



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

## Structure of this Document

This document is structured as follows:

<u>Part 1: Purpose of the Document</u>	<i>page 1</i>
<u>Part 2: The FTA and its Certificate of Origin Regime</u>	
<i>Introduction</i>	<i>page 2</i>
<i>Circumstances When a Certificate of Origin is Not Required</i>	<i>page 2</i>
<u>Part 3: Conditions and Criteria Relating to Designation as an Authorised Body</u>	
<i>Introduction and Background Criteria</i>	<i>page 3</i>
<i>Quality of Service</i>	<i>page 4</i>
<i>Fee Structure</i>	<i>page 4</i>
<i>Electronic Support Systems</i>	<i>page 5</i>
<i>Additional Conditions</i>	<i>pages 5-6</i>
<i>Notification of Details to China Customs</i>	<i>page 6</i>
<u>Part 4: Organisational and Governing Matters</u>	
<i>Timetable</i>	<i>page 6</i>
<i>Contact People in New Zealand Customs Service</i>	<i>page 7</i>
<i>Requirements</i>	<i>page 7</i>
<i>Conditions Relating to the Document</i>	<i>pages 8-9</i>
<i>Project Governance and Assessment Process</i>	<i>page 10</i>

## Part 1: Purpose of the Document

1. This document seeks responses from non-governmental entities in New Zealand that wish to be designated as an Authorised 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 an Authorised Body.
2. The organisational and governing matters in Part 4 set out:
  - how the project will be managed and the timetable to be followed;
  - 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 FTA<sup>1</sup> 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 FTA<sup>2</sup>, and it will be the responsibility of an Authorised Body to issue certificates of origin in accordance with the terms 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:
  - o "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
  - o "authorised body means any government authority or other entity authorised under the domestic legislation of a Party to issue a Certificate of Origin;"<sup>3</sup>
4. The Government has decided that non-government entities will be designated specifically to issue New Zealand certificates of origin under the New Zealand-China Free Trade Agreement.
5. The Government has appointed the New Zealand Customs Service (Customs) to be the government agency responsible for selecting and designating any New Zealand Authorised Body, and for undertaking the associated oversight and compliance assurance monitoring of the certificate of origin issuing regime. 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.
6. An amendment to the Customs and Excise Act 1996 is being sought, via the legislation necessary to implement the FTA, to give the Comptroller of Customs the legal authority to designate each Authorised Body and to set any terms and conditions that the Comptroller thinks fit in relation to the conduct and performance of the role.

### *Circumstances When a Certificate of Origin is Not Required*

7. Pursuant to Article 37, a New Zealand Certificate of Origin will not be required:

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<sup>1</sup> The full text of the FTA, and all available documents, is available on the New Zealand government website – [www.chinafta.govt.nz](http://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.

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

<sup>3</sup> *Chapter 4 Section 2 Article 33* of the FTA refers



- 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
  - 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.<sup>4</sup>
8. 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 FTA<sup>5</sup>.

### **Part 3: Conditions and Criteria Relating to Designation as an Authorised 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 an Authorised 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.

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<sup>4</sup> The paragraph reflects the provisions of *Chapter 4 Section 2 Article 37* of the FTA

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



### *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.
  - Agree that certificates of origin will be issued only when, as an Authorised 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 – an Authorised 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 Authorised 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 an Authorised 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.

(The information provided in response to the last six criteria above will either be included as provided in the associated documentation to be signed with the Chief Executive, or drawn upon in the drafting of that documentation.)

