

INSTRUCTIONS AND GUIDELINES

ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AGREEMENT

FILE NO: 2009/034399-01

*ASEAN-AUSTRALIA-NEW ZEALAND
FREE TRADE AGREEMENT
December 2009*

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-1-

THIS INSTRUCTION AND GUIDELINE REFERS TO:

PRACTICE STATEMENT No: 2009/13

PUBLISHED DATE: 8 DECEMBER 2009

AVAILABILITY: Internal and External

SUBJECT: Origin issues as they relate to the ASEAN-Australia-New Zealand Free Trade Agreement.

PURPOSE: To specify the rules that need to be satisfied under the ASEAN-Australia-New Zealand Free Trade Agreement which are used to determine if a good is an AANZ originating good and therefore eligible for the free or preferential duty rate under the Agreement.

OWNER: National Director Trade & Compliance

CATEGORY: Operational Procedures

CONTACT:

Mail: Director Valuation and Origin
Trade Services Branch
Australian Customs and Border Protection Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2600

Phone: (02) 6275 6556
Fax: (02) 6275 6477
Email: origin@customs.gov.au

The electronic version published on the intranet is the current Instruction and Guideline.

SUMMARY OF MAIN POINTS

This Instruction and Guideline outlines all the rules of origin under the ASEAN-Australia-New Zealand Free Trade Agreement.

INTRODUCTION

This Instruction and Guideline deals with origin issues as they relate to the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA or the Agreement). This agreement enters into force on 1 January 2010.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-2-

Table of Contents

Division 1:	Introduction	4
Division 2:	Legislation	6
Division 3:	Overview of the AANZFTA	8
Division 4:	Principles of rules of origin	9
Division 5:	Wholly obtained goods of a Party	13
Division 6:	Goods produced in a Party from originating materials	16
Division 7:	Goods produced in a Party from non-originating materials, or a combination of non-originating and originating materials	20
Division 8:	Other AANZ originating goods, provisions and operations	38
Division 9:	Origin advice rulings	46
Division 10:	Identical and Interchangeable Materials	53
Division 11:	Certificate of origin	55
Appendix 1:	Example - Certificate of origin	59

Division 1: Introduction

1. Coverage of Instruction and Guideline

- (1) This Instruction and Guideline deals only with origin issues as they relate to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Agreement or AANZFTA).

2. Abbreviations

The following abbreviations are used throughout this Instruction and Guideline:

Agreement	the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area
AANZFTA	the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area
AANZ Originating good	a good imported from a Party that is originating because it meets the requirements of the Rules of Origin Chapter of AANZFTA
ASEAN	the Association of Southeast Asian Nations
Association of Southeast Asian Nations	the territories of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Socialist Republic of Viet Nam
Member State	a Member State of the Association of Southeast Asian Nations
AANZFTA Regulations	<i>Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009</i>
CTC	Change in Tariff Classification
Customs Act	<i>Customs Act 1901</i>
HS	the Harmonized Commodity Description and Coding Systems
Party	any ASEAN Member State, Australia or New Zealand
ROO	Rule(s) of Origin
RVC	Regional Value Content

3. Implementation

The AANZFTA will initially enter into force on 1 January 2010. Access to the Agreement from that date will only be available to those Parties that have completed their domestic implementation requirements. As Parties complete these requirements they will become eligible to use the Agreement.

Parties that have not completed their domestic requirements will be treated as 'non-parties' until their requirements have been completed. This will mean that goods produced in these countries will not be eligible for preferential rates duty and will be treated as non-originating for cumulation purposes.

Reference should be made to the Customs and Border Protection website at www.customs.gov.au/site/page6076.asp to ascertain which Parties have completed their domestic requirements and are eligible to access tariff benefits available under the Agreement.

Division 2: Legislation

1. General outline of legislation

The preferential tariff requirements of AANZFTA are contained within the following documents:

- **Combined Australian Customs Tariff Nomenclature and Statistical Classification “Introduction”**
 - pages 1 and 2 (Application of Rates of Duty)
- **Customs Tariff Act 1995 (the Customs Tariff)**
 - Main amendments
 - Schedule 8
- **Customs Tariff Regulations 2004 (the Customs Tariff Regulations)**
 - These Regulations prescribe certain goods for the purpose of Schedule 8 to the Customs Tariff Act 1995 (AANZ originating goods).
- **Customs Act 1901**
 - Division 1G of Part VIII (sections 153ZKA to 153ZKJ) – AANZ originating Goods
- **Customs Regulations 1926 (the Customs Regulations)**
 - Regulation 126D
- **Customs (ASEAN-Australia-New Zealand Rules Of Origin) Regulations 2009**

2. Operation of the legislation

Chapter 3 of AANZFTA (Rules of Origin) has been implemented by the following legislation:

- **Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009 (Act No. 97 of 2009):**
 - Part 1 ASEAN-Australia-New Zealand (AANZ) originating goods (incorporated into the Customs Act) - sections 153ZKA-153ZKJ
 - Part 2 Application provisions
- **Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009 (Act No. 98 of 2009):**
 - Schedule 1 - Main amendments
 - Schedule 2- Contingent amendments relating to the Carbon Pollution Reduction Scheme
 - Schedule 8
- **Customs Amendment Regulations 2009 (No. 6) (incorporated into the Customs Regulations)**

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-6-

- ***Customs Tariff Amendment Regulations 2009 (No. 1) (incorporated into the Customs Tariff Regulations 2004)***
- ***Customs (ASEAN-Australia-New Zealand Rules Of Origin) Regulations 2009***

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-7-

Division 3: Overview of the AANZFTA

1. Geographical area covered by the Agreement

- (1) The Agreement covers the ten Member States of ASEAN, Australia and New Zealand.

2. Overview of goods covered by AANZFTA

- (1) All goods imported into Australia from a Party for which the Agreement is in force are covered by the AANZFTA. The rules of origin provisions and preferential rates of duty applicable to AANZ originating goods for such Parties to the Agreement will initially commence on 1 January 2010.
- (2) Section 16 of the Customs Tariff provides that the rates of customs duty for AANZ originating goods are free unless the classification of the particular goods is specified in the third column of the Tariff Classification in Schedule 8.

Division 4: Principles of rules of origin

1. Explanation of concept of AANZ originating goods

- (1) ROO are necessary to provide objective criteria for determining whether or not imported goods are eligible for the preferential rates of duty available under the AANZFTA.
- (2) The AANZFTA grants benefits to all goods that “originate” in a Party to the Agreement. “Originating” is a term used to describe goods that meet the requirements of Article 2 of Chapter 3 of the Agreement. Article 2 establishes which goods are originating goods and precludes goods from other countries from obtaining those benefits by merely transiting through a Party.
- (3) The ROO define the methods by which it can be ascertained that a particular good has undergone sufficient work or processing, or has undergone substantial transformation, to obtain the benefits under the AANZFTA.
- (4) Originating goods are those that satisfy the requirements of:
 - Division 1G of Part VIII of the Customs Act, as inserted by Part 1 of Schedule 1 of the *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009*; and
 - the AANZFTA Regulations.
- (5) The types of ROO to be used when determining if a good is an originating good are:
 - wholly obtained in an ASEAN Member State or in New Zealand;
 - produced in an ASEAN Member State or in New Zealand, exclusively from originating materials; and
 - goods produced from non-originating materials, or a combination of non-originating and originating materials (these ROO are the product specific rules (PSR) and the “general” rule).
- (6) Non-originating goods or materials are those which originate from outside a Party, or which are produced in a Party but, because of a high level of offshore material used to produce them, do not meet the ROO.

2. Harmonized system of tariff classification

- (1) Product specific ROO are based on tariff classifications under the internationally accepted HS. The HS organises products according to the degree of production, and assigns them numbers known as tariff classifications. The HS is arranged into 97 chapters covering all products. Each chapter is divided into headings. Headings can be divided into subheadings, and subheadings are divided into tariff classifications.

Example: Harmonized System of Tariff Classification

Chapter 62. Articles of apparel and clothing accessories, not knitted or crocheted
Heading 6209..... Babies' garments and clothing accessories
Subheading 6209.20..... Of cotton
Tariff classification 6209.20.20..... Clothing accessories

- (2) As shown above, chapter means the two-digit chapter number. Headings are identified with a four-digit number, subheadings have a six-digit number, and tariff classifications have an eight-digit number. Subheadings give a more specific description than headings, and tariff classifications give a more specific description than subheadings.
- (3) Under the HS, the chapter, heading, and subheading numbers for any good are identical in all countries using the HS. However, the last two digits of the tariff classification are not harmonized – each trading nation individually assigns them.
- (4) The PSR are organised using the HS classification numbers. Therefore, importers determine the HS classification of the imported good and use that classification to find the specific ROO in the applicable Annex to the Agreement. If the good meets the requirements of the ROO (and all other relevant requirements), it is an originating good.

3. Change in Tariff Classification

- (1) When a ROO is based on a CTC, each of the non-originating materials used in the production of the good must undergo the applicable change as a result of production occurring entirely in an ASEAN Member State or in New Zealand, or in an ASEAN Member State and New Zealand, or in an ASEAN Member State and Australia.
- (2) This means that the non-originating materials are classified to one tariff classification prior to processing and classified to another upon completion of processing. This approach ensures that sufficient transformation has occurred within the parties to the FTA to justify a claim that the good is a legitimate product of a Party to the Agreement. The exact nature of the CTC required for a specific good can be found by referring to the PSR.

Example: Product specific rule requiring a CTC

Newsprint (HS 4801) is produced in Vietnam from mechanical wood pulp (4701) imported from China.

The product specific rule for 4801 is:

A change to heading 4801 from any other heading; or

No change in tariff classification is required provided that there is a regional value content of 40 per cent.

In the production of newsprint in Vietnam from wood pulp imported from China, the CTC is from 4701 to 4801.

The product specific rule for 4801 requires a CTC from any other heading. As 4701 is a different heading to 4801, the good satisfies the CTC requirement and is therefore an AANZ originating good.

