

ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA (AANZFTA): INFORMATION ABOUT THE RULES OF ORIGIN – IMPORTS

This fact sheet outlines the rules of origin for goods imported into New Zealand that are the subject of a claim for the tariff preferences applied under Chapter 3 and Annex 2 (Product Specific Rules) to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the AANZFTA Agreement).

A separate fact sheet provides information for New Zealand exporters about the system of certificates of origin issued by a certification body authorised by the Comptroller of Customs. These certificates of origin will be required for almost all New Zealand exports to another party to the AANZFTA Agreement.

This fact sheet should be used only as a general guide. It does not set out every requirement of the rules of origin. Accordingly, it is strongly recommended that the fact sheet be read in conjunction with the Customs and Excise Act 1996, the Customs and Excise Regulations 1996 and Schedule 8 to those regulations: Rules of origin for AANZFTA goods (see www.customs.govt.nz/library/legislation).

WHAT COUNTRIES DOES THE AANZFTA AGREEMENT APPLY TO?

The signatories to the AANZFTA Agreement are New Zealand, and Australia, and the ten countries that are members of the Southeast Asian Nations (ASEAN). The AANZFTA Agreement entered into force on 1 January 2010 for New Zealand, Australia, Brunei Darussalam, Malaysia, Myanmar, the Philippines, Singapore, and Viet Nam. Thailand was added on 12 March 2010.

Accordingly, the rules of origin provision set out in regulations 51ZM to 51ZX of the Customs and Excise Regulations

1996 (“the Regulations”) do not yet apply to all signatories to the AANZFTA Agreement. The Regulations only apply to signatories to the AANZFTA Agreement that have been specified as a party for the purposes of the Regulations, being those countries named above.

Hence, any reference to a ‘party’ mentioned in this fact sheet is made solely to a party for which the AANZFTA Agreement has entered into force.

The entry into force for each of the remaining countries which are members of ASEAN: Cambodia, Indonesia, and the Lao People’s Democratic Republic, is subject to that country being specified as a party for the purposes of the Regulations. Goods imported into New Zealand from one of these countries will not be eligible to claim preferential tariff treatment until that country is specified as a party.

For updates on the status of these countries, please refer to the New Zealand AANZFTA Agreement website (www.asean.fta.govt.nz).

CHANGE IN TARIFF CLASSIFICATION (CTC) APPROACH

In most cases when goods imported from a party to the AANZFTA Agreement are not 'wholly produced or obtained' (see 'Goods wholly produced or obtained' below), the principal requirement is that those goods must have undergone a process which resulted in a change in tariff classification as set out in Schedule 8 to the Regulations.

The CTC approach allows a good produced in a party to the AANZFTA Agreement to be treated as originating if it is classified in a different classification within the internationally-accepted Harmonized Commodity Description and Coding System (HS) from any non-originating materials (as defined in regulation 51ZM) used in its production. Such goods can be traded between a party to the AANZFTA Agreement and New Zealand at the applicable preferential tariff rate.

WHAT ARE ORIGINATING GOODS?

Goods imported into New Zealand from a party to the AANZFTA Agreement are treated as originating if the goods meet all applicable requirements of regulations 51ZM to 51ZX, and if:

- the goods are wholly produced or obtained in a party (see note below under 'Goods wholly produced or obtained'); or
- the goods meet the applicable product specific rule outlined in Schedule 8 to the Regulations, and if the product specific rule requires a regional value content, the final process of production is performed within a party; or
- the goods are produced in a party exclusively from originating materials from one or more of the parties.

The following points provide more detailed information on the methods of determining whether a good imported from a party to the AANZFTA Agreement is originating.

