

Malaysia-Australia Free Trade Agreement (MAFTA)

Making Use of MAFTA to Export or Import Goods

A. Introduction

1. The Malaysia-Australia Free Trade Agreement (MAFTA) provides for extensive tariff liberalization commitments by Malaysia and Australia from the Agreement's entry-into-force on 1 January 2013. The negotiated outcome of MAFTA provides tariff-free treatment on 94.8 per cent of Malaysia's tariff lines in 2013, rising to 98.6 per cent in 2016, and 98.8 per cent in 2020. Tariff-free treatment in 2013 applies to 97.6 per cent of Malaysia's 2009-2011 average imports from Australia, rising to 99 per cent by 2017. Australia's tariff commitments provide tariff-free treatment for all goods from 2013. These tariff commitments only apply to those goods exported from or imported by Malaysia or Australia that meet the Agreement's Rules of Origin (ROO).
2. This brochure is intended to provide a simple guide to business on how to make use of MAFTA to export or import goods. It:
 - Explains where to find details of the tariff commitments for individual products;
 - Describes the ROO provisions of the Agreement;
 - Explains where to find the ROO for individual products;
 - Outlines the Agreement's provisions on the use of documentation in order to make use of tariff preferences when a good is imported into either Party (i.e. Declarations of Origin for exports from Australia and Certificates of Origin for exports from Malaysia); and
 - Notes the Agreement's provisions on verification, including its requirements on retention of records demonstrating that a good meets MAFTA's ROO.

B. How to Find the Tariff Commitments for Individual Products

3. As all Australian tariffs are eliminated on entry-into-force there is no need to refer to a tariff schedule to find the Australian tariff under the Agreement. The tariff schedule for Malaysia is included in Annex 1 to the Agreement and is available on the DFAT website (<http://www.dfat.gov.au/fta/mafta/#documents>). The tariff schedule is in a tariff classification format that is known as the Harmonized Commodity Description and Coding System (HS) 2007.

4. However, the tariff commitments for Malaysia are being implemented using the current version of the HS format, the HS 2012; i.e. when goods are imported into Malaysia, the import documentation will need to be completed using the HS 2012. The change in the HS format is due to the fact that the HS is periodically updated by the World Customs Organization – usually every five years – to simplify it where possible and to take account of changes in technology, the appearance of new products, and changes in the patterns of international trade.
5. As Malaysia is implementing its commitments in HS 2012, it has converted its MAFTA Tariff Schedule into HS 2012. A copy of the tariff schedule in the HS 2012 format can be found on the DFAT website. (see www.dfat.gov.au/fta/mafta/#documents - “Annex 1 – Tariff Schedules (HS 2012)”).
6. The official gazettal of Malaysia’s tariff commitments in HS 2012 was published on the Royal Malaysian Customs Department’s website on 31 December 2012. website at: (<http://www.customs.gov.my/index.php/en/agen-m/1323-perintah-duti-kastam-barang-barang-di-bawah-perjanjian-perdagangan-bebas-malaysia-australia-2012>)
7. The implementation of Malaysia’s tariff schedule in HS 2012 has necessitated some variations in tariff phasings. The most significant that business should be aware of are:
 - a. **Vehicles of subheading 8703.23 with spark ignition engines of a cylinder capacity exceeding 2,000 cc but not exceeding 2,500 cc:** These vehicles now receive duty-free treatment from 1 January 2013.
 - b. **Tariff Rate Quotas on Eggs not for hatching:**
 - i. HS 2007 tariff line 0407.00.910 (hen eggs: not for hatching) which had a Tariff Rate Quota of 4,000,500 units in 2013 has been split into two HS 2012 tariff lines, 0407.21.000 (fresh hen eggs: not for hatching) and 0407.90.100 (other hen eggs: not for hatching). The Tariff Rate Quota volume will apply to combined imports under the two HS 2012 tariff lines.
 - ii. Similarly, HS 2007 tariff line 0407.00.920 (duck eggs: not for hatching) which had a Tariff Rate Quota of 5,000,500 units in 2013 has been split into two HS 2012 tariff lines, 0407.29.100 (fresh duck eggs: not for hatching) and 0407.90.200 (other duck eggs: not for hatching). The Tariff Rate Quota volumes will apply to combined imports under the two HS 2012 tariff lines.
 - c. **Tariff rate Quota on Liquid Milk with fat content by weight greater than 6%:** HS 2007 tariff line 0401.30.110 which had a Tariff Rate Quota of 20600 Litres in 2013 has been split into two HS 2012 tariff lines, 0401.40.110 (fat content by weight 6 to 10%) and 0401.50.100 (fat content by weight greater than 10 %). Malaysia has opted to apply the Tariff Rate Quota only to 0401.40.110. As such, 0401.50.100 is subsequently duty-free from 2013.