4. Regional Value Content

- (1) For some goods, the CTC ROO is supported by a local content threshold component called the RVC requirement. The purpose of the RVC is to ensure that a good is produced with a specified proportion of the final value of the good coming from a Party.
- (2) The RVC requirement can take the form of either an additional requirement to the specified CTC, or can provide an optional test, allowing the product to meet a lesser degree of tariff shift if the threshold is reached. In some instances an RVC requirement is the only requirement and must be met in order to claim preferential rates of duty available under the Agreement.
- (3) Article 5.1 of Chapter 3 of the Agreement provides the formulae to determine RVC.
- (4) Section 3 in Division 7 of this Instruction and Guideline provides a full explanation of RVC.

5. Types of originating goods under the AANZFTA

- (1) The types of AANZ originating goods under the Agreement are dealt with in Division 5 to 9 of this Instruction and Guideline as outlined below:
 - wholly obtained goods of a Party - (**Division 5**);
 - goods produced in a Party from originating materials - (**Division 6**);
 - goods produced in a Party from non-originating materials, or a combination of non-originating and originating materials - (**Division 7**);
 - and
 - other AANZ originating goods - (**Division 8**).

- (2) In deciding whether goods are AANZ originating goods the following concepts which are explained in this Instruction and Guideline must also be considered:
- CTC - **Division 7, Section 2;**
 - Cumulation - **Division 7, Section 2;**
 - *De minimis* rule - **Division 7, Section 2;**
 - RVC - **Division 7, Section 3;**
 - Goods that are chemicals of chapter 28, 29 and 32 - **Division 7, Section 4;**
 - Packaging materials and containers - **Division 8, Section 1;**
 - Accessories, spare parts, tools or instructional or other information resources - **Division 8, Section 2;**
 - Non-qualifying operations or processes – **Division 8, Section 3;**
 - Consignment provisions - **Division 8, Section 4;**
 - Identical and interchangeable materials (Fungible goods and materials) - **Division 10;**
 - Certificate of origin – **Division 11.**

6. Origin Advice Rulings

- (1) Written advice on any origin matter will be provided by Customs and Border Protection in the form of an Origin Advice Ruling upon request. The Ruling exists to advise Australian importers, producers of a Party and exporters of a Party on specific issues relating to the origin of their goods for the purposes of determining eligibility for preferential duty rates for goods imported into Australia (**Division 9**).

Division 5: Wholly obtained goods of a Party

1. Statutory provisions

- (1) Section 153ZKC of the Customs Act contains provisions relating to goods wholly obtained in a Party:

153ZKC Wholly obtained goods of a Party

- (1) Goods are **AANZ originating goods** if:
- (a) they are wholly obtained goods of a Party; and
 - (b) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (2) Goods are **wholly obtained goods of a Party** if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, harvested, picked or gathered in a Party (including fruit, flowers, vegetables, trees, seaweed, fungi and live plants); or
 - (b) live animals born and raised in a Party; or
 - (c) goods obtained from live animals in a Party; or
 - (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or
 - (e) minerals or other naturally occurring substances extracted or taken in a Party; or
 - (f) fish, shellfish or other marine goods taken from the high seas, in accordance with international law, by ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
 - (g) goods produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
 - (h) goods taken by a Party, or a person of a Party, from the seabed, or beneath the seabed, outside:
 - (i) the exclusive economic zone of that Party; and
 - (ii) the continental shelf of that Party; and
 - (iii) an area over which a third party exercises jurisdiction;and taken under exploitation rights granted in accordance with international law; or

- (i) waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials; or
 - (j) used goods that are collected in a Party and that are fit only for the recovery of raw materials; or
 - (k) goods produced or obtained entirely in a Party exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.
- (2) In determining whether goods are wholly obtained or produced entirely in a Party the following definition in section 153ZKB will also need to be considered:

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

2. Policy and practice – wholly obtained goods

- (1) Section 153ZKC determines that goods are originating goods of a Party if they are wholly obtained in a Party because the goods fall into one of the following categories:
- plants or goods obtained from plants that are grown, harvested, picked or gathered in a Party, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants (for example, rice grown in Viet Nam)
 - live animals born and raised in a Party; or
 - goods obtained from live animals in a Party, or
 - goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party; or
 - minerals or other naturally occurring substances extracted or taken in a Party (for example, tin mined in Malaysia); or
 - fish, shellfish, or other marine life taken from the high seas, in accordance with international law, by ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party (for example tuna caught by a Thailand registered fishing vessel or prawns caught by a Philippines registered vessel); or
 - goods produced from goods referred to in paragraph 153ZKC(2)(f) on board factory ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party (for example, fish that are filleted and frozen on board a vessel flying the flag of New Zealand); or
 - goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed, outside:
 - the exclusive economic zone of that Party; and
 - the continental shelf of that Party; and
 - an area over which a third party exercises jurisdiction;and taken under exploitation rights granted in accordance with international law; or

- goods (see example #1 in Policy and Practice below) that have been derived from production in a Party and that is fit only for the recovery or raw materials; or
- used goods that are derived from consumption in a Party and that are fit only for the recovery of raw materials (see example #2 in Policy and Practice below); or
- goods produced or obtained entirely in a Party exclusively from goods referred to in paragraphs 153ZKC(2)(a) to 153ZKC(2)(k).

3. Policy and practice – goods derived from production or consumption in a Party

- (1) There are two categories of goods that are derived from production or recovery operations which qualify as “goods wholly obtained” under section 153ZKC.
- (2) The first category is goods that result from production operations in a Party and that are fit only for the recovery of raw materials.

Example #1: Goods derived from production operations in a Party

Galvanised pipe imported into Cambodia from China is used in the production of elbows and flanges.

The off-cuts and metal filings resulting from such a production process in Cambodia are waste and scrap that is fit only for the recovery of raw materials. Therefore, under 153ZKC(2)(i), the off-cuts and filings are considered to be “wholly obtained” goods and thus are Cambodian originating goods.

- (3) The second category is goods that are obtained during collection or recovery operations in a Party following consumption, such goods being only fit for the recovery of raw materials

Example #2: Goods obtained from collection or recovery operations in a Party

Insulated copper wire is collected or recovered in Singapore from scrap telephone or electrical cables. This scrap wire is, vide 153ZKC(2)(j), considered to be Singapore originating regardless of where the cable was produced.

Division 6: Goods produced in a Party from originating materials

1. Statutory provisions

- (1) Section 153ZKD of the Customs Act contains provisions relating to goods produced in a Party from originating materials:

153ZKD Goods produced from originating materials

Goods are **AANZ originating goods** if:

- (a) they are produced entirely in a Party from originating materials only; and
- (b) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

- (2) In determining whether goods are produced entirely in a Party the following definitions in section 153ZKB will also need to be considered:

AANZ originating goods means goods that, under this Division, are AANZ originating goods.

Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area done at Thailand on 27 February 2009, as amended from time to time.

Note: In 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

aquaculture has the meaning given by Article 1 of Chapter 3 of the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Rule 7 of the Annex to Chapter 3 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983 [1988] ATS 30, as in force from time to time.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30 ([1988] ATS 30). In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

exclusive economic zone has the same meaning as in the *Seas and Submerged Lands Act 1973*.

Harmonized System means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

in a Party includes:

- (a) the territorial sea of a Party; and
- (b) the exclusive economic zone of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law; and
- (c) the continental shelf of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law.

indirect materials means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods:

including:

- (c) fuel (within its ordinary meaning); and
- (d) tools, dies and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

Interpretation Rules means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

originating materials means:

- (a) AANZ originating goods that are used or consumed in the production of other goods; or
- (b) indirect materials.

Party means a Party (within the meaning of the Agreement) for which the Agreement has entered into force.

Note: See also subsection (7).

produce means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble.

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

2. Policy and practice - general

- (1) If Australian originating materials are imported into Indonesia and used in the production of a good also incorporating Indonesian originating materials, the good produced is a AANZ originating good in accordance with paragraph (a) of the definition of “originating materials” found on page 17.

Example: Goods produced in Indonesia using a combination of Australian and Indonesian originating materials

An Indonesian producer imports tanned sheep leather (classified to 4105.30.00) from Australia. This leather is an Australian originating material.

The leather is used in Indonesia to produce handbags and wallets using a number of Indonesian originating materials (metal clasps, plastic zippers, cotton thread, etc).

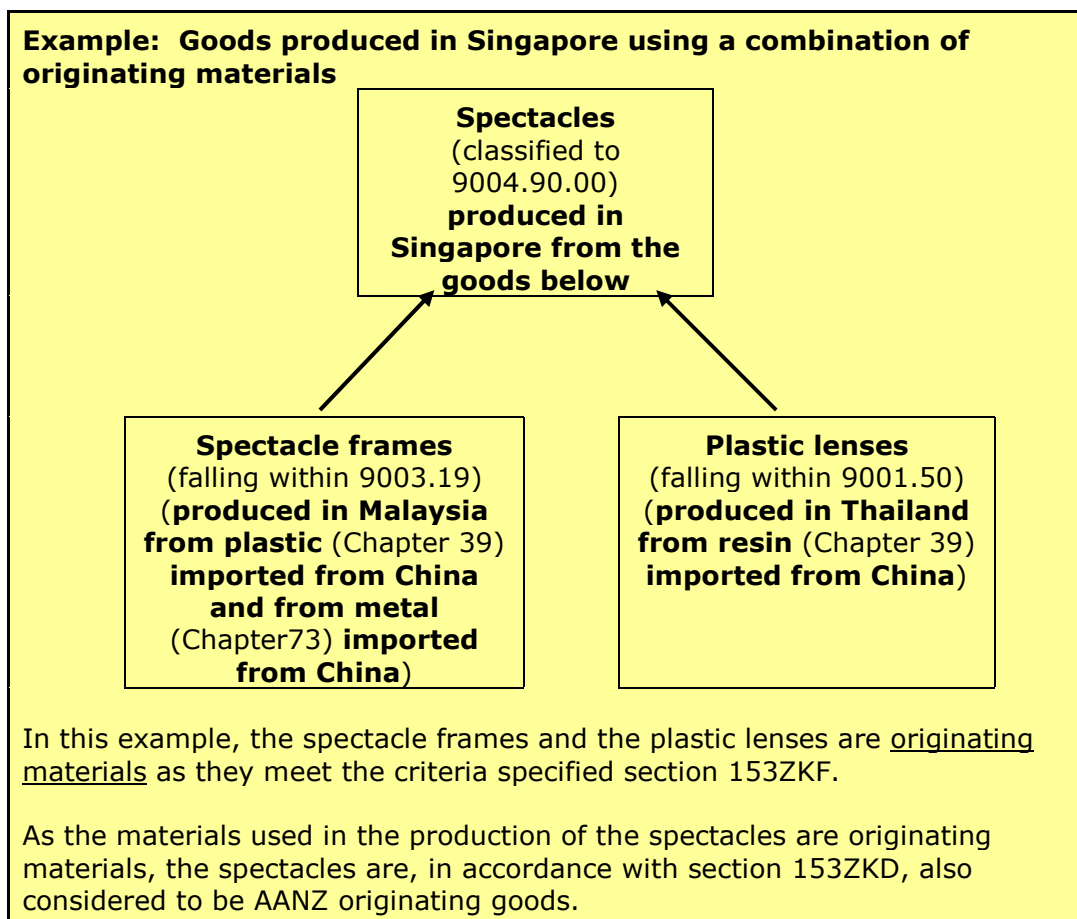
The finished handbags and wallets (classified within heading 4202) are Indonesian originating goods because they are produced from originating materials.