GOODS WHOLLY PRODUCED OR OBTAINED

The following goods must be treated as wholly produced or obtained in a party to the AANZFTA Agreement:

- (a) plants and plant goods (including fruit, flowers, vegetables, trees, seaweed, fungi, and live plants) grown, harvested, picked, or gathered in a party
- (b) live animals born and raised in a party
- (c) goods obtained from live animals in a party
- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing, in a party
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed, or beneath the seabed in a party
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered or recorded with a party and entitled to fly the flag of that party
- (g) goods produced from goods referred to in paragraph (f) on board any factory ship registered or recorded with a party and entitled to fly the flag of that party
- (h) goods taken by a party, or a person of a party, from the seabed or beneath the seabed
 - (i) beyond the exclusive economic zone and adjacent continental shelf of that party; and
 - (ii) beyond areas over which non-parties exercise jurisdiction under exploitation rights granted in accordance with international law
- (i) waste and scrap derived from production and consumption in a party, or used goods collected in a party, provided that the waste, scrap or used goods are fit only for the recovery of raw materials

- (j) goods produced or obtained in a party solely from products referred to in paragraphs (a) to (i) above, or from their derivatives.

Note:

Such goods are normally natural resource based goods obtained in a party to the AANZFTA Agreement and final products made from them that do not include any non-originating materials. (Waste and scrap, or used goods, covered by (i) above, are an exception to this, and are treated for the purposes of the rules of origin as containing no non-originating materials.)

Examples:

Minerals mined in Viet Nam, logs cut from trees grown in Myanmar, and gold jewellery made in Malaysia from gold mined in Malaysia are examples of goods qualifying as originating under these wholly produced or obtained provisions. Another example would be metal shavings from a machining process carried out in a party to the AANZFTA Agreement when the product being machined does not originate in a party to the AANZFTA Agreement.

Note:

'Obtained' does not mean 'purchased'. The term is used simply to acknowledge that origin can be conferred on goods that are naturally occurring as well as on goods that are produced by human endeavour.

GOODS THAT MEET THE REQUIREMENTS OF A PRODUCT SPECIFIC RULE

Schedule 8 to the Regulations sets out the product specific rule(s) of origin for each category of goods traded between a party to the AANZFTA Agreement and New Zealand.

(a) Change in tariff classification (CTC) rule

Many goods imported from a party to the AANZFTA Agreement will qualify under the rules of origin regulations for AANZFTA goods on the basis that they can satisfy a change in tariff classification rule specified in Schedule 8.

To use this approach, the importer must first determine the tariff classification of the final good imported into New Zealand and ascertain the appropriate product specific rule of origin set out in Schedule 8 in respect of that tariff classification.

The difference between the classification of the final good and the classification of the non-originating materials that went into the production of that good will determine whether or not the conditions of the specific change in tariff classification rule have been met.

There are three types of change in tariff classification rules that an importer may encounter in Schedule 8:

- CC (Change of chapter) – all of the non-originating materials must have undergone a change at the two-digit level in a party.
- CTH (Change in tariff heading) – all of the non-originating materials must have undergone a change at the four-digit level in a party.
- CTSH (Change in tariff sub-heading) – all of the non-originating materials must have undergone a change at the six-digit level in a party.

The following example illustrates how a CTC rule operates in practice:

Warp knit fabric of HS heading 60.05 is produced in the Philippines using non-originating cotton yarn and is exported to New Zealand.

The rule for warp knit fabric of HS heading 60.05, set out in Schedule 8, is CC.

The non-originating cotton yarn is classified in HS heading 52.06.

The result of this rule is that the warp knit fabric is treated as originating in the Philippines. This is because the warp knit fabric is classified within a different HS chapter (chapter 60) from the non-originating cotton yarn (chapter 52).

Note:

Some CTC rules include the phrase, “except from [heading/subheading specified]”. The “except-from” rules are intended to ensure that processing deemed to be of minimal significance does not, itself, confer origin (eg simply cutting a material to length or width).

Treatment of packing materials and containers under a CTC requirement

Packing materials and containers in which the goods are packaged for retail sale, when classified together with the goods (in accordance with Rule 5 of the General Rules for the Interpretation of the Harmonized System), **must not** be taken into account in determining whether all of the non-originating materials used in the production of the goods have met the applicable CTC requirement for the goods.