8. Malaysia's MAFTA tariff schedule contains several columns setting out the following information:
- HS Code: this is the national tariff number for each product. The HS is harmonized internationally up to the six digit level. The HS is used by Malaysia and Australia as the basis for classifying and differentiating between goods for the purposes of levying tariffs, applying other trade measures and collecting trade statistics. However, the national tariff of most countries is at the 7, 8 or 9 digit level (or higher), with the additional digits allowing countries to make their own distinctions between different categories of goods.
 - Description: this is the description of the good covered by the corresponding national tariff number. Like the tariff numbers, this is harmonized internationally in the HS up to the six digit level, but can differ between countries at higher levels.
 - Columns for 2013, 2014 etc: these columns set out Malaysia's tariff commitments for each year. The column headed '2013' sets out the tariff applied by Malaysia for each tariff line in calendar year 2013. The tariff rates implemented in subsequent years are set out in the columns headed '2014', '2015' etc, and these rates will be implemented on 1 January of each year. The final column is headed '2020 and subsequent years' and sets out the final tariff rate that will apply from 2020 onwards.

C. MAFTA Rules of Origin (ROO) Provisions

Overview of the ROO Provisions

9. The tariff commitments in MAFTA only apply to goods which comply with its ROO provisions and are therefore eligible to be considered to be MAFTA originating goods.
10. The ROO provisions in MAFTA are set out in the following parts of the Agreement:
- Chapter 3 of the Agreement is titled "Rules of Origin" and contains the key provisions on ROO as well as verification procedures (<http://www.dfat.gov.au/fta/mafta/#documents>). Article 1 of the Chapter contains definitions of many of the key terms used in the rules.
 - An Annex to Chapter 3 is titled "Operational Certification Procedures" (OCP) and sets out the procedures for Declarations of Origin (DOO) and the issuing and use of Certificates of Origin (COO). This Annex also includes an Appendix on Data Requirements for DOO and COO.
 - Annex 2 to the Agreement is titled "Product Specific Rules" (PSR) and includes:
 - A Headnote to the Annex which sets out rules for interpreting the PSR.

- The body of the PSR which is arranged according to sub-heading in the HS format. In some cases, important provisions are contained in Chapter Notes.

11. It is very important that business note that the PSR in Annex 2, as attached to the Agreement when it was signed in May 2012, are in HS 2007 format. As both Australia and Malaysia are implementing their tariff commitments in the HS 2012 format, they have transposed the HS 2007 PSR into the HS 2012 format. The PSR in the HS 2012 format are available on the DFAT website and businesses interested in making use of MAFTA should ensure that they refer to the HS 2012 PSR (see www.dfat.gov.au/fta/mafta/#documents - “Annex 2 – Product Specific Rules (HS 2012)”).

Originating Goods

12. Under Article 3.2 a good is considered a MAFTA originating good if:

- It is wholly obtained or produced in a Party (as provided in Article 3.3 of the Agreement); or
- It is produced in a Party exclusively from originating materials from one or both of the Parties; or
- Satisfies all applicable requirements of Annex 2 (Product Specific Rules Schedule), as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.

13. Many agricultural, fishery and mineral goods will meet the requirements for being wholly obtained or produced. However, manufactured goods typically make use of components and inputs from a range of countries and will therefore generally involve at least some use of non-originating materials. This means that most manufactured goods will need to comply with Annex 2 (Product Specific Rules) on the substantial transformation of these non-originating materials.

