



## **AUSTRALIAN CUSTOMS NOTICE NO. 2009/44**

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### **ASEAN-Australia-New Zealand Free Trade Agreement Implementation**

#### **Agreement**

The Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (AANZFTA) was signed by the Minister for Trade, The Hon Simon Crean and his ASEAN and New Zealand counterparts, on 27 February 2009 in Hua Hin, Thailand.

The ASEAN Member States are 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 and the Socialist Republic of Viet Nam

#### **Entry into Force**

The AANZFTA will enter into force for Australia, New Zealand, Singapore, Myanmar (Burma), Brunei, the Philippines, and Vietnam on 1 January 2010.

The entry into force date for the remaining ASEAN Member States (Thailand, Malaysia, Indonesia, Laos and Cambodia) is subject to implementation of domestic legislative requirements by those countries.

Imported goods from these countries are not originating goods until the AANZFTA enters into force for these countries. It is therefore not possible to apply the AANZFTA to goods imported from these countries until this occurs.

A further ACN will be issued when the entry into force date for those countries is known.

#### **Preferential rates of customs duty**

The *Customs Tariff Act 1995* (the Tariff), as amended by the *Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009*, will provide preferential rates of customs duty for AANZ originating goods.

Goods imported from New Zealand, Singapore, Myanmar (Burma), Brunei, the Philippines and Vietnam on or after 1 January 2010 that meet the requirements of the Rules of Origin Chapter of AANZFTA will be AANZ originating goods and will be entitled to preferential rates of customs duty.

### **Other duties and taxes**

While AANZ originating goods will be eligible for preferential rates of duty, excise-equivalent duties, Goods and Services Tax, dumping duties and other taxes and levies, including cost recovery charges, if relevant, will still be payable in relation to such goods.

### **Rules of origin**

Goods will be AANZ originating goods if they satisfy the requirements of:

- Division 1G of Part VIII (sections 153ZKA to 153ZKJ) of the *Customs Act 1901* (Customs Act), as inserted by item 1 of Schedule 1 to the *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009*; and
- the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009* (the AANZ Regulations).

There are rules of origin for the following categories of goods:

- goods that are wholly obtained in an ASEAN Member State or in New Zealand;
- goods that are produced in an ASEAN Member State or in New Zealand, exclusively from originating materials; and
- goods produced in an ASEAN Member State or in New Zealand or in an ASEAN Member State or in New Zealand and Australia from non-originating materials, or a combination of non-originating and originating materials.

Detailed information on each category is provided below. For the purposes of these categories, a Party is a Party for which the AANZFTA has entered into force.

#### 1. Goods that are wholly obtained in an ASEAN Member State or in New Zealand

Subdivision B of Division 1G sets out the rules in relation to goods that are wholly obtained goods of a Party.

Subsection 153ZKC(1) provides that goods are *AANZ originating goods* if they are wholly obtained goods of a Party 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.

Subsection 153ZKC(2) provides that goods are wholly obtained 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 life taken from the high seas by ships, 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 a 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 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 produces or obtained entirely in a Party exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

## 2. Goods that are produced entirely from originating materials

Subdivision C of Division 1G sets out the rules in relation to goods that are produced entirely in a Party, exclusively from originating materials.

Section 153ZKD provides that goods are AANZ originating goods if they are produced entirely in a Party, from originating materials only 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.

*Originating materials* are defined in section 153ZKB as:

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

### 3. Goods produced from non-originating materials

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.*

#### 3.1. Goods produced from non-originating materials and classified in the tariff table

In this Subdivision, subsection 153ZKE(1) provides that such goods are AANZ originating goods if:

- (a) they are classified to a heading or subheading of the Harmonized System (HS) specified in column 1 or column 2 of the table in Schedule 1 to the AANZ Regulations; and
- (b) each requirement that is specified in the regulations to apply in relation to the goods is satisfied; 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.

The table in Schedule 1 to the AANZ Regulations incorporates product-specific origin requirements relating to change in tariff classification (CTC), regional value content (RVC), production and other rules for determining whether a good is an AANZ originating good.