3. Policy and practice – AANZ originating materials

- (1) Section 153ZKD replicates the effect of paragraph 153ZKC(2)(k) to the extent that if a good is produced entirely in a Party from a good referred to in paragraph 153ZKC(2)(a) to paragraph 153ZKC(2)(j), inclusive (in other words, from wholly obtained goods of a Party), then that good is an originating good of the Party where the production was performed in accordance with paragraph (a) of section 153ZKD.

4. Policy and practice - goods produced in a Party using a combination of originating materials

- (1) Section 153ZKD is broader than 153ZKC because, in addition to the above production scenarios, it also allows the production of goods to occur from materials that are originating materials from any Party. This will include goods that are eligible under new sections 153ZKE and 153ZKF of the Act.



5. Policy and practice - indirect materials

- (1) Indirect materials are also originating materials under section 153ZKB which is reproduced on page 17.
- (2) All "indirect materials" which fall within paragraphs (a) and (b) of the definition of that term, used in the production originating materials, are considered to be originating materials of a Party regardless of the origin of those indirect materials.
- (3) The list of indirect materials given in paragraphs (c) to (h) in the definition is not to be construed as an exhaustive list of such materials.

Example: Indirect materials

Tools and safety equipment, produced in China, are used by workers in Malaysia during the operation of equipment used to produce the spectacles in the above example. Such tools and safety equipment meet the terms of paragraph (b) of the definition of "indirect materials" and are thereby considered to be originating materials by virtue of paragraph (d) and (g) of the definition of "originating materials".

The use of such indirect materials in the production of goods in Malaysia is permitted by virtue of paragraphs (d) and (g) of the definition of "originating materials" and such goods are deemed to be Malaysian originating materials.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-19-

Division 7: Goods produced from non-originating materials only, or a combination of non-originating and originating materials

Section 1: Statutory Provisions and Overview

1. Statutory provisions

- (1) Subdivision D of Division 1G sets out the rules in relation to goods that are produced from non-originating materials only, or from non-originating materials and originating materials.

This Subdivision comprises two parts, namely:

- section 153ZKE – Goods produced from non-originating materials and classified in the tariff table, and
- section 153ZKF – Goods produced from non-originating materials and not classified in the tariff table.

1.1 Section 153ZKE

- (1) Section 153ZKE of the Customs Act contains provisions relating to goods produced in a Party from non-originating materials, or from a combination of non-originating and originating materials, where the classification of the goods is found in the tariff table.

153ZKE Goods produced from non-originating materials and classified in the tariff table

- (1) Goods are **AANZ originating goods** if:
- (a) they are classified to a heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
 - (b) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
 - (c) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

Change in tariff classification

- (2) The regulations may specify that each non-originating material used or consumed in the production of the goods is required to satisfy a specified change in tariff classification.
- (3) The regulations may also specify when a non-originating material used or consumed in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; and
 - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;

then the requirement referred to in subsection (2) is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.

- (5) If:
- (a) the requirement referred to in subsection (2) applies in relation to the goods; and
 - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
 - (c) one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification;

then the requirement referred to in subsection (2) is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

Regional value content

- (6) The regulations may specify that the goods are required to have a regional value content of at least a specified percentage.
- (7) If:
- (a) the goods are required to have a regional value content of at least a specified percentage; and
 - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
 - (c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
 - (d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

- (8) For the purposes of subsection (7), disregard section 153ZKI in working out whether the accessories, spare parts, tools or instructional or other information material are originating materials or non-originating materials.
- (9) However, subsection (7) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.

No limit on regulations

- (10) Subsections (2) and (6) do not limit paragraph (1)(b).
- (2) In determining whether goods are produced from non-originating materials only or from a combination of non-originating and originating materials, the following definitions in section 153ZKB will also need to be considered:

Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area done in Thailand on 27 February 2009, as amended from time to time.

Note: In 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

customs value of goods has the meaning given by section 159.

indirect materials means:

- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in their goods; or
- (b) goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including

- (c) fuel (with its ordinary meaning); and
- (d) tools, dyes and moulds; and
- (e) spare parts and materials; and
- (f) lubricants, greases, compounding materials and other similar goods; and
- (g) gloves, glasses, footwear, clothing, safety equipment and supplies; and
- (h) catalysts and solvents.

non-originating materials means goods that are not originating materials.

originating materials means:

- (a) AANZ originating goods that are used or consumed in the production of other goods; or
- (b) indirect materials.

(3) Also relevant is Part 5, "Determination of Value", of the AANZ Regulations.

(4) Value is further defined in subsection 153ZKB(3), which states:

Value of goods

- (3) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

(5) Also relevant is Part 4, "Regional Value Content requirement", of the AANZ Regulations.

(6) Regional value content is defined in subsection 153ZKB(2), which states:

Regional value content of goods

- (2) The **regional value content** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

1.2 Section 153ZKF

(1) Section 153ZKFE of the Customs Act contains provisions relating to goods produced from non-originating materials, or from a combination of non-originating and originating materials, where the classification of the goods are not found in the tariff table.

153ZKF Goods produced from non-originating materials and not classified in the tariff table

Regional value content of at least 40%

(1) Goods are **AANZ originating goods** if:

- (a) they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009; and
- (b) the final process in their production was performed in a Party; and
- (c) the goods have a regional value content of at least 40%; and
- (d) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

- (2) For the purposes of subsection (1), if:
- (a) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
 - (b) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
 - (c) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

- (3) For the purposes of subsection (2), disregard section 153ZKI in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.
- (4) However, subsection (2) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.

Change in tariff classification at heading level

- (5) Goods are **AANZ originating goods** if:
- (a) they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009; and
 - (b) they are produced entirely in one or more Parties from non-originating materials only or from non-originating materials and originating materials; and
 - (c) each non-originating material used or consumed in the production of the goods undergoes a change in tariff classification that is a change to a heading of the Harmonized System from any other heading of the Harmonized System; and
 - (d) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

- (6) For the purposes of paragraph (5)(c), if one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification referred to in that paragraph, then that paragraph is taken to be satisfied if the total value of those non-originating materials does not exceed 10% of the customs value of the goods.
- (7) For the purposes of paragraph (5)(c), if:
- (a) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
 - (b) one or more of the non-originating materials used or consumed in the production of the goods do not satisfy the change in tariff classification referred to in that paragraph;
- then that paragraph is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

2. Policy and practice - general

2.1 Section 153ZKE

- (1) Section 153ZKE of the Customs Act sets out the provisions relating to goods produced in a Party from non-originating materials, or from a combination of non-originating and originating materials, where the classification of the goods is found in the tariff table..
- (2) Goods are AANZ originating goods if all the requirements of subsection 153ZKE(1) have been met. The requirements of this subsection, simply put, are:
- that the tariff classification of the goods as entered on a customs declaration corresponds with a heading or subheading in Column 1 of the Schedule 1 table; and
 - each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
 - the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (3) The Schedule 1 table is the table in Part 2 of Schedule 1 to the AANZFTA Regulations. Schedule 1 incorporates the product specific rules. The product specific rules specify the CTC requirement, RVC and any other requirements for the purpose of determining whether a good is an AANZ originating good. Column 1 of the Schedule 1 table rules sets out the Heading reference of goods in the HS. Column 2 lists tariff classifications at the subheading level, Column 3 sets out the product description for the good and Column 3 sets out the product specific rule relevant to the tariff classification in Column 2.
- (4) Some examples to illustrate the different types of rules appearing in the Schedule 1 table are:

- **PSR = wholly obtained**

The rule may be at the heading level or at the subheading level and it may specify a change to a chapter, heading or subheading.

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	0101.10	Live horses, asses, mules and hinnies: - Pure-bred breeding animals	Wholly obtained.

- **PSR = change of tariff classification only**

The rule will be at the subheading level and it may specify a change to a chapter, heading or subheading.

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	0208.10	Other meat and edible meat offal, fresh, chilled or frozen: - Of rabbits or hares	A change to subheading 0208.10 from any other chapter.

- **PSR = change of tariff classification except from certain classifications**

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	5109.10	Yarn of wool or fine animal hair, put up for retail sale: - Containing 85% or more by weight of wool or of fine animal hair	A change to subheading 5109.10 from any other heading, except from heading 5106 through 5108.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-26-

- **PSR = change of tariff classification provided certain requirements have been met**

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	6305.20	Sacks and bags, of a kind used for the packing of goods: - Of cotton	A change to subheading 6305.20 from any other chapter, provided that where the starting material is fabric, the fabric is raw or unbleached fabric and fully finished in the territory of one or more of the parties.

- **PSR = change of tariff classification and a RVC requirement**

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	8708.29	Parts and accessories of the motor vehicles of headings 8701 to 8705: - Other parts and accessories of bodies (including cabs): other	A change to subheading 8708.29 from any other subheading provided that there is a regional value content of not less than 40 per cent.