MAFTA's Substantial Transformation Requirements

14. MAFTA's ROO make use of a number of internationally recognized tests for determining substantial transformation:

- *Change in Tariff Classification (CTC)*: non-originating materials must undergo the required change in their tariff classification under the HS within the MAFTA Parties. The required CTC change might be at one of three levels:
 - a change in chapter (CC), at the 2-digit level of the HS;
 - a change in tariff heading (CTH), at the 4-digit level of the HS; or
 - a change in tariff sub-heading (CTSH), at the 6-digit level of the HS.
- *Regional Value Content (RVC)*: the proportion of the value of the exported good added within the MAFTA Parties must reach a specified threshold (i.e. this puts a limit on the proportion of the value of the exported good represented by non-originating materials).
- *Production Process*: non-originating materials must undergo specified processing within the MAFTA Parties.

15. An important feature of the MAFTA's ROO is that for many goods they allow manufacturers the choice of using either a CTC rule or an RVC rule in order to determine the origin of the good.

The Formulae for Calculating RVC

14. In calculating the RVC either of the following formulae can be used:

(a) *Direct Formula*

$$RVC = \frac{VOM}{V} \times 100\%$$

(b) *Indirect/Build-Down Formula*

$$RVC = \frac{V - VNM}{V} \times 100\%$$

where:

V = value of the good, as provided in the Agreement (generally, the FOB value of the good).

VOM = value of originating materials acquired or self-produced, and used or consumed by the producer in the production of the good.

VNM = value of non-originating materials, including materials of undetermined origin.

15. Article 3.11 of the Agreement provides further detail on the formulae for calculating RVC, including full definitions of the terms used.

D. Other Important ROO Provisions

Cumulation

16. A key feature of MAFTA's ROO is that it allows for cumulation (Article 3.4). This means that a good that complies with the MAFTA ROO (i.e. it is a MAFTA originating good), and is exported to the other MAFTA Party where it is used as a material in the production of another good, is considered to originate in the Party where the working or processing of the finished good has taken place. For example:

- If a CTC or Production Process test is applicable to the finished good, the MAFTA originating materials used in the production of that good do not have to comply with these tests because the tests only apply to non-originating materials used in the production of the finished good.

- If an RVC test is applicable to the finished good, the MAFTA originating materials used in the production of that good can be counted towards meeting the specified RVC requirement.
17. MAFTA also allows any production activity that occurs in the territory of one or both of the MAFTA Parties to count as qualifying content in the origin determination of a good regardless of whether that production was sufficient to confer originating status on the material used in the production of that good.
- If a CTC test is applicable to the finished good, the entire CTC that occurred in Malaysia and Australia is assessed; i.e. part of the tariff shift can occur in one of the Parties with the remainder occurring in the other Party.
 - If an RVC test is applicable to the finished good, any processing that occurred in Malaysia and Australia can be included in the RVC calculation.
 - If a Production Process test is applicable to the finished good, any steps in the production process that occurred in Malaysia and Australia are considered when determining origin.
18. The fact that a good has been sourced from a MAFTA Party does not necessarily mean that it is a MAFTA-originating good. Only goods which meet MAFTA's ROO requirements are originating. However, if a good is not MAFTA-originating, it may still be possible to cumulate any processing done on that good in any of the MAFTA Parties.

Transportation of Goods and ROO Requirements

19. A MAFTA originating good retains its originating status provided that the good undergoes no subsequent production or any other operation in non-Parties, other than unloading, reloading, storing, repacking, relabelling or any other operation necessary to preserve it in good condition or to transport the good to the territory of the importing Party (Article 3.14).
20. The MAFTA also allows for goods which have been exhibited in the other Party or a non-Party to continue to qualify for origin purposes (Article 3.17 paragraph 4).

Other Important Elements of the ROO Provisions

21. Other important elements of MAFTA ROO provisions that business needs to be familiar with:
- *Minimal operations and processes.* These provisions cover operations or processes which on their own, or in combination, are not considered to constitute a substantial transformation. The full list of non-qualifying operations and processes is listed in Article 3.10 of the Agreement.