#### **Change in tariff classification requirement**

This requirement is satisfied if each non-originating material used in the production of the good undergoes the required tariff classification change (the transformation test), or the total value of the non-originating materials that do not meet the transformation test does not exceed 10% of the customs value of the good (*de minimis*). For goods classified within Chapters 50 to 63 the *de minimis* requirement can also be satisfied if the total weight of the non-originating materials that do not meet the transformation test does not exceed 10% of the total weight of the good.

The transformation test applies only to non-originating materials and generally requires that the classification, under the HS, of a non-originating material is different from the classification of the good that is produced using that non-originating material.

## Regional value content

Some of the rules in the table in Schedule 1 to the AANZ Regulations may require the good to satisfy a RVC requirement. This requirement is met using either the “Direct Method” or the “Indirect/Build-Down Method”. Both methods require that an RVC of at least 40 per cent be obtained.

Subregulation 4.2 (1) of the AANZ Regulations sets out the direct method as the following formula:

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

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

*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.

Subregulation 4.3 (1) of the AANZ Regulations sets out the indirect/build down method as the following formula:

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

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

*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.

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

### **Production requirement**

If the only requirement in rules in the table in Schedule 1 to the AANZ Regulations in relation to goods is that the goods are required to have a regional value content of at least a particular percentage, the final process of production of the goods must be performed in a Party.

For all other goods listed in the table in Schedule 1 (other than wholly obtained goods), they must be produced entirely in one or more Parties from non-originating materials only or from non-originating materials and originating materials. Therefore, if the requirement mentioned in the table in Schedule 1 in relation to goods includes a regional value content requirement plus a change in tariff classification requirement, those goods would be subject to this production requirement.

Wholly obtained goods are subject to the production requirements that are set out in subsection 153ZKC(2).

### **3.2. Goods produced from non-originating materials and not classified in the tariff table**

The AANZFTA provides that goods will be an AANZ originating good if they are classified to a heading or subheading that is not specified in column 1 or column 2 of the table in Schedule 1 to the AANZ Regulations but meets a 'general rule'. The general rule is either an RVC of 40% or a CTC of change of heading. The producer of the good can choose which of the two general rules is to be met.

Subsection 153ZKF(1) provides that goods are AANZ originating goods if:

- (a) they are classified to a heading or subheading of the HS that is not specified in column 1 or column 2 of the table in Schedule 1 to the AANZ Regulations; and
- (b) the final process in their production was performed in a Party; and

- (c) the good has a RVC 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.

This RVC 40% requirement can be met using either the direct method or the indirect/build down method.

Subsection 153ZKF(5) provides that goods are AANZ originating goods if:

- (a) they are classified to a heading or subheading of the HS that is not specified in column 1 or column 2 of the table in Schedule 1 to the AANZ Regulations; 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 another heading (CTH); 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.

### **Non-qualifying operations**

If the goods are required to only meet an RVC requirement then section 153ZKG is to be used in conjunction with subsections 153ZKE(1) and 153ZKF(1). Section 153ZKG provides that goods are not AANZ originating goods merely because of the following operations:

- (a) operations to preserve goods in good condition for the purpose of transport or storage of the goods;
- (b) operations or possesses 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).

The non-qualifying operations requirement is not to be used when the rules in the table in Schedule 1 include a CTC requirement.

### **Packaging materials and containers**

Where goods are packaged for retail sale in packaging material or a container, and the packaging material or container is classified with the good in accordance with Rule 5 of the Interpretation Rules, section 153ZKH provides for the packaging material or container to be disregarded when determining origin.

However, where the goods must satisfy a RVC requirement to be an AANZ originating good, the value of the packaging material or container must be taken into account as an originating material or a non-originating material in satisfying that requirement.

Part 5 of the AANZ Regulations outlines how the value of non-originating packaging material or container is to be calculated.