Treatment of accessories, spare parts, and tools under a CTC requirement

If goods are subject to a CTC requirement (as set out in Schedule 8) any accessories, spare parts, tools, and instructional or other information materials presented with the goods must be regarded as part of those goods and **must not** be taken into account when determining whether or not the applicable CTC has taken place, if:

- (a) the accessories, spare parts, tools, and instructional or other information materials presented with the goods are not invoiced separately from the goods; and
- (b) the quantities and values of the accessories, spare parts, tools, and instructional or other information materials presented with the goods are customary for those goods.

An exception to the CTC rule – the de minimis provision

Where goods do not satisfy the CTC requirements in a product specific rule, the goods can still be treated as originating if they meet all applicable requirements under regulations 51ZM to 51ZX and Schedule 8, and:

- (a) for goods other than goods classified within Chapters 50 to 63 of the HS, the value of all non-originating materials used in their production that did not undergo the required CTC does not exceed 10 percent of the FOB value of the goods; or
- (b) for goods classified within Chapters 50 to 63 of the HS:
 - (i) the weight of all non-originating materials used in their production that did not undergo the required CTC does not exceed 10 percent of the total weight of the goods, or
 - (ii) the value of all non-originating materials used in their production that did not undergo the required CTC does not exceed 10 percent of the free on board (FOB) value of the goods.

(b) Regional value content

For some goods, the product specific rule in Schedule 8 requires or permits the use of a regional value content (RVC) rule linked to the FOB value of the finished goods.

How the regional value content rule operates

In any case where Schedule 8 or regulation 51ZM to 51ZX refers to the use of an RVC rule, the value of that content is to be calculated using **either** of the following formulas:

(i) Direct formula (also called the build-up formula)

$$RVC = \frac{\text{AANZFTA material cost + labour cost} + \text{overhead cost + profit + other costs}}{\text{FOB}} \times 100\%$$

where:

FOB means the free on board value (determined in accordance with Schedule 2 to the Customs and Excise Act 1996) of imported goods, including the cost of transport to the port or site of final shipment abroad.

AANZFTA material cost is the value of originating materials, parts, or produce that are acquired or self-produced by the producer and incorporated into the goods or consumed in their production.

Labour cost includes wages, remuneration, and other employee benefits.

Overhead cost is the total overhead expense.

Other costs are the costs incurred in placing the goods in the ship or other means of transport for export, including domestic transport costs, storage and warehousing, port handling, brokerage fees, and service charges.

Minimal operations and processes under an RVC requirement

Where a claim for origin is based solely on an RVC requirement certain operations and processes (as specified under regulation 51ZR) are considered to be minimal and may not be taken into account in determining whether the goods are originating.

Treatment of packing materials and containers under an RVC requirement

If goods are subject to an RVC requirement, the value of the packing materials and containers in which the goods are packaged for retail sale **must** be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the goods.

Treatment of accessories, spare parts, and tools under an RVC requirement

If goods are subject to an RVC requirement, the value of the accessories, spare parts, tools, and instructional or other information materials presented

(c) Specified process rules

A so-called specific manufacturing or processing operation rule, such as a chemical reaction rule, can be an alternative to a CTC or RVC rule. Examples of specified process rules can be found in chemical and textile chapters.

Goods entirely produced

Goods are also treated as originating goods if they are produced in a party exclusively from originating materials from one or more of the parties.

Other important elements of the rules of origin

(a) Accumulation

Originating goods used in another party as a material in the production of other goods **must** be regarded as originating in the party where the working or processing of the finished goods took place.

Note:

This provision encourages greater levels of integration amongst the AANZFTA Agreement parties.

(b) Treatment of packing materials and containers for transportation

Packing materials and containers for transportation **must not** be taken into account in determining the origin of goods.

Can goods be transported through a non-party?

Goods that would otherwise qualify under the rules of origin provisions will retain their originating status **only if** the goods have been transported to New Zealand without passing through any non-party to the AANZFTA Agreement.

Alternatively, if goods have transited through a non-party, they will retain their originating status **only if** the goods have not undergone any subsequent production or any other operation outside the territory of a party other than unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to New Zealand; and the goods have not entered the commerce of a non-party.