- *De minimis provisions.* These provisions in Article 3.5 of the Agreement only apply in cases where the claim for origin is based on a CTC requirement. If the good does not meet the CTC rule it will still be considered an originating good on condition that the value of all non-originating materials used in its production that do not undergo the required CTC do not exceed 10 per cent of the FOB value of the exported good. In the case of textile and apparel products covered by Chapters 50 to 63 of the tariff, the de minimis provision also applies if the weight of all non-originating materials that do not undergo the required CTC does not exceed 10 per cent of the total weight of the exported good.
- *Accessories, spare parts, tools and instructional or other information.* Article 3.6 provides that accessories, spare parts, tools and instructional or other information will not be considered in origin determinations where a CTC or production process rule is used, provided that the accessories are customarily supplied with the finished goods and are not separately invoiced. The value of accessories, spare parts, tools and instructional or other information will be considered in origin determinations where an RVC rule is used.
- *Fungible materials.* These are materials that are identical or interchangeable as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and once incorporated into a finished product cannot be distinguished on the basis of any markings or visual examination. Article 3.7 of the Agreement sets out rules for determining whether they are originating materials.
- *Treatment of packaging materials and containers.* Article 3.8 of the Agreement provides that packaging materials for shipping and transport are not considered in origin determinations. The value of retail packaging materials is considered in the value of the good where an RVC rule is used. However, retail packaging materials are not taken into account where a CTC or production process rule is used.
- *Indirect materials.* Article 3.9 of the Agreement provides that indirect materials (e.g. costs such as fuel and energy, lubricants and tools used in producing a good but not physically incorporated into it) are treated as originating materials without regard to where they are produced. Article 3.1 of the Agreement contains the definition of indirect materials.

E. How to Find the ROO Requirements for Individual Products

How to Find the ROO Requirements for Individual Products

To find the MAFTA ROO for a particular good, these steps should be followed:

Step 1: Check whether the good meets MAFTA requirements for:

- a wholly obtained or produced good as set out in Article 3.3 of the Agreement; or
- is produced in a Party exclusively from originating materials from one or more of the Parties in accordance with Article 3.2(c) of the Agreement.

If the good meets these requirements then it is a MAFTA originating good. If the good does not meet these requirements, proceed to Step 2.

Step 2: Check the Product Specific Rules (PSR) set out in Annex 2 of the Agreement for the Applicable Product Specific Rule of Origin relevant to the particular good. For each HS sub-heading, a PSR exists in Annex 2 in Column 3 which must be met in order for the good to be deemed to be a MAFTA originating good. Some products are covered by a PSR at the four digit HS Heading level.

F. Documentation: Declarations of Origin, Obtaining and Using a Certificate of Origin, and Verification Procedures

22. MAFTA ROO are supported by a requirement that:

- exports from Australia be supported by a Declaration of Origin (DOO); and
- exports from Malaysia be supported by a Certificate of Origin (COO) issued by a designated Issuing Authority.

23. The detailed requirements for obtaining and using DOO and COO are set out in the Operational Certification Procedures (OCP) in the Annex to Chapter 3.

24. Key features of the DOO/COO requirements:

- A DOO/COO is required for each shipment of goods for which preferential tariff treatment under MAFTA is claimed (Article 3.15). An importer, if requested, must submit the DOO/COO to the Customs Authority of the importing Party at the time of import declaration in order to claim preferential tariff treatment.

