

Designation as a Certification Body to Issue Certificates of Origin under the New Zealand - China Free Trade Agreement (the FTA)

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Part 1: Purpose of the Document

1. This document seeks responses from non-governmental entities in New Zealand that wish to be designated by the Comptroller of Customs pursuant to section 64B(1) of the Customs and Excise Act 1996 (the Act) as a Certification Body to issue Certificates of Origin under the FTA. In this context:
 - Part 2 provides background information on the FTA's certificate of origin regime; and
 - Part 3 sets out the conditions and criteria that Cabinet and the Ministers of Trade and of Customs have agreed are to determine whether a responding entity merits being designated as a Certification Body.
2. The organisational and governing matters in Part 4 set out:
 - how the project will be managed;
 - the process requirements that responding entities will need to adhere to, and the conditions associated with the document; and
 - the assessment procedures that will be applied to each response that is received.

Part 2: The FTA and its Certificate of Origin Regime

Introduction

1. The FTA¹ that is intended to enter into force on 1 October 2008 was signed in Beijing on 7 April 2008.
2. A significant feature of the FTA is the tariff preference benefits which exports of New Zealand origin will obtain on entry to the market in China. To secure those benefits, the FTA requires that New Zealand put in place a regime under which formal certificates of origin, as provided in the FTA, are issued in New Zealand. Every Certificate of Origin is to be issued in the format set out in Annex 6 of the FTA², and it will be the responsibility of a Certification Body to issue certificates of origin in accordance with the terms and conditions of its designation. The Certificate of Origin is to be presented to the customs authorities in China by the importer in China at the time the New Zealand export consignment enters China.
3. In this context, the FTA provides that:
 - "Certificate of Origin means a form issued by an authorised body of the exporting Party, identifying the goods being consigned between the Parties and certifying,....., that the goods to which the certificate relates originate in a Party;" and
 - "authorised body means any government authority or other entity authorised under the domestic legislation of a Party to issue a Certificate of Origin;"³ The Act was amended by the New Zealand-China Free Trade Agreement Act 2008 to introduce, inter alia, section 64B(1) that gives the Chief Executive of Customs the power to designate a "certification body" (called "authorised body" in the FTA) and section 64B(2) that gives the Chief Executive of Customs the power to set terms and conditions on any designation.
4. The Government decided that non-government entities will be designated specifically to issue New Zealand certificates of origin under the FTA and that the New Zealand Customs Service (Customs) will be the government agency responsible for administering the FTA certificate of origin regime, including the associated compliance assurance monitoring. This activity is to be undertaken to enable New Zealand to assure China that the New Zealand regime is competent, credible and robust and that the certificates of origin issued by any Authorised Body are accurate, valid and authentic.

Circumstances When a Certificate of Origin is Not Required

5. Pursuant to Article 37 of the FTA, a New Zealand Certificate of Origin will not be required:
 - for any consignment the aggregate customs value (value for duty) of which does not exceed US\$1,000 or its equivalent in Chinese currency, or such higher amount as China may establish; or

¹ The full text of the FTA, and all available documents, is available on the New Zealand government website – www.chinafta.govt.nz. Of particular importance in the context of Certificates of Origin and this document are *Chapter 4: Rules of Origin and Operational Procedures* and *Annex 5* that specifies the particular process or other requirements that the products included in that Annex must meet to be accorded origin.

² *Annex 6* is available to be viewed on the website listed in the footnote above.

³ *Chapter 4 Section 2 Article 33* of the FTA refers

- for any consignment of goods covered by an advance ruling on origin issued by China Customs that deems the goods to qualify as originating in New Zealand, so long as the facts and circumstances on which the ruling was based remain unchanged and the ruling remains legally valid; or
 - when China decides, for any reason, that a Certificate of Origin is not required in relation to a consignment or in general.⁴
6. Where the three circumstances above apply, the New Zealand exporter, producer, or exporter and producer will be able to prepare and complete, themselves, a Declaration of Origin in the format set out in Annex 7 of the FTA⁵.

Part 3: Conditions and Criteria Relating to Designation as a Certification Body

Introduction

1. All responses to this document will be assessed by Customs. The assessments will form the basis for determining whether a response demonstrates that the entity has the clear ability to meet the conditions and criteria set out below to be designated as a Certification Body, and has notified its commitment to agree to the conditions specified below.
2. This being so, it is incumbent on each responder to provide information and commentary that is sufficiently comprehensive to enable Customs to judge its capacity and capability to meet each condition or criteria.