- **PSR = RVC requirements only**

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	8708.40	Parts and accessories of the motor vehicles of headings 8701 to 8705: - Gear boxes and parts thereof	No change in tariff classification is required provided that there is a regional value content of not less than 40 per cent.

- **PSR = provision that certain requirements have been met**

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	8103.30	Tantalum and articles thereof, including waste and scrap: - Waste and scrap	Origin shall be conferred to a good of this subheading that is derived from production or consumption in a Party.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-27-

CHOICE OF RULE

- **PSR = change of tariff classification rule or a RVC only**

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	7801.10	Unwrought lead: - Refined lead	A change to subheading 7801.10 from any other chapter; or No change in tariff classification is required provided that there is a regional value content of not less than 40 per cent.

- **PSR = change of tariff classification rule or a RVC only or CTC plus RVC**

Column 1	Column 2	Column 3	Column 4
Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
	8539.10	Electric filament or discharge lamps, including sealed beam lamp unite and ultra-violet or infra-red lamps; arc-lamps: - Sealed beam lamp units	A change to subheading 8539.10 from any other heading; or A change to subheading 8539.10 from any other subheading provided that there is a regional value content of not less than 35 per cent; or No change in tariff classification is required provided that there is a regional value content of not less than 40 per cent.

2.2. The requirements

- (1) As stated in paragraph 2.3 of this Division, Column 4 of the Schedule 1 table sets out the PSR relevant to the tariff classification in Column 2.
- (2) The PSR will specify one or more requirements and each requirement specified must be satisfied for the good to be an AANZ originating good. If the ROO provides a choice of rules, the good has to meet one of the optional product specific rules available to be originating.
- (3) If any requirement is not satisfied, the good is a non-originating good.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-28-

- (4) Provided the criteria specified in paragraphs 153ZKE(1)(a), 153ZKE(1)(b) and 153ZKE(1)(c) are satisfied, the good will be an AANZ originating good and be afforded appropriate tariff treatment (provided all the other relevant requirements of Division 1G of the Customs Act and the AANZFTA Regulations are satisfied).

2.3 Section 153ZKF

- (1) Section 153ZKF of the Customs Act sets out the provisions relating to goods produced in a Party from non-originating materials, or from a combination of non-originating and originating materials, where the classification of the goods is not found in the tariff table.
- (2) Section 153ZKF provides a choice of two methods of conferring origin. That is, either a RVC of 40% (ss 153ZKF(1)) or a CTC which is a change of heading (ss 153ZKF(5)).
- (3) Goods are AANZ originating goods if all the requirements of subsection 153ZKF(1) have been met. The requirements of this subsection, simply put, are:
- that the tariff classification of the goods is not in the PSR schedule; and
 - the final process in their production was performed in a Party; and
 - the goods have a regional value content of at least 40%; and
 - the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (4) Goods are AANZ originating goods if all the requirements of subsection 153ZKF(5) have been met. The requirements of this subsection, simply put, are:
- that the tariff classification of the goods is not in the PSR schedule; and
 - they are produced entirely in one or more Parties from non-originating materials only or from non-originating materials and originating materials; and
 - each non-originating material used or consumed in the production of the goods undergoes a CTC that is a change in heading from any other heading; and
 - the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

Section 2: Change in Tariff Classification Requirement (CTC)

1. CTC requirement

- (1) The CTC requirement is used in two subsections of the Act; subsection 153ZKE(2) and subsection 153ZKF(5). The principle of how to use CTC is the same for both subsections. The only difference is in which level (chapter, heading or subheading) the CTC is applied.
- (2) Subsection 153ZKE(2) of the Customs Act states that the regulations may specify that each non-originating material used in the production of goods is required to satisfy a specified CTC. This requirement is set out in Part 2 of the AANZFTA Regulations.
- (3) The concept of CTC applies only to non-originating materials. It means that non-originating materials that are sourced from outside or within a Party which are used to produce another good, must not have the same classification under the HS as the final good into which they are incorporated. This means that the tariff classification of the final good (after the production process) must be different to the tariff classification of each non-originating material (before the production process). This approach ensures that sufficient transformation of the materials has occurred within a Party, to justify the claim that the goods are the produce of that Party.

Example #1: CTC requirement

Frozen pork (HS 0203) is imported into Singapore from China and combined with spices from India (HS 0907-0910) and cereals produced in Singapore to make pork sausages (HS 1601).

The applicable product specific rule for a good of 1601 is:

A change to heading 1601 from any other chapter.

As the frozen meat is classified to Chapter 2 and the spices to Chapter 9, these non-originating materials meet the transformation (CTC) requirement (the cereal is the produce of Singapore and is therefore an originating material and is not required to change in classification). The pork sausages are therefore AANZ originating.

2. CTC requirement – transformation

- (1) Subsections 153ZKE(2) and (3) directly address the transformation test.
- (2) Non-originating materials used directly in producing a good will satisfy the transformation test if they satisfy the CTC requirement that is specified in Column 4 of the Schedule 1 table opposite the final classification for the goods.

Example #2: CTC requirement (transformation test)

The example on the previous page addressed the production of pork sausages in Singapore from imported frozen pork (HS 0203) which is combined with imported spices (HS 0907-0910) and cereals produced in Singapore to make pork sausages (HS 1601).

The applicable product specific rule for a good of 1601 is:

A change to heading 1601 from any other chapter

The non-originating materials meet the transformation test and the pork sausages are therefore considered to be AANZ originating.

3. CTC requirement - cumulation

- (1) Subsection 153ZKE(3) states that the regulations may also specify when a non-originating material used or consumed in the production of the goods is taken to satisfy the CTC requirement.
- (2) If non-originating materials do not satisfy the specified CTC requirement for the final good, it is still possible for that requirement to be satisfied. This can only occur if the material was produced entirely in any of the Parties (that is any ASEAN country, New Zealand or Australia), from other non-originating materials and each of those materials satisfies the same CTC test for the final good (this requirement is also set out in Part 3 of the AANZFTA Regulations).

Example #3: CTC requirement (cumulation)

A producer of suits in Thailand purchases wool fabric from Australia. The wool fabric has met the rules of origin requirements for it to be determined as an originating good of Australia. Therefore, using the cumulation provisions, it is also an originating good (for preferential duty and rules of origin purposes) of Thailand.

4. *De minimis*

- (1) The CTC requirement under subsection 153ZKE(2) is also taken to be satisfied if the good meets the requirement of subsections 153ZKE(4) or 153ZKE(5). This is termed the *de minimis* rule.
- (2) Although the requirement of a CTC is a very simple principle, it necessitates that all non-originating materials undergo the required change. A very low percentage of the materials used to produce a good may not undergo the required CTC, thus preventing the goods from being an AANZ originating good. Therefore, the Agreement incorporates a *de minimis* provision that allows a good to qualify as an AANZ originating good provided the total value of all non-originating materials that do not satisfy the CTC requirement used to produce the good does not exceed 10% of the customs value of the final good.

Example #4: CTC requirement (*de minimis*) by value

A good uses two materials, A and B, and both are non-originating materials. As a result of its transformation into the finished good, A makes the required HS classification change, but B does not.

Because B does not make the required change, the finished good will not qualify unless the value of B is no more than 10% of the good's value.

If the good is valued at \$100 and the value of B is \$5, the value of B is 5% of the good's value. Therefore the goods is considered to be originating.

In addition, for goods classified within Chapters 50 to 63 of the HS, where one or more of the non-originating materials used or consumed in the production of the goods did not satisfy the CTC, then the requirement referred is taken to be satisfied if the total weight of those non-originating materials does not exceed 10% of the total weight of the goods.

Example #5: CTC requirement (*de minimis*) by weight

A good classified within chapters 50 to 63 uses three materials that are non-originating. As a result of its transformation into the finished good, A and B makes the required HS classification change, but C does not.

Because C does not make the required change, the finished good will not qualify unless the weight of C is no more than 10% of the good's total weight.

If the finished good weighs 50 grams and the weight of C is 2 grams, the weight of C is 4% of the good's total weight. Therefore the goods is considered to be AANZ originating.

Section 3: Regional Value Content (RVC) requirement

1. Statutory Provisions

153ZKB(2) Regional value content of goods

Regional value content of goods

The **regional value content** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.

- (1) In calculating the RVC of goods, the definition of value in subsection 153ZKB(3) of the Customs Act is relevant. This provision states:

Value of goods

The value of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

- (2) Part 5 of the AANZFTA Regulations sets out how that value of goods is to be worked out.
- (3) The definition of customs value in section 153ZKB(1) provides:
- customs value** of goods has the meaning given by section 159.
- (4) Part 4 of the AANZFTA Regulations prescribe the RVC rule for the purposes of the requirement as follows:

Direct method

- (1) The direct method is the formula:

$$\text{RVC} = \frac{\text{value of originating materials} + \text{labour costs} + \text{overhead costs} + \text{profit} + \text{other costs}}{\text{adjusted value}} \times 100$$

where:

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

labour costs includes wages, remuneration and other employee benefits associated with the production of the goods.

overhead costs includes the cost of the following (to the extent that the cost can be attributed to the production of the goods):

- (a) inspection and testing of materials and goods;
- (b) insurance of plant, equipment and materials;
- (c) dies, moulds and tooling;
- (d) depreciation, maintenance and repair of plant and equipment;
- (e) interest payments for plant and equipment;
- (f) research, development, design and engineering;
- (g) the following items in relation to real property used for the production of the goods:
 - (i) insurance;
 - (ii) rent and lease payments;
 - (iii) mortgage interest;
 - (iv) depreciation on buildings;
 - (v) maintenance and repair;
 - (vi) rates and taxes;
- (h) leasing plant and equipment;
- (i) energy, electricity, water and other utilities;
- (j) storage of the goods within the place in which the production of the goods occurs;
- (k) royalties or licences for patented machines or processes used in the production of the goods or for the right to produce the goods;
- (l) disposal of non recyclable waste;
- (m) security within the place in which the production of the goods occurs.

profit has its ordinary meaning.

other costs means costs incurred in placing the goods in a ship or other means of transport for exportation and includes transport costs, storage and warehousing costs, port handling fees, brokerage fees and service charges.

adjusted value means the customs value of the goods, as calculated under Division 2 of Part VIII of the Act.