### **Accessories, spare parts, tools or instructional or other information materials**

Where goods are imported into Australia together with accessories, spare parts, tools or instructional or other information resources, section 153ZKI will allow those accessories, spare parts, tools or instructional or other information materials to be AANZ originating goods if:

- (a) they are accessories, spare parts, tools or instructional or other information resources in relation to the other goods;
- (b) the other goods are AANZ originating goods; and
- (c) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the underlying goods; and
- (d) the quantities and the value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods.

In addition under ss153ZKE(7), where the other goods must satisfy a RVC requirement to be a AANZ originating good, the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account as an originating material or a non-originating material when satisfying that requirement.

Part 5 of the AANZ Regulations outlines how the value of the accessories, spare parts, tools or instructional or other information materials that are originating or non-originating materials is to be calculated.

### **Consignment rule**

In addition to the rules specified above, section 153ZKJ provides that goods are not AANZ originating goods if:

- (a) they are transported through a country or place other than a Party; and
- (b) at least one of the following applies:
  - (i) they undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing or any other operation that is necessary to preserve them in good condition or to transport them to Australia);



- (ii) they 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.

This rule applies despite any of the other rules that are set out above. Therefore, even if all of the other rules are satisfied, the goods will not be AANZ originating goods if the consignment rule is breached.

### **Certificates of Origin**

A Certificate of Origin (CoO) is required to support a claim for an AANZ preferential rate of duty. A good claiming an AANZ preferential rate of duty should be entered as an AANZ originating good only if the importer holds, at the time the goods are imported, a valid CoO, or a copy of one, which provides details that the good qualifies as an AANZ originating good.

The CoO shall be issued by an Issuing Authority/Body of the exporting Party. A copy of a valid AANZ CoO has been posted on the AANZ webpage of the Customs and Border Protection website. Details of the Issuing Authorities/Bodies for each Party shall be posted on the AANZ webpage when notification is received from the individual countries.

The following link will take you to this webpage:  
<http://www.customs.gov.au/site/page6076.asp>

Supporting information may also need to be provided to Customs and Border Protection, upon request. A request for information to support a claim of eligibility for an AANZ preferential duty rate may be made at the time of entry or at a time after the good has been delivered into home consumption.

### **Refund of customs duty**

Where duty has been paid on AANZ originating goods, or on goods that would have been AANZ originating goods except for the fact that the importer did not have a valid CoO or copy of one at the time the goods were imported, the importer is able to claim a refund of duty on such goods under regulation 126D of *Customs Regulations 1926*. In relation to the second circumstance, the importer must hold a valid CoO or copy of one at the time of applying for the refund.

### **Origin advice service**

The AANZ allows for Australian importers, ASEAN and New Zealand exporters and producers of goods to obtain advance rulings from Customs and Border Protection regarding future importations of goods into Australia.

Customs and Border Protection will provide written advice on origin matters through the provision of an Origin Advice (OA). The OA exists to advise Australian importers, ASEAN and New Zealand 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.

The Customs and Border Protection Instructions and Guidelines for the ASEAN-Australia-New Zealand Trade Agreement, contains information on further information on obtaining an AANZ OA. This Instruction and Guideline will shortly be available at <http://www.customs.gov.au/site/page6076.asp>.

### **Import declaration requirements**

Before claiming preference, importers should take reasonable care to ensure that their goods are AANZ originating goods because they have met the relevant rule of origin, that the consignment rules are met and that 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.

The existing Country Code specific for the particular country of export should continue to be used for all goods imported under AANZ.

Where goods are AANZ originating goods, the Preference Scheme Type "AANZ" should also be used on Customs Import Declarations to access the preferential rate of duty. It will be necessary to also quote a Preference Rule on the Import Declaration (preference rule information is available on the CoO).

When goods are **not** AANZ originating goods and the importer has a valid CoO (and/or a valid Declaration of Origin) for another FTA covering imports of goods from a particular country, for example Singapore (SAFTA), Thailand (TAFTA) or New Zealand (ANZCERTA) then the goods should be entered under that specific preferential scheme type.