### *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* (Attachment 1 refers).

#### *Electronic Support Systems*

6. Each entity that responds to this document will need to provide information 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, an Authorised Body (these would include a requirement that applications be accepted only from signatories authorised by the exporter);
    - to prevent access to their system by unauthorised people; and
    - to permit the automatic electronic transfer of a copy of each certificate of origin to a separate electronic database of FTA Certificates of Origin to be held 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 to establish an image copy of each certificate of origin at the time it is issued.
  - 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 an Authorised 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 an Authorised Body, including those relating to periodic and as-required compliance assurance.
  - Accept that a designation to be an Authorised Body may be withdrawn by the Comptroller of Customs after due notice has been given should the Comptroller



determine that the Authorised 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 an Authorised 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 Authorised 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 Expression of Interest 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 Authorised 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**

*Timetable*

Set out below is the timetable for completing the process of designating the New Zealand Authorised Bodies.

<i>By 30 May 2008</i> - Document issued that seeks responses from non-governmental entities in New Zealand that wish to be designated as an Authorised Body to issue Certificates of Origin under the FTA;
<i>27 June 2008</i> - Closing date for receipt of responses by New Zealand Customs Service.
<i>By 31 July 2008</i> - Entities to be designated an Authorised Body are selected and the legal instrument of authorisation signed by the Comptroller of Customs.
<i>By 29 Aug 2008</i> - Associated documentation signed with each Authorised Body relating to matters such as the service procedures and performance, fee structure, and compliance assurance processes.



*Contact People in New Zealand Customs Service*

1. For questions relating to this document contact:

*Alan Davies*  
Project Manager  
International Trade Policy  
The Customhouse  
17-21 Whitmore Street  
Wellington

Postal address: P O Box 2218, Wellington  
Email: [alan.davies@customs.govt.nz](mailto:alan.davies@customs.govt.nz)

2. For questions relating to certification of origin under the FTA contact:

*Graham Webb*  
Senior Trade Advisor  
International Trade Policy  
The Customhouse  
17-21 Whitmore Street  
Wellington

Postal address: P O Box 2218, Wellington  
Email: [graham.webb@customs.govt.nz](mailto:graham.webb@customs.govt.nz)

*Requirements*

Any entity that wishes to be considered as an Authorised Body needs to:

- address any questions it may have on this document direct to the Project Manager in writing before Friday 27 June 2008;
- state its agreement to those conditions set out in paragraphs 3-10 under the heading **Conditions and Criteria Relating to Designation as an Authorised 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 **Conditions and Criteria Relating to Designation as an Authorised 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; and
- deliver to the New Zealand Customs Service, Wellington, by **Friday 27 June 2008** one (1) hard copy and one (1) electronic copy of its response to this document.



## *Conditions Relating to this Document*

### General

1. Customs reserves the right to negotiate with any entity that responds to this document, to the exclusion of any other entity that responds.

### 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 the **Conditions and Criteria Relating to Designation as an Authorised 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 by 29 August 2008 between Customs and an Authorised 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/Authorised 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 by 29 August 2008 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 after **27 June 2008** any supplementary information or material.



4. The only exception to the above is where an entity makes clear in its response noted in the paragraph immediately above that further information that is in preparation is not able to be finalised in time to be included in the response. Where this exception is to be availed of, the date by which Customs will receive all supplementary information and material is to be set out clearly in that response. That date is to be no later than **Friday 4 July 2008**. No additional information or material will be accepted by Customs after **Friday 4 July 2008**.
5. 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.
6. 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.
7. 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 general interest and importance, then the question or issue and the reply from Customs may be advised via e-mail to all entities that Customs is aware of that intend to respond to this document. 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 an Authorised Body is to be designated.
2. If an entity canvasses any employee or advisor of Customs, other than the two contacts named on page 7, concerning any aspect of this Authorised 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)
	Group Manager Trade and Marine
	Senior Trade Analyst
	Senior Trade Advisor

Project Manager

2. The Project Manager will evaluate all responses received by the due date against the each of the conditions and criteria set out in this document. The outcome will be a report to the Project Steering Group that assesses and makes 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 the Project Manager will prepare a report from the Project Sponsor to the Comptroller of Customs. 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.



## **World Trade Organisation Provision Referred to in Paragraph 5 on Page 5**

### **"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."