Indirect/Build-down method

(2) The build-down method is the formula:

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

where:

adjusted value means the customs value of the goods, as calculated under Division 2 of Part VIII of the Act.

value of non-originating materials means the value of the non-originating materials that are acquired and used in the production of the goods but does not include the value of a material that is self-produced.

RVC is the regional value content of the good, expressed as a percentage.

Part 5 of the AANZFTA Regulations outlines how the value of materials is to be calculated.

2. Policy and practice - RVC requirement

- (1) The RVC requirement is used in two subsections of the Act; subsection 153ZKE(6) and subsection 153ZKF(1). The principle of how to use RVC is the same for both subsections. The only difference is in the level of RVC percentage required to be met.
- (1) For a number of goods, the product specific ROO found in the Schedule 1 tariff table may specify a RVC as:
 - The only requirement to be satisfied; or
 - a requirement additional to the CTC requirement; or
 - an optional alternative to a CTC requirement.
- (2) In cases where a RVC requirement is specified as additional to a CTC requirement, goods need to satisfy both the CTC requirement and the specified RVC requirement to qualify as an AANZ originating goods.
- (3) In cases where the PSR provides for options to determine origin, all the requirements of the option selected (e.g. the CTC requirement only or a combination of RVC and CTC) must be met for the good to qualify as an AANZ originating good.
- (4) Subsection 153ZKF(2) of the Customs Act specifies how the RVC is to be calculated in relation to accessories, spare parts, tools or instructional or other information resources. This is further discussed under Division 8.

Direct method

Under the direct Method, the RVC calculation determines the percentage of originating content (that being the value of materials, labour, overheads etc) which is used in the production of goods.

$$\text{RVC} = \frac{\text{value of originating materials} + \text{labour costs} + \text{overhead costs} + \text{profit} + \text{other costs}}{\text{adjusted value}} \times 100$$

Example: Direct method

A Vietnam producer sells a good to an Australian importer for \$100 in an arm's-length sale. The value of originating materials used in the good = \$20, the labour cost = \$5, overhead = \$2, profit = \$15 and other costs = \$3. Using the direct method, the producer calculates the RVC as follows:

$$\text{RVC} = \frac{\text{value of originating materials} + \text{labour costs} + \text{overhead costs} + \text{profit} + \text{other costs}}{\text{adjusted value}} \times 100$$

$$\text{RVC} = \frac{20 + 5 + 2 + 15 + 3}{100} \times 100$$

$$\text{RVC} = 45\%$$

Therefore, using the build-down method, the RVC of the good is 45%.

The direct method is used by ASEAN countries in their other FTAs. In this FTA Australia can also use this formula.

Indirect/Build-down method

Under the Indirect/Build-down Method, the RVC of goods is calculated by using the total value of non-originating materials used in the production of the goods to arrive at the RVC of the goods.

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

Example: Indirect/Build-down method

A Cambodian producer sells a good to an Australian importer for \$200 in an arm's-length sale. The value of non-originating materials used in the good is \$60. Using the indirect/build-down method, the producer calculates the RVC as follows:

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

$$70\% = \frac{\$200 - \$60}{\$200} \times 100$$

$$\text{RVC} = 70\%$$

Therefore, using the indirect/build-down method, the RVC of the good is 70%.

Note that Australia normally refers to this formula as the build-down method while ASEAN countries refer to it as the indirect method, hence the name Indirect/Build-down method.

Section 4: Goods that are classified within Chapter 28, Chapter 29 or Chapter 32 of the Harmonized System

1. Policy and practice – process rules

- (1) Preceding the PSR for Chapters 28, 29 and Chapter 32 in the Schedule 1 table of the AANZFTA Regulations are Chapter Notes relating to all goods within these particular Chapters. These notes are termed “process rules” as they require the materials to undergo a certain process to obtain AANZ origin.
- (2) Unlike other FTAs such as AUSFTA these process rules do not take precedence over the product specific rules for goods within these chapters. In other words, the process rules may only be applied if the good fails to satisfy either the RVC or the CTC requirement of the PSR. If a good does meet the requirement of a particular process rule, then the good is considered to be an AANZ originating goods.

Chemical Reaction Origin Rule

Any good of either Chapters 28, 29 and Chapter 32 that is the product of a chemical reaction shall be considered to be an originating good if the chemical reaction occurred in a Party.

The “chemical reaction” rule may be applied to any good classified in the above chapters if the CTC and the RVC rules can not be met.

Note: For purposes of these Chapters, a “chemical reaction” is a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of the molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a product is an originating good:

- (a) dissolving in water or other solvents;
- (b) the elimination of solvents including solvent water; or
- (c) the addition or elimination of water of crystallization.

Division 8: Other AANZ originating goods, provisions and operations

Section 1: Packaging materials and containers

1. Statutory provisions

- (1) Section 153ZKH of the Customs Act sets out the requirements that apply in respect of packaging materials and containers when AANZ originating goods are imported into Australia. That provision states:

153ZKH Packaging materials and containers

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
 - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision (with one exception).

Exception

- (2) If the goods are required to have a regional value content of at least a particular percentage, the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

2. Policy and practice – general

- (1) Determination of whether packaging materials and containers in which a good is packaged for retail sale are originating or non-originating is not required. Such packaging materials and containers are not to be the subject of the CTC requirement.
- (2) However, if a good that is packaged for retail sale in packaging material or a container is subject to a RVC, the value of the packaging materials and containers must be taken into account as originating or non-originating, as the case may be, in calculating the RVC of the good.

Example: Packaging materials and containers

Dolls (9503) are made in Vietnam. The dolls are wrapped in tissue paper and packed in cardboard boxes described with a brand logo for retail sale. Both the tissue paper and the cardboard box are of Chinese origin.

The product specific ROO for 9503 is:

A change to heading 9503 from any other heading, or
No change in tariff classification is required, provided that there is a regional value content of not less than 40 per cent.

The tissue paper and cardboard box are disregarded for purposes of the CTC requirement; their value though must be counted as non-originating materials when calculating the RVC.

Section 2: Accessories, spare parts, tools or instructional or other information materials

1. Statutory provisions

- (1) Section 153ZKI of the Customs Act sets out the requirements that apply in respect of accessories, spare parts, tools or instructional or other information resources imported into Australia with the goods to which they are accessories, spare parts, tools or instructional or other information resources. That provision states:

153ZKI Goods that are accessories, spare parts, tools or instructional or other information materials

Goods are **AANZ originating goods** if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
 - (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
 - (c) the accessories, spare parts, tools or instructional or other information materials are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
 - (d) the other goods are AANZ originating goods; and
 - (e) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and
 - (f) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.
- (2) Also relevant is subsection 153ZKE(7) which states:
- (7) If:
- (a) the goods are required to have a regional value content of at least a particular percentage; and
 - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
 - (c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
 - (d) the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZKB(3).

(3) For the purposes of subsection 153ZKE(7), the AANZFTA Regulations state:

5.3 Value of accessories, spare parts, tools or certain other materials

- (1) This regulation applies to:
 - (a) goods mentioned in subsection 153ZKE(7) of the Act (that are goods required by these Regulations to have a regional value content of at least a particular percentage); and
 - (b) goods mentioned in subsection 153ZKF(2) of the Act for which it is necessary to work out the regional value content.
- (2) For working out the regional value content of goods to which this regulation applies:
 - (a) the value of accessories, spare parts, tools or instructional or other information materials that are imported with the goods must be taken into account as follows:
 - (i) if the accessories, spare parts, tools or instructional or other information materials are AANZ originating goods — as originating materials used or consumed in the production of the goods;
 - (ii) if the accessories, spare parts, tools or instructional or other information materials are not AANZ originating goods — as non-originating materials used or consumed in the production of the goods; and
 - (b) the value of the accessories, spare parts, tools or instructional or other information materials is to be worked out as if the accessories, spare parts, tools or instructional or other information materials were materials used or consumed in the production of the goods.

2. Policy and practice - general

- (1) Section 153ZKI provides that if an originating good is imported into Australia with spare parts, accessories, tools or instructional or other information resources, then the spare parts, accessories, tools or instructional or other information resources are also AANZ originating goods if:
 - they are standard for the goods;
 - they are imported with the goods and those goods are originating goods;
 - they are not imported merely to artificially raise the RVC of the originating goods;
 - the accessories, spare parts, tools or instructional or other information resources have not been invoiced separately from the originating goods; and
 - the quantities and value of the accessories, spare parts, tools or instructional or other information resources is customary for the goods.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-41-

- (2) If the above requirements have been met, then the spare parts, accessories, tools or instructional or other information resources do not separately have to satisfy the CTC requirement that the originating goods they are imported with had to undergo, or any other CTC requirement.
- (3) Subsection 153ZKE(7) provides that, when working out if the good is an AANZ originating good, if the product specific ROO requires that a good must satisfy a RVC requirement, the value of spare parts, accessories, tools or instructional or other information resources must be taken into account as originating or non-originating materials, as the case may be, for the purposes of that requirement.
- (4) Detailed information regarding RVC is to be found in Section 3 in Division 7 of this Instruction and Guideline.

Section 3: Non-qualifying operations or processes

1. Statutory provisions

- (1) Section 153ZKG of the Customs Act sets out the non-qualifying operations which apply to AANZ originating goods imported into Australia, and states:

153ZKG Non-qualifying operations or processes

- (1) This section applies for the purposes of working out if goods are AANZ originating goods under:
- (a) subsection 153ZKE(1) where, in relation to paragraph 153ZKE(1)(b), the goods are claimed to be AANZ originating goods solely on the basis that the goods have a regional value content of at least a particular percentage; or
 - (b) subsection 153ZKF(1).
- (2) The goods are not AANZ originating goods merely because of the following:
- (a) operations or processes to preserve goods in good condition for the purpose of transport or storage of the goods;
 - (b) operations or processes to facilitate the shipment or transportation of goods;
 - (c) packaging (other than encapsulation of electronics) for transportation or sale or presenting goods for transportation or sale;
 - (d) simple processes of sifting, classifying, washing, cutting, slitting, bending, coiling, uncoiling or other similar simple processes;
 - (e) affixing of marks, labels or other distinguishing signs on goods or on their packaging;
 - (f) dilution with water or another substance that does not materially alter the characteristics of goods;
 - (g) any combination of things referred to in paragraphs (a) to (f).