Background Criteria

3. Each entity that responds to this document will need to provide information that relates to its:
 - Previous experience with and/or demonstrated knowledge of the operation of rules of origin in a free trade agreement and/or in a non-tariff preference context.
 - Credibility as an organisation with respect to the work required of a certificate of origin authorising body, to provide the necessary level of assurance to the Chinese authorities.
 - Commitment to maintaining adequate office facilities and staffing levels and to employing appropriately trained staff.
 - Ability to demonstrate its impartiality i.e. have no commercial interest in the outcome and, if a membership-based organisation, confirm an agreement to provide certification services at similar levels of performance to members and non-members alike.

Quality of Service

4. Each entity that responds to this document will need to:
 - Agree to only issue certificates of origin that conform to the layout agreed between the Parties to the FTA, and as set out in Annex 6 of the FTA.

⁴ The paragraph reflects the provisions of *Chapter 4 Section 2 Article 37* of the FTA

⁵ *Annex 7* is able to be viewed on the website noted in Footnote 1

- Agree that certificates of origin will be issued only when, as a Certification Body, sufficient information is held to confirm that the goods in question "originate" in New Zealand under the FTA rules of origin.
- Indicate the information it will require an applicant for a certificate of origin to provide in order to be able to determine that the goods meet the rules of origin under the FTA and, thereby, permit an FTA certificate of origin to be issued – a Certification Body is to determine the information it requires and how it is to be received.
- Describe the procedures and/or processes that will be used to determine that the goods covered by an application for a certificate of origin meet the FTA rules of origin.
- Describe the procedures it will use so that certificates of origin will be issued in a timely manner (preferably within 24 hours) once an application has been made in the required form and contains the information required.
- Indicate how an expedited service would be provided for frequent significant exporters in order to minimise, as far as possible, the additional compliance costs for these exporters.
- Indicate the extent to which it intends to provide an acceptable level of service throughout New Zealand and across all export sectors, either as a single Certification Body or as part of a group. This factor will not, however, mean that separate responses from individual entities in New Zealand that are limited to a geographical area and/or specific product sector will not be considered for designation as a Certification Body.
- Indicate the date from which FTA certificates of origin will be issued, bearing in mind the benefit of having such certificates able to be issued from the earliest possible time.

Fee Structure

5. Each entity that responds to this document will be required to indicate its proposed certificate fee structure and why it considers that the structure:
 - represents value for money for New Zealand exporters;
 - is commensurate with the cost of the services rendered; and
 - is consistent with the relevant World Trade Organisation provisions on *Fees and Formalities Connected with Importation and Exportation* (as set out in Attachment 1 to this document).

Electronic Support Systems

6. Each entity that responds to this document will need to provide information that has the necessary degree of specificity and technical detail to permit a judgement to be made that demonstrates that it has the ability:
 - to establish and maintain an electronic certificate of origin application and electronic processing and recording system; and
 - to ensure that the system proposed is sufficiently robust and secure:

- to prevent fraudulent actions involving certificates issued by, or purporting to be issued by, a Certification Body (these would include a requirement that applications be accepted only from signatories authorised by the exporter); and
 - to prevent access to their system by unauthorised people; and
 - to permit the electronic transfer of encrypted data for:
 - a copy of each certificate of origin to be held on a separate electronic database of FTA Certificates of Origin by Customs; and
 - metadata as defined by Customs to be held on a separate electronic database by Customs.
7. Each entity that responds to this document is to signify its willingness to agree:
- To establish, own and operate a database to store electronically all FTA certificates of origin that it issues.
 - To transfer electronically to the database that Customs is establishing and in accordance with the requirements agreed with Customs an image copy of each certificate of origin
 - To meet the costs of establishing and maintaining its separate databases to operate from the timing it commences issuing certificates of origin, with discussions with Customs to determine an equitable sharing of any interconnection costs. That situation is to continue to apply while those separate databases remain in operation.
8. Each entity designated as a Certification Body will need to retain for seven years from the date of issue all records relating to the issue of the FTA Certificates of Origin and the electronic database of issued certificates, consistent with the FTA requirement in Article 39 2., Retention of Origin Documents, and with section 95 of the Customs and Excise Act 1996.

