regional value content.
- “(3) Packaging materials and containers for shipment in which goods are packed exclusively for transport are not included in determining the origin of the goods.

“39C Treatment of indirect materials

- “(1) Indirect materials are deemed originating materials without regard to where they are produced, and their value is determined by their cost recorded in the accounting records of the producer of the goods.
- “(2) Subclause (1) does not apply if an importer of goods has elected that the origin of the goods be assessed by the method referred to in regulation 33(2)(f).

“39D Claims for preference based on, or supported by, declaration of exporter

- “(1) An importer may claim preferential treatment for goods from Australia on the basis of a declaration of the exporter of the goods.
- “(2) The Customs may require an importer to submit a declaration, or to arrange for the exporter to submit a declaration, that gives the reasons why the goods qualify as originating goods, including any relevant information about costs and production.
- “(3) The declaration may be provided in electronic form.

“39E Records

- “(1) This regulation applies to each of the following persons:

- “(a) an importer of goods in respect of which a claim for preferential treatment is made in New Zealand:
 - “(b) an exporter in New Zealand of goods in respect of which a claim for preferential treatment is made in Australia:
 - “(c) a producer or principal manufacturer in New Zealand who produces or manufactures goods for export to Australia in respect of which a claim for preferential treatment may be made in Australia.
- “(2) A person to whom this regulation applies must keep a record of all transactions relating to the importation or exportation of the goods to show that the goods qualify for preferential treatment.
- “(3) The record must be maintained for at least 5 years after the date of importation or exportation, as the case may be.

“39F Verification of origin

To determine whether goods imported into New Zealand from Australia qualify as originating goods, the Customs may verify any claims made for tariff preference by taking any 1 or more of the following actions:

- “(a) requesting relevant information from any or all of the following:
 - “(i) the importer:
 - “(ii) the exporter in Australia:
- “(b) requesting the importer to arrange for the exporter to provide information directly to the Customs:
- “(c) requiring a declaration to be provided under regulation 39D:
- “(d) requesting the customs administration of Australia to visit the premises of the exporter, producer, or principal manufacturer in Australia, in accordance with any procedures jointly adopted by the parties for the review of the records and the observation of the facilities of exporters, producers, or principal manufacturers.

“39G Decision on origin

- “(1) If the Customs is satisfied that the goods are originating goods under regulation 39D or 39F, it must grant the claim for preferential treatment for the goods.

- “(2) Preferential treatment may be denied if the importer fails to comply with any requirements of these regulations.
- “(3) If preferential treatment is denied, the Customs must give a written explanation for the decision to the person who made the claim for preferential treatment.”

5 New Schedule 7 added

[Revoked]

Regulation 5: revoked, on 1 September 2011, by regulation 12(2) of the Customs and Excise (Rules of Origin—Product-specific Rules for Australian Goods) Amendment Regulations 2011 (SR 2011/276).

**Schedule
New Schedule 7 added**

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[Revoked]

Schedule: revoked, on 1 September 2011, by regulation 12(2) of the Customs and Excise (Rules of Origin—Product-specific Rules for Australian Goods) Amendment Regulations 2011 (SR 2011/276).

Rebecca Kitteridge,
for Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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Notes

1 *General*

This is an eprint of the Customs and Excise (Rules of Origin for Australian Goods) Amendment Regulations 2006. The eprint incorporates all the amendments to the regulations as at 1 September 2011. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about eprints and officialisation, please see <http://www.pco.parliament.govt.nz/eprints/>.

3 *List of amendments incorporated in this eprint (most recent first)*

Customs and Excise (Rules of Origin—Product-specific Rules for Australian Goods) Amendment Regulations 2011 (SR 2011/276): regulation 12(2)