Goods produced in an ASEAN country that are not AANZ originating goods and they do not meet the originating goods requirements of another FTA may still be eligible for preferential rates of duty under the General System of Preference. The appropriate preference scheme type (DC, DCS, DCT or LDC) should be used depending on the particular country. Full details of the appropriate preference scheme for individual countries are available in Schedule 1 to the Customs Tariff.

If no preference scheme is quoted, the general rate of duty will apply.

Where non originating AANZ goods do not meet the requirements for another FTA of preference scheme the general rate (GEN) should be used.

The Preference Rule Types for use with this Agreement are:

- WO = wholly obtained
- PE = produced entirely from originating materials
- RVC = regional value content of 40% ('General Goods Rule')
- CTH = change in tariff heading ('General Goods Rule')
- PSR = product specific rule

This information will be obtained from the CoO.

Where preference is claimed and Customs and Border Protection finds that the imported good does not meet the relevant rule of origin or the consignment rule, Customs and Border Protection will demand the duty short-paid and may impose penalties. Additional action may be taken where fraud is indicated.

## **Additional origin information**

The text of the AANZFTA is available on the Department of Foreign Affairs and Trade website, [www.dfat.gov.au](http://www.dfat.gov.au). Any enquiries in relation to this ACN should be directed by email to [origin@customs.gov.au](mailto:origin@customs.gov.au) or by telephone on (02) 6275 6556 to Origin, Trade Services Branch.

## **Customs Tariff**

The *Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act* received the Royal Assent on 2 October 2009, as Act No. 98 of 2009. The Act contains amendments to the Tariff to implement the duty reductions contained in the AANZFTA by:

- providing free rates, and preferential rates, of customs duty for goods that are AANZ originating goods in accordance with new Division 1G of Part VIII of the Customs Act 1901;
- phasing the preferential rates of customs duty for all goods to Free by 2020;
- maintaining rates of customs duty on certain goods (alcohol, tobacco and petroleum products) that are equivalent to the rates of excise duty payable on such goods when locally manufactured; and
- creating a new Schedule 8 in the Tariff to accommodate the preferential, phasing and excise equivalent rates of duty.

The amendments to the Tariff provide that a Free rate of duty applies to AANZ originating goods, unless a rate is specified in Schedule 8 opposite the tariff classification that applies to those goods.

The amendments will come into effect on 1 January 2010.

## **Prescribed Goods and Certain Motor Vehicles**

A limited number of items in Schedule 8 to the Customs Tariff apply in respect of "prescribed goods only" where the AANZFTA specifies different rates of duty for goods that are classified in the same tariff subheading. In this case, goods that have a substantive rate (that is a rate other than Free) under the Agreement will be prescribed and will be subject to the rate of duty set out in column 3 of Schedule 8. Goods that are not prescribed will be free of duty.

The prescribed goods for each relevant item are specified in the *Customs Tariff Regulations 2004*. An extract of these Regulations will be made available on the Customs website.

In the Integrated Cargo System (ICS), the rate of duty for prescribed goods will be accessed by using Rate Number 01 for the relevant classification. For those goods that are not prescribed, Rate Number 02 will provide the Free rate of duty.

The AANZFTA provides for rates of duty of 5% for certain motor vehicles of heading 8703 when imported as AANZ originating goods from Indonesia, Thailand or Malaysia. This rate of duty motor vehicles from Indonesia, Thailand or Malaysia will be accessed by using Rate Number 01.

When imported from other ASEAN countries or New Zealand, the rate of duty for certain motor vehicles is Free, and Rate Number 02 is to be used.

### **Tariff reprint pages**

Tariff reprint pages containing alterations to the Tariff and Schedules 4 and 8 will be issued in early December 2009.

Supplementary Pages to Schedule 1 of the Customs Tariff will be issued to indicate the date on which the AANZFTA enters into force for each ASEAN country and New Zealand.

Revised Schedule 3 pages that include a reference to Schedule 8 will be issued as other changes are made to those pages.

Inquiries concerning the Tariff amendments may be directed to:

Manager  
Tariff Legislation  
Australian Customs Service  
5 Constitution Avenue  
CANBERRA ACT 2601  
Ph: 02 6275 6542

Jennifer Reimitz  
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