Additional Conditions

9. Each responding entity is to signify its willingness to:
- Agree to be bound by any terms and conditions Comptroller of Customs thinks fit to set down in relation to a designation as a Certification Body, including those relating to periodic and as-required compliance assurance.
 - Accept that a designation to be a Certification Body may be withdrawn by the Comptroller of Customs after due notice has been given should the Comptroller determine that the Certification Body is not meeting the terms and conditions that have been set or has otherwise been making an incorrect use of the designation - a key requirement is that the New Zealand producer/supplier support the application for a Certificate of Origin by a declaration that its goods meet any applicable rule of origin.
 - Accept that it would not be free to relinquish its designation on its terms and at a time it sets and, thereby, put at risk the ability for New Zealand to provide an ongoing, nationwide and/or comprehensive goods coverage of the regime.

- Accept that any withdrawal of a designation by the Comptroller of Customs or any relinquishment of a designation by a Certification Body would be managed under a process and timeframe agreed with the Comptroller. It is proposed, however, that a designation might contain provisions for an 'agreed voluntary transfer' of a designation, provided the transferee can demonstrate it meets all the requirements to be a Certification Body with no reduction in service quality, integrity and security, or increase in fees.

Notification of Details to China Customs

10. Each entity that responds to this document will need to agree that, pursuant to Chapter 4, Section 2, Article 40 2. of the FTA, Customs can provide to the General Administration of Customs of the People's Republic of China, and before it issues any certificates of origin, the following details on that Certification Body:
- Its name.
 - Relevant contact details.
 - The details of any security features associated with any relevant forms and documents it uses, such as special paper, stamps, dimensions.
 - Any change in any of the above information.

Part 4 Organisational and Governance Matters

Contact Person in New Zealand Customs Service

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International Trade Policy
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Requirements

Any entity that wishes to be considered as a Certification Body needs to:

- address any questions it may have on this document direct to the Customs' Contact Person in writing;
- state its agreement to those conditions set out in paragraphs 3-10 under the heading, **Part 3: Conditions and Criteria Relating to Designation as a Certification Body**, on pages 3-6 of this document that have such agreement as a prerequisite to being designated;

- provide information that demonstrates clearly that it is able to meet each condition and criteria set out in paragraphs 3-10 under the heading, **Part 3: Conditions and Criteria Relating to Designation as a Certification Body**, on pages 3-6 of this document that relate to the capability and capacity to provide a service that will both meet the needs of New Zealand exporters and enable assurance to be given to China about the quality and integrity of that service;
- deliver to the New Zealand Customs Service, Wellington, by **Friday 26 September, 2008** one (1) hard copy and one (1) electronic copy of its response to this document;
- acknowledge in its response that it accepts that, while Customs will commence the assessment of a response as soon as it has been received, there can be no expectation that, if successful, an entity that seeks to be designated as a Certification Body would have any designation formalised in time to enable it to issue certificates of origin for goods arriving in China from 1 October 2008, the date the FTA is intended to enter into force. This is because, at this time, the priority for Customs is to ensure that all the legal and operational requirements associated with the designation of the entities who responded successfully to the document issued by Customs in late May 2008 are completed as soon as possible to enable them to commence issuing FTA certificates of origin at the earliest opportunity; and
- acknowledge that the information provided in response to the criteria and conditions set out in **Part 3 Conditions and Criteria Relating to Designation as a Certification Body** will either be included as provided in the associated documentation to be signed with the Comptroller of Customs, or drawn upon in the drafting of that documentation.

Conditions Relating to this Document

Agreements, warranties, representations

1. Neither this document nor any response to it establishes an obligation on Customs to enter into any agreement with any recipient or third party.
2. The conditions and criteria set out in **Part 3: Conditions and Criteria Relating to Designation as a Certification Body** on pages 3-6 of this document, the information and statements made by an entity that responds to this document, and other information or documents used in the assessment process may be drawn upon in the preparation of the associated documentation that will be signed between Customs and a Certification Body relating to its origin certification service.
3. Customs makes no representation and gives no warranties other than that as may be set out in the associated documentation noted immediately above.
4. The information supplied by Customs in connection with this document or with, or in, any associated documentation noted in paragraph 2 above of this section is confidential. Information must not be released to any other person (other than a proposed responder's/Certification Body's employees or advisors) without the prior written consent of Customs.
5. Customs will keep confidential the responses it receives and will not release the information in the responses without the prior agreement of the entity that provided the information, unless required to do so by law. Customs is subject to the Official Information Act 1982, and information provided by responders may be required to be disclosed under that Act.