2. Policy and practice – general

- (1) The non-qualifying operation provision over-rides the PSR schedule and aims to ensure that operations undertaken to non-originating goods results in a substantial change. The provision seeks to ensure that work undertaken on non-originating goods is significant in nature.
- (2) These non-qualifying operations are to be used only when the rule used to obtain origin is an RVC rule on its own. They are also to be used when the general 40% rule is used.

They are not to be used when the rule contains a CTC requirement, even if the RVC is an addition to the CTC. If the PSR provides a choice of rules and the rule used is RVC only then the non-qualifying operations apply.

Section 4: Consignment provisions

1. Statutory provisions

- (1) Section 153ZKJ of the Customs Act sets out the consignment provisions which apply to AANZ originating goods imported into Australia, and states:

153ZKJ Consignment

- (1) Goods are not AANZ originating goods under this Division if:
- (a) the goods are transported through a country or place other than a Party; and
 - (b) at least one of the following applies:
 - (i) the goods undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing or any operation that is necessary to preserve the goods in good condition or to transport the goods to Australia);
 - (ii) the goods enter the commerce of that country or place;
 - (iii) the transport through that country or place is not justified by geographical, economic or logistical reasons.
- (2) This section applies despite any other provision of this Division.

2. Policy and practice – general

- (1) The consignment provision is not a mandatory direct shipment provision. The provision seeks to ensure that the benefits of the Agreement go to the seller in the exporting country. This may not be so if the goods are further processed in a non-Party country before importation into Australia.
- (2) An exported good will lose its status as an AANZ originating good if it undergoes any process of production or other operation en route from a Party to Australia, other than necessary unloading, reloading, storing, repacking, relabelling, exhibition or any operation that is necessary to preserve them in good condition or to transport them to Australia. In other words, a partially completed product could not be completed in a non-Party following export from a Party to Australia.

Example #1: Consignment provisions

Surgical instruments, cotton gowns and bandages, made in Thailand from Thai originating materials, are sent to Hong Kong where they are packaged together in a set and then sterilized for use in operating rooms. They are then sent to Australia.

Upon their arrival in Australia, the medical sets are not eligible for preferential treatment because they underwent operations in Hong Kong that are not covered by the exceptions in section 153ZKJ.

Example #2: Consignment Provisions

Motor vehicles manufactured in Philippines are sent by ship to Australia. Before departure, they are coated with a protective veneer to inhibit damage to painted surfaces during transit on the vessel.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Papua New Guinea so that the protective veneer can be reapplied to ensure that the vehicles are preserved in good condition for the remainder of the voyage to Australia.

This process would not affect the origin status of the vehicles as it fits within the exceptions to section 153ZKJ.

- (3) An exported good will also lose its status as an AANZ originating good if it enter the commerce of a non-Party.

Division 9: Origin advice rulings

Section 1: Provision of binding Origin Advice Rulings

1. Provisions

- (1) The Agreement does not require either Australia or any Party to provide Origin Advice Rulings.

2. Policy and practice – general

- (1) Notwithstanding the above, Customs and Border Protection, on request, will provide written advice on origin matters through the provision of a Ruling. The Ruling exists to advise importers, producers and exporters on specific issues relating to the origin of their goods for the purposes of determining eligibility for preferential duty rates for goods imported into Australia.
- (2) Assessments of the origin of a good will be issued as soon as possible but no later than 30 days after a request for such advice provided that all necessary documentation has been submitted.
- (3) Requests for a Ruling will be accepted before trade in the good concerned begins.

3. Adequate applications

- (1) A Ruling will only be given where:
 - evidence is presented of a commitment or firm intent to import or export;
 - the application contains adequate and correct information; and
 - supporting evidence of the facts of the application is provided with the application.
- (2) Inadequate applications will be rejected.

4. How to lodge an application

- (1) Applications (with supporting documentation) should be forwarded to:

Valuation and Origin Section
Trade Services Branch
Australian Customs and Border Protection Service
5 Constitution Avenue
CANBERRA ACT 2600

- (2) At the time an application is made for a Ruling, Customs and Border Protection will register the application with a unique Origin Advice Number and the applicant will be advised of this number.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-46-

5. Applications with more than one origin issue

- (1) Each application must be for a single origin issue. Where there is more than one issue, separate applications must be lodged for each.

6. Supporting information and documentation

- (1) It is unrealistic to expect a correct and binding origin advice ruling if inadequate or incomplete information is provided to Customs and Border Protection. The essential principle to be followed is that all information that is relevant to the request for advice should be supplied with the application.
- (2) Section 2 of this Division sets out a guide to the supporting documentation required to accompany an application for AANZFTA origin rulings. The list is not exhaustive; if there are any other relevant documents and information, it must also be supplied with the application.

7. Advice conditional on data provided

- (1) The Customs and Border Protection decision will be made only on the basis of the statements and supporting documentation provided, and accordingly, the validity of the advice is conditional upon correct and complete information being provided.
- (2) In the course of processing an application, Customs and Border Protection may request, at any time, additional information necessary to evaluate the application.

8. Penalty action – false or misleading statements

- (1) From the time of registering an application until the decision of Customs and Border Protection, the applicant may still be subject to penalty provisions under subsection 243T(1) in respect of any duty short paid on any import declaration.
- (2) If an applicant is uncertain about a claim of preference made on any import declaration, and considers that including that information may be false or misleading, then that person should lodge that declaration “amberline”.
- (3) Subsection 243T(1) may not apply where, in lodging the declaration “amberline”, a person specifies the particular information included in the import declaration that might be false or misleading. Further, that person must also set out the reasons why there is uncertainty about the information.
- (4) Whilst quoting an origin advice number on an import declaration is optional, if there is any doubt about a claim for preference, a person should follow the above guidelines.

9. Withdrawal of application

- (1) An owner may withdraw an application by advising Customs and Border Protection at any time between registration of the application and the decision by Customs and Border Protection on the application. Withdrawal of the application has the effect of cancelling the application.

10. Payment of duty following ruling

- (1) When Customs and Border Protection has finalised an application and notified the applicant of the Ruling and the reasons for that decision, any duty or GST short paid on entries becomes payable.

11. Validity of advice

- (1) Rulings are valid for all ports in Australia for five (5) years from the date of notification of the advice. After that time the Ruling will be cancelled. If a Ruling is still required a new application must be made.
- (2) Customs and Border Protection may cancel or amend a Ruling within its five-year life, where particular circumstances warrant. Such circumstances include, but are not limited to situations in which:
 - an amendment is made to the legislation which has relevance to the advice;
 - incorrect information was provided to Customs and Border Protection or relevant information was withheld;
 - Customs and Border Protection's decision is changed as a result of legal precedent;
 - the facts and conditions of the origin application have changed;
 - Customs and Border Protection has issued conflicting advices.

12. Cancelled or amended advice

- (1) Where Customs and Border Protection cancels or amends a Ruling, in-transit provisions may be applied at the discretion of Customs and Border Protection.

13. In-transit provisions

- (1) Where in-transit provisions apply, the cancelled or amended Ruling continues to apply in relation to goods that:
 - were imported into Australia on or before the date on which the cancellation or amendment came into effect and were entered for home consumption before, on, or within 30 days after that date; or
 - had left the place of export on or after that date and were entered for home consumption before, on, or within 30 days after the date on which they were imported into Australia.

14. Customs and Border Protection to honour advice

- (1) A Ruling is not legally binding on Customs and Border Protection. However, Customs and Border Protection will honour a Ruling unless it was provided on the basis of false or misleading information or where the applicant failed to provide all the relevant information and documentation that was available.

15. Conflicting rulings

- (1) Should an applicant hold or be aware of any conflicting Rulings from Customs and Border Protection for an origin issue, they are to be treated as being void and Customs and Border Protection is to be notified immediately.

16. Appeals against rulings

- (1) Where a Customs and Border Protection's decision in a Ruling is disputed, it should first be discussed with the decision maker. If the advice is still disputed, a further appeal to the Director Valuation and Origin, Trade Services Branch, Canberra may be requested.
- (2) This appeal mechanism does not preclude the right to external review – for example, to the Administrative Appeals Tribunal (AAT), after there has been a payment under protest. It should be noted that a Ruling in itself is not a decision which is reviewable by the AAT or the Federal Court.

Section 2: Origin Advice Rulings – information requirements

1. Application

- (1) An Origin Advice Ruling will be issued to importers, exporters or any other person who requires a Ruling on goods imported into Australia under the AANZFTA ROO provisions. Section 1 of this Division sets out the procedures for lodging a Ruling.

2. Subject matter of rulings

- (1) Rulings may be sought on various AANZFTA issues including, but not limited to:
 - whether a good qualifies as an originating good being wholly obtained or produced in an AANZFTA Party;
 - whether a good qualifies as an originating good produced entirely in a Party;
 - whether non-originating materials used in the production of a good imported into Australia undergo the applicable CTC;
 - whether a good satisfies a RVC requirement;
 - the appropriate basis for determining the value of originating and non-originating materials; and
 - the application of *de minimis* provisions.

3. Content of application - general

- (1) The following relevant information should be included in the application:
 - the specific subject matter to which the request relates;
 - a complete statement of all relevant facts relating to the AANZFTA transaction which must state that the information presented is accurate and complete;
 - the names, addresses and other identifying information of all interested parties; and
 - copies of any other origin advice, tariff classification advice or valuation advice that has been issued in relation to the imported good.