- However, a DOO/COO is not required for originating goods not exceeding US\$200 FOB value or such higher amount specified in an importing Party's domestic laws. (Article 3.18).
- Note that in the case of imports into Australia, this FOB value amount is A\$1,000.
- The DOO/COO must contain the Data Requirements listed in the Appendix on Data Requirements:
 - name and details of the exporter/producer;
 - declaration by the exporter/producer or their authorised representative that the goods are originating;
 - description of the goods;
 - HS Code (6 digits); and
 - origin conferring criteria.
- The DOO/COO consists of a single original (OCP Rule 7).
- The DOO can take the form of a declaration on the invoice or company letterhead (OCP Rule 1).
- The Issuing Authority for COO is the Malaysian Ministry of International Trade and Industry (MITI).
 - *Application for a COO.* The exporter or producer of the good should apply to the Issuing Authority for a COO. They must provide appropriate supporting documents and other relevant information to the Issuing Authority to prove that the good to be exported qualifies as originating. (OCP Rule 2 and Rule 3)
 - *Issuing of the COO.* The COO should be issued prior to, or at the time of exportation or soon thereafter. Where this is not possible due to involuntary errors or omissions or other valid causes, the COO may be issued retroactively but no longer than one year from the date of shipment, bearing the words "ISSUED RETROACTIVELY" (OCP Rule 5).
 - *Certified True Copy of the COO.* In the event of theft, loss or destruction of a COO, the exporter or producer may apply in writing to the Issuing Authority for a certified true copy of the original to be made on the basis of the export documents in their possession bearing the endorsement of the words "CERTIFIED TRUE COPY". This copy shall bear the date of the original COO (OCP Rule 6).
- Period of validity of DOO/COO. The DOO/COO is valid for one year after the date on which the DOO was signed or the COO was issued (Article 3.15).

25. All records necessary to demonstrate the origin of a good that is exported or imported must be maintained by the Issuing Authority, exporter and importer for a period of not less than five years after the date of exportation or importation (Article 3.19).
26. Article 3.20 of the Agreement provides detailed provisions on the approach to be followed by the Customs Authority of the importing Party if it sees a need to verify the eligibility of a good for preferential tariff treatment. Verification activities may involve requests for information from the Issuing Authority, the importer, the exporter or the producer of the goods, or a request to undertake a verification visit to the premises or factory of the exporter or producer.

Goods in Transport and Storage

26. The Agreement allows originating goods which are in transport or storage at the time of entry-into-force to be eligible for preferential tariff treatment (Article 3.27). In order to be eligible the originating goods must:
- (a) be in the process of being transported from the exporting Party to the importing Party; or
 - (b) not have been released from Customs control, including an originating good stored in a warehouse regulated by the Customs Administration of the importing Party.
27. The originating good must also meet the requirements of Article 3.17 of the Agreement.

Sample Declaration of Origin

28. The MAFTA does not require a specific format to be used for the DOO on the invoice or company letter head provided that the Data Requirements are contained in the document.

Invoice

29. In the case of a DOO provided on an invoice, the majority of the information required should already be contained in the document, and therefore a simple statement attesting to the origin and listing the origin criteria met by the good is all that should be required. Below are some examples that can be used for an invoice. Be sure to check that the invoice contains all the Data Requirements – if it does not, then these additional Data Requirements will need to be provided.

Origin Criteria WO (Wholly Obtained or Produced)

“I declare that the goods described below are Australian originating goods as defined in the Malaysia-Australia Free Trade Agreement as they are wholly obtained or produced in Australia or Australia and Malaysia.”

Origin Criteria PE (Produced Entirely from Originating Materials)

“I declare that the goods described below are Australian originating goods as defined in the Malaysia-Australia Free Trade Agreement as they are produced entirely in Australia, or entirely in Australia and Malaysia, from originating materials only.”

Origin Criteria PSR (Product Specific Rule of Origin)

“I declare that the goods described below are Australian originating goods as defined in the Malaysia-Australia Free Trade Agreement as they are produced in Australia, or Australia and Malaysia, from non-originating materials and meet the following product specific rule of origin: (insert here the product specific rule of origin in Annex 2 of the Agreement that the good meets e.g. RVC(40) or CTSH)”

30. If several goods, each meeting different origin criteria, are covered by a single invoice, then the DOO needs to clearly identify the ROO met by each good.

Company Letter Head

31. In the case of a DOO provided on a company letterhead, the simple statement attesting to the origin and setting out the origin criteria needs to be supplemented by the Data Requirements. A sample approach for a company letterhead appears on the following page (**Annex**):