6. This document is the property of Customs and may not be reproduced in any way (other than for the purposes of preparing and submitting a response) without the prior written approval of Customs.

Information Conditions

1. In putting forward a response to this document, each responder warrants that all the information it provides is complete and accurate in all material respects, and its provision to, and use by, Customs will not breach any third party intellectual property rights.
2. Customs is under no obligation to check any response for errors. Acceptance of a response that contains errors will not invalidate any associated documentation to be signed between Customs and a Certification Body as part of the certification process that either incorporates information that is contained in a response or draws on such information.
3. Customs will not accept an approach from an entity that has responded to this document that seeks to put forward any supplementary information or material after it has submitted its response.
4. Customs will not seek further material from any entity that has either not responded to a particular condition or criteria, or whose response Customs considers lacks sufficient detail.
5. The only reason why Customs might contact a responding entity will be to seek clarification of a matter. In that case, the contact will be in the form of a specific written (including by email) question that will not permit additional material to be provided.
6. Should an entity that is preparing its response pose a question or raise an issue relating to this document that Customs judges to be of interest and importance to any other entity which Customs knows is also preparing a response, then the question or issue and the reply from Customs may be advised via e-mail to those other entities. The identity of the entity that posed the question or raised the issue will not be disclosed to others.

Governing law and liability limitation

1. This document is governed by New Zealand law.
1. Customs and its agents or advisors will not be liable in contract or tort or in other way for any direct or indirect damage, loss or cost incurred by any responder or other person in respect of the process by which a Certification Body is to be designated.
2. If an entity canvasses any employee or advisor of Customs, other than the contact named on page 6, concerning any aspect of this Certification Body designation process, that entity may be disqualified at Customs' discretion.

Cost conditions

1. Each entity that responds to this document must pay its own costs in preparing and presenting its response, including but not limited to the costs of any communications or negotiations, meetings, presentations or interviews with Customs, site inspections by Customs or legal costs.

Customs contact person

1. The Customs contact person (or any other person specifically authorised by the Customs contact person) is the only person authorised to make representations or explanations to entities intending to respond to this document.

Project Governance and Assessment Process

1. The following governance structure is to operate:

Project Sponsor	Group Manager Policy
Project Steering Group	Manager International Relations (Chair)
	Acting Group Manager Trade and Marine
	Senior Trade Analyst
	Senior Policy Analyst

2. Each response received will be evaluated against the conditions and criteria set out in this document and the outcome will be reported to the Project Steering Group that will assess and make recommendations on the extent to which each responder:
 - o has evidenced the clear ability to provide the origin certification service required by the FTA; and
 - o has notified their agreement to all the conditions set out in this document.
3. The preparation of that report will be assisted by appropriate advice from Customs' Legal and Advisory Services, and Information Services.
4. After the Project Steering Group has made a decision on those recommendations, a report from the Project Sponsor to the Comptroller of Customs will be prepared. That report will be approved by Project Steering Group before it is submitted to the Project Sponsor for consideration, with that approval noted in a covering memorandum from the Chair of the Project Steering Group to the Project Sponsor that also makes reference to the consultation that has been undertaken with other sections within Customs.

Note

This document is little changed from the one that was issued by Customs in late May 2008. The changes that have been made:

- incorporate the need to reflect the amendments made to the Customs and Excise Act 1996 by section 14 of the New Zealand-China Free Trade Agreement Act 2008 (e.g. the replacement of the term "an Authorised Body" by "a Certification Body"); and
- relate to the more specific requirement in the opening sentence of paragraph 6 in the section on page 5 headed *Electronic Support Systems*, and in the third bullet point of that paragraph.

13 August 2008

World Trade Organisation Provision Referred to in Paragraph 5 on Page 4

"The General Agreement on Tariffs and Trade (GATT 1947) – Article VIII: Fees and Formalities connected with Importation and Exportation

1. (a) All fees and charges of whatever character (other than import and export duties and other taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in subparagraph (a).

(c) The contracting parties also recognise the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.

3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

- (a) consular transactions, such as consular invoices and certificates;
- (b) quantitative restrictions;
- (c) licensing;
- (d) exchange control;
- (e) statistical services;
- (f) documents, documentation and certification; (underling added)
- (g) analysis and inspection; and
- (h) quarantine, sanitation and fumigation."