4. Content of application – specific

- (1) Where a good has been wholly obtained or produced entirely in a Party to the AANZFTA, a complete description of the good shall be supplied, including:
 - a description of how the good was obtained;
 - details of all processing operations employed in the production of the good;
 - the location where each operation was undertaken;
 - the sequence in which the operations occurred;
 - a list of all materials used in the production of the good; and
 - evidence of the origin of materials used in the production of the good.
- (2) Where the request for a Ruling involves the application of a ROO that requires an assessment of whether the materials used in the production of the imported good undergo an applicable CTC, the advice must list each material used in the production of the good and must:
 - identify each material which is claimed to be an originating material, providing a complete description of each such material including the basis for claiming origin status;
 - identify each material which is a non-originating material, or for which the origin is unknown, providing a complete description of each such material, including its tariff classification; and
 - describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.
- (3) Where the origin advice involves the issue of whether a good satisfies a RVC requirement the advice must:
 - provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act;
 - provide information which is sufficient to identify and calculate the value of each non-originating material, or material the origin of which is unknown, used in production of the good.
- (4) If a *de minimis* exception to a HS classification is claimed, the advice must:
 - provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act;
 - identify each material which is claimed to be an originating material and provide a complete description of each such material;
 - identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification and value.

- (5) Where no tariff ruling has been made by Customs and Border Protection in relation to the goods, sufficient information must be supplied to enable tariff classification of the goods. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation. Where product literature, drawings, photographs or other material are available they should accompany the application.

Division 10: Identical and Interchangeable Materials

1. Provisions

- (1) Identical and interchangeable materials are materials that are generally accepted as those goods that are fungible for commercial purposes and whose properties are essentially identical.
- (2) The treatment of identical and interchangeable materials is covered by Article 10 of Chapter 3 of the Agreement, which states:

Identical and Interchangeable Materials

The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of generally accepted accounting principles of stock control applicable, or inventory management practice, in the exporting Party.

2. Policy and practice - general

- (1) Many materials involved in production processes are interchangeable for commercial purposes, in that they have essentially identical properties (e.g. ball bearings, nuts, bolts, screws etc). These materials are considered to be identical and interchangeable materials.
- (2) A producer may choose to physically separate in different containers the interchangeable materials obtained from different countries. In many cases this may not be practical and the producer stores all the fungible materials in one container.
- (3) When a producer mixes originating and non-originating interchangeable materials, so that physical identification of the actual materials used is impossible, the producer may determine the origin of the materials used based on one of the standard inventory accounting methods (e.g. last-in first-out, or first-in first-out) allowed under generally accepted accounting principles.
- (4) It is important to note that once a Party has decided on an inventory management method for a particular fungible good or material, that method must continue to be used throughout the whole of the financial year.

Example #1: Identical and Interchangeable Materials

Amongst the materials used by a Malaysian producer of machinery parts are ball bearings. Depending on pricing and supply availability, it may source the ball bearings from within Malaysia, from India, or from China. All of the ball bearings are of identical size and construction.

On 1 January, the producer buys 1 tonne of ball bearings of Malaysian origin, and on 3 January buys 1 tonne of ball bearings of Chinese origin.

The ball bearings have been stored in the one container at the producer's factory. The form of storage of the intermingled ball bearings makes those of Malaysian origin indistinguishable from those sourced from China.

An Australian company places an order on the Malaysian producer for machinery parts which require the use of 800kg of ball bearings.

If the producer elects "first-in first-out" inventory procedures, the 800kg of ball bearings used to fill the Australian order are considered to be AANZ originating materials, regardless of their actual origin.

Example #2: Identical and Interchangeable Materials

Continuing the above scenario, a second Australian company places an order on the same Malaysian producer for machinery parts which requires the use of 500kg of the same ball bearings.

The producer, as stated above, has elected to adopt a "first-in first-out" inventory procedure.

In this example there now remains 1200kg of the original 2000kg, the first 200kg of ball bearings used are considered to be Malaysian originating materials. The remaining quantity of ball bearings used (300kg) are considered to be non-originating materials and the ball bearings must undergo the CTC requirement specified in the PSR for the final good.

- (5) In considering the origin of identical and interchangeable materials, if the producer determines that they are AANZ originating goods, they do not need to undergo any CTC.
- (6) Alternately, if identical and interchangeable materials used in a production process are non-originating materials, those materials must undergo the CTC requirement appropriate for the good being produced.

Division 11: Certificate of origin

1. Policy and practice - general

- (1) Article 15 of the AANZFTA states that an importer can only make a claim for preferential treatment under AANZFTA when the claim for preferential treatment is supported by a Certificate of Origin (CoO) issued by an Issuing Authority/Body of the exporting Party.
- (2) The CoO must comply with the requirements of the Annex on Operational Certification Procedures (OCP) to the AANZFTA Agreement.
- (3) An example of an acceptable CoO is located at **Appendix 1** along with instructions for completing the CoO. The CoO shall:
 - (i) be in hardcopy;
 - (ii) bear a unique reference number separately given by each place or office of issuance;
 - (iii) be completed in English; and bear an authorised signature and official seal of the Issuing Authority/Body. The signature and official seal may be applied electronically.
- (4) The CoO is to be made by the Issuing Authority/Body of the exporting Party. Issuing Authorities/Bodies for each Party are listed on the ASEAN-Australia-New Zealand Free Trade Agreement webpage (www.customs.gov.au/site/page6076.asp).
- (5) Where duty has been paid on AANZ originating goods because a valid CoO or copy of one was not available at the time the goods were imported, the importer is able to claim a refund of duty provided the importer holds a valid CoO or copy of one at the time the refund is sought under regulation 126D of *Customs Regulations 1926*.

2. Procedures

- (1) Customs and Border Protection may seek further evidence of preference entitlement for any specific reason or a simple intuitive selection, irrespective of the existence of a CoO.

Where there is insufficient evidence to justify the claim that preference applies there will be a liability for the payment of any Customs duty and GST that has been short paid. In these circumstances, an offence may be committed against subsections 243T(1) or 243U(1) of the Customs Act and an administrative penalty under the *Taxation Administration Act 1953* (Taxation Administration Act) may apply where there is a shortfall amount of GST. It should be noted that an infringement notice may be served in lieu of prosecution for an offence against subsections 243T(1) or 243U(1) of the Customs Act.

Note: Goods from some ASEAN countries may be eligible for Developing Country (DC) or Least Developed Country preferential rates of duty.

- (2) Each shipment should be accompanied by a CoO. An importer may be required to produce this either at the time of importation, or at some later date.
- (3) If, after the time of the customs declaration, evidence becomes available to the owner that the goods are ineligible for preferential rates of duty, the owner should, as soon as practicable after becoming aware of the error, amend the import declaration and tender to Customs any short paid Customs duty and GST. This action may protect a person against any liability for an offence under subsections 243T(1) or 243U(1) of the Customs Act if the amendment is considered a voluntary disclosure as explained in ACN 2004/05. Furthermore, this action may result in the reduction or remission of an administrative penalty that may apply under the *Taxation Administration Act 1953*.
- (4) Where a duty or GST short payment results from incorrectly claimed preferential duty rates, a person may be protected from liability for an offence against subsection 243T(1) or 243U(1) of the Customs Act, or an administrative penalty under the Taxation Administration Act, if, at the time of entry of the goods, the person holds:
 - a CoO issued by an Issuing Authority/Body of the exporting Party that stated that a particular preference criterion of Division 1G of Part VIII of the Customs Act had been met; or
 - evidence of the relevant factory processes and costs of the overseas manufacturer that indicated that the goods in question were eligible for preferential rates of duty.
- (5) The protection may not apply, however, where:
 - other information available to the person indicated that the statement on the CoO was incorrect or unreliable;
 - the CoO could not be clearly related to the goods in question.

3. Minimum requirements

- (1) The CoO shall be completed by an Issuing Authority/Body of the exporting Party and contain a set of minimum requirements that:
- specify that the goods enumerated therein are the origin of the Party and meet the terms of Chapter 3 of the Agreement;
 - be made in respect of one or more goods and may include a variety of goods;
 - be completed in English.
- (2) The minimum requirements required on the CoO are:

1. Exporter details	The name and address and contact details of the exporter
2. Shipment details (a Certificate of Origin can only apply to a single shipment of goods)	(i) Consignee name and address (ii) Sufficient details to identify the consignment, such as importer's purchase order number, invoice number and date and Air Way Bill or Sea Way Bill or Bill of Lading (iii) Port of Discharge, if known
3. Full description of goods	(i) Detailed description of the goods, including Harmonized System Code (6-digit level), and if applicable, product number and brand name (ii) The relevant origin conferring criteria (iii) FOB Value
4. Certification by Issuing Authority/Body	Certification by the Issuing Authority/Body that, based on the evidence provided, the goods specified in the Certificate of Origin meet all the relevant requirements of this Chapter
5. Certificate of Origin number	A unique number assigned to the Certificate of Origin by the Issuing Authority/Body

4. Validity

- (1) The CoO shall remain valid for a period of twelve months from the date the document was issued.

5. Exceptions

- (1) A CoO is not required for imports when the total customs value of the originating goods does not exceed \$A1,000, provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the requirements of the Agreement.

Note: For custom clearance purposes the importer will be required to complete either:

- a **Self Assessed Clearance** if the customs value does not exceed \$A1,000 and a CoO is not required; or
- an **Import Declaration** when the customs value exceeds \$A1,000.

6. CoO issued retroactively

- (1) The CoO shall be issued as near as possible to but not later than three working days after the date of exportation.
- (2) Where a CoO has not been issued within three working days after the date of exportation due to involuntary errors or omissions or other valid causes, the CoO may be issued retroactively, but no longer than 12 months from the date of exportation. If a CoO is issued retroactively it will be indicated as such. Retroactive CoO are valid for claiming preferential duty rates.

7. Back-to-back CoO

- (1) If an AANZ originating good has been imported into a Party, but is then re-exported to another Party, the exporter in the “intermediate Party” may make an application to the Issuing Authority/Body in that country to issue a “back-to-back” CoO to ensure that the good will be eligible for preferential tariff treatment at the final destination.

The Agreement provides that the Issuing Authority/Body must issue such a Certificate if an application is made by the exporter while the good is passing through the second Party provided that the following conditions are met:

- (i) a valid original CoO or its certified true copy is presented;
- (ii) the period of validity of the back-to-back CoO does not exceed the period of validity of the original CoO;
- (iii) the consignment which is to be re-exported using the back-to-back CoO does not undergo any further processing in the intermediate Party, except for repacking or logistics activities such as unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party; and
- (iv) the back-to-back CoO contains relevant information from the original CoO. In particular, every column in the back-to-back CoO shall be completed. The FOB value of the intermediate Party shall also be reflected in the back-to-back CoO.