(ii) Indirect formula (also called the build-down formula)

$$RVC = \frac{FOB - \text{value of non-originating materials}}{FOB} \times 100\%$$

where:

value of non-originating materials is the CIF value at the time of importation or the earliest ascertained price paid or payable for all non-originating materials, parts, or produce acquired by the producer in the production of the goods (including materials of undetermined origin but not materials that are self-produced by the producer and incorporated into the goods or consumed in their production).

CIF value means the value (determined in accordance with Schedule 2 of the Customs and Excise Act 1996) of imported goods, and includes the cost of insurance and freight up to the port or place of entry into the country of importation.

with the goods **must** be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the goods.

Note:

This provision for accessories, spare parts, tools, and instructional or other information materials presented with the goods does not apply if the accessories, spare parts, tools, and instructional or other information materials have been added solely for the purpose of artificially raising the RVC of those goods if it is proven subsequently that they are not sold with the goods.

WHAT ARE THE ADMINISTRATION AND ENFORCEMENT REQUIREMENTS?

(a) Documentary evidence of origin

A certificate of origin is not required for imports of goods into New Zealand from a party to the AANZFTA Agreement.

An importer in New Zealand may claim the tariff preference on the basis of:

- a certificate of origin issued by an issuing authority/body in a party to the AANZFTA Agreement; or
- a declaration (on the invoice or any other commercial document) provided by the exporter in a party to the AANZFTA Agreement.

However, if requested by New Zealand Customs, an importer who claims a preferential tariff rate for goods imported into New Zealand from a party to the AANZFTA Agreement must be able to provide sufficient information to substantiate such a claim.

A claim for AANZFTA preference should not be made for goods if the necessary documentation and information to substantiate such a claim is not held (see sections 66 and 67 of the Customs and Excise Act 1996).

Note:

See the separate fact sheet for the documentary requirements for exporting goods from New Zealand to another party to the AANZFTA Agreement.

(b) Records

New Zealand importers are required to retain origin documents for a period of seven years.

(c) Verification of origin

The Comptroller of Customs may decide to verify any claim for AANZFTA tariff preference by taking any one or more of the following steps:

- requesting information from the importer in New Zealand
- instituting reactive checking measures to establish the validity of the Certificate of Origin or other documentary evidence of origin

- issuing written requests to the issuing authority/body of the exporting party for information from the exporter or producer.

DO OTHER TAXES, LEVIES, OR CHARGES APPLY?

Some taxes and levies will remain irrespective of preferential tariff treatment. For example:

- goods and services tax (GST)
- excise equivalent duties
- anti-dumping or countervailing measures
- entry and cargo transaction fees or other cost recoveries.

A PARTY TO THE AANZFTA AGREEMENT QUALIFYING UNDER MULTIPLE TRADE AGREEMENTS

Some parties to the AANZFTA Agreement already benefit from preferential tariff treatment applied under certain other trade agreements that New Zealand has entered into. For example, in addition to the AANZFTA Agreement, New Zealand has trade agreements with the following AANZFTA member countries:

- Australia (Australia-New Zealand Closer Economic Relations Trade Agreement)
- Brunei Darussalam and Singapore (Trans-Pacific Strategic Economic Partnership Agreement)
- Singapore (Agreement between New Zealand and Singapore on a Closer Economic Partnership)
- Thailand (New Zealand-Thailand Closer Economic Partnership Agreement).

Imports into New Zealand from an ASEAN member country that is also declared under the Tariff Act 1988 as a Less Developed Country (LDC) or a Least Developed Country (LLDC) can claim the rate of tariff duty under those arrangements, if applicable.

In all cases, importers will have the option to choose the trade agreement/arrangement that is most suitable to their specific circumstances.

HOW DO I OBTAIN FURTHER INFORMATION?

For any rules of origin queries or questions, contact:

Valuation and Origin section
New Zealand Customs Service
PO Box 29
Shortland Street
Auckland 1140

Telephone: +64 9 359 6655
Facsimile: +64 9 359 6586

Email: v&o@customs.govt.nz

FOR FURTHER INFORMATION

Contact your nearest office of the New Zealand Customs Service, visit the Customs website www.customs.govt.nz, or call Customs on 0800 428 786 (0800 4 CUSTOMS).