Appendix 1: Example - Certificate of origin

1. Goods Consigned from (Exporter's name, address and country)			Certificate No. Form AANZ AGREEMENT ESTABLISHING THE ASEAN – AUSTRALIA – NEW ZEALAND FREE TRADE AREA (AANZFTA) CERTIFICATE OF ORIGIN (Combined Declaration and Certificate) Issued in (Country) (see Overleaf Notes)		
2. Goods Consigned to (Importer's/ Consignee's name, address, country)			4. For Official Use <input type="checkbox"/> Preferential Treatment Given Under AANZFTA <input type="checkbox"/> Preferential Treatment Not Given (Please state reason/s) Signature of Authorised Signatory of the Importing Country		
3. Means of transport and route (if known) Shipment Date: Vessel's name/Aircraft etc.: Port of Discharge:					
5. Item number	6. Marks and numbers on packages	7. Number and kind of packages; description of goods including HS Code (6 digits) and brand name (if applicable)	8. Origin Conferring Criterion (see Overleaf Notes)	9. Quantity (Gross weight or other measurement), and value (FOB) (see Overleaf Notes)	10. Invoice number(s) and date of invoice(s)
11. Declaration by the exporter The undersigned hereby declares that the above details and statements are correct; that all the goods were produced in (country) and that they comply with the rules of origin, as provided in Chapter 3 of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area for the goods exported to (importing country) Place and date, name, signature and company of authorised signatory			12. Certification On the basis of control carried out, it is hereby certified that the information herein is correct and that the goods described comply with the origin requirements specified in the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area. Place and date, signature and stamp of Authorised Issuing Authority/ Body		
13. <input type="checkbox"/> Back-to-back Certificate of Origin <input type="checkbox"/> <i>De Minimis</i>			<input type="checkbox"/> Subject of third-party invoice <input type="checkbox"/> Accumulation <input type="checkbox"/> Issued retroactively		

OVERLEAF NOTES

1. Countries which accept this form for the purpose of preferential treatment under the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Agreement):

Australia	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia
Myanmar	New Zealand	Philippines	Singapore	Thailand	Viet Nam

 (hereinafter individually referred to as a Party)
2. **CONDITIONS:** To be eligible for the preferential treatment under the AANZFTA, goods must:
 - a. Fall within a description of products eligible for concessions in the importing Party;
 - b. Comply with all relevant provisions of Chapter 3 (Rules of Origin) of the Agreement.
3. **EXPORTER AND CONSIGNEE:** Details of the exporter of the goods (including name, address and country) and consignee (name and address) must be provided in Box 1 and Box 2, respectively.
4. **DESCRIPTION OF GOODS:** The description of each good in Box 7 must include the Harmonized Commodity Description and Coding System (HS) subheading at the 6-digit level of the exported product, and if applicable, product name and brand name. This information should be sufficiently detailed to enable the products to be identified by the customs officer examining them.
5. **ORIGIN CRITERIA:** For the goods that meet the origin criteria, the exporter should indicate in Box 8 of this Form, the origin criteria met, in the manner shown in the following table:

Circumstances of production or manufacture in the country named in Box 11 of this form:	Insert in Box 8
(a) Goods wholly produced or obtained satisfying Article 2.1(a) of the Agreement	WO
(b) Goods produced entirely satisfying Article 2.1(c) of the Agreement	PE
(c) Not wholly produced or obtained in a Party, provided that the goods satisfy Article 4.1(a) of the Agreement	RVC
(d) Not wholly produced or obtained in a Party, provided that the goods satisfy Article 4.1(b) of the Agreement	CTH
(e) Not wholly produced or obtained in a Party, provided that the goods satisfy Article 4.2, i.e., if the good is specified in Annex 2, all the product specific requirements listed have been met: - Change in Tariff Classification - Regional Value Content - Other, including a Specific Manufacturing or Processing Operation or a CTC or RVC requirement combined with additional requirement	PSR(CTC) PSR(RVC) PSR(Other)

6. **EACH GOOD CLAIMING PREFERENTIAL TARIFF TREATMENT MUST QUALIFY IN ITS OWN RIGHT:** It should be noted that all the goods in a consignment must qualify separately in their own right. This is of particular relevance when similar articles of different sizes or spare parts are exported.
7. **FOB VALUE:**
 - An exporter from an ASEAN Member State must provide in Box 9 the FOB value of the goods
 - An exporter from Australia or New Zealand can complete either Box 9 or provide a separate "Exporter Declaration" stating the FOB value of the goods.
8. **INVOICES:** Indicate the invoice number and date for each item. The invoice should be the one issued for the importation of the good into the importing Party.
9. **SUBJECT OF THIRD PARTY INVOICE:** In case where invoices are issued by a third country, in accordance with Rule 22 of the Operational Certification Procedures, the "SUBJECT OF THIRD-PARTY INVOICE" box in Box 13 should be ticked (✓). The number of invoices issued by the manufacturers or the exporters and the number of invoice issued by the trader (if known) for the importation of goods into the importing Party should be indicated in Box 10.
10. **BACK-TO-BACK CERTIFICATE OF ORIGIN:** In the case of a back-to-back certificate of origin issued in accordance with paragraph 3 of Rule 10 of the Operational Certification Procedures, the back-to-back certificate of origin in Box 13 should be ticked (✓).
11. **CERTIFIED TRUE COPY:** In case of a certified true copy, the words "CERTIFIED TRUE COPY" should be written or stamped on Box 12 of the Certificate with the date of issuance of the copy in accordance with Rule 11 of the Operational Certification Procedures.
12. **FOR OFFICIAL USE:** The Customs Authority of the Importing Party must indicate (✓) in the relevant boxes in Box 4 whether or not preferential tariff treatment is accorded.
13. **BOX 13:** The items in Box 13 should be ticked (✓), as appropriate, in those cases where such items are relevant to the goods covered by the Certificate.

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

**GUIDELINES FOR COMPLETING THE INFORMATION ON THE ORIGIN
CONFERRING CRITERION ON THE CERTIFICATE OF ORIGIN (CoO) FORM OF THE
AANZFTA**

The following table is a guide for implementers of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) in completing Box 8 of the AANZFTA CoO. This document will only serve as a guide for the implementers and will not be attached to the AANZFTA CoO or be required for submission to importing authorities.

Circumstances of production or manufacture in the country named in Box 11 of this form:	Insert in Box 8
Goods wholly produced or obtained satisfying Article 2.1(a) of the Agreement	WO Understanding: "WO" should be placed in Box 8 if the good is wholly produced or obtained in a Party.
Goods produced entirely satisfying Article 2.1(c) of the Agreement	PE Understanding: "PE" should be placed in Box 8 if the good is produced in a Party entirely in a Party exclusively from originating materials from one or more of the Parties.
Not wholly produced or obtained in a Party, provided that the goods satisfy Article 4.1(a) of the Agreement	RVC Understanding: "RVC" should be placed in Box 8 if the good satisfies the requirement in Article 4.1(a) of a regional value content of not less than 40 per cent of the FOB value.
Not wholly produced or obtained in a Party, provided that the goods satisfy Article 4.1(b) of the Agreement	CTH Understanding: "CTH" should be placed in Box 8 if the good satisfies the requirement in Article 4.1(b) that all non-originating materials used in the production of the good have undergone a change in tariff classification at the four-digit level (i.e. a change in tariff heading) of the HS Code in a Party.
Not wholly produced or obtained in a Party, provided that the goods satisfy Article 4.2, i.e., if the good is specified in Annex 2, all the product specific requirements listed have been met:	

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

<ul style="list-style-type: none"> - Change in Tariff Classification 	<p style="text-align: center;">PSR(CTC)</p> <p>Understanding: "PSR (CTC)" should be placed in Box 8 if the applicable origin criterion in Annex 2 is a Change in Tariff Classification, whether at the level of the chapter ("CC"), the level of a heading ("CTH") or the level of a subheading ("CTSH"). There is no need to place the actual tariff shift.</p>
<ul style="list-style-type: none"> - Regional Value Content 	<p style="text-align: center;">PSR(RVC)</p> <p>Understanding: "PSR (RVC)" should be placed in Box 8 if the applicable origin criterion in Annex 2 is an RVC.</p>
<ul style="list-style-type: none"> - Other, including a Specific Manufacturing or Processing Operation or a CTC or RVC requirement combined with an additional requirement 	<p style="text-align: center;">PSR(Other)</p> <p>Understanding: "PSR (Other)" should be placed in Box 8 if the applicable origin criterion in Annex 2 is either a manufacturing or process rule or a CTC combined with an additional requirement. Below are some of the examples:</p> <ul style="list-style-type: none"> (i) RVC 40% + CTSH; (ii) No change in tariff classification is required provided that the good is cooked in the territory of the parties; (iii) No change in tariff classification is required provided that the good is produced by refining; (iv) CTSH, except from 2523.29 through 2523.90; (v) Origin shall be conferred to a good of this subheading that is derived from production or consumption in a Party; (vi) If the good is a result of a "chemical reaction".

RELATED POLICIES AND REFERENCES

Instructions and guidelines – AUSFTA

Instructions and Guidelines – ANZCERTA

Instructions and Guidelines – SAFTA

Instructions and Guidelines - TAFTA

Instructions and Guidelines – ACI-FTA

KEY ROLES AND RESPONSIBILITIES

The policy owner of this Instruction and Guideline is:

Director Valuation and Origin Section
Trade Services Branch
Australian Customs and Border Protection Service

CONSULTATION**Industry Consultation**

Not required.

Internal Consultation

The following internal stakeholders have been consulted in the development of this Instruction and Guideline:

- Customs Legal Unit
- Compliance Operations Branch

APPROVAL

Approved on 8 December 2009

Sue Pitman
National Director Trade and Compliance
Australian Customs and Border Protection Service

INTERNAL AND EXTERNAL USE

BCS CLASSIFICATION: TDFC – Policy - Guidelines

File Number: 2009/034399-01

-63-