

A Guide to Determining the Origin of Goods Under the AANZFTA

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Acknowledgements and Disclaimer

The following Guide has been developed from the ASEAN Secretariat's publication "Primer on the Rules of Origin" (available at www.aseansec.org/publications/AANZFTA-ROO.pdf). However, this Guide does not form part of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and it does not provide or intend to provide any legal interpretation of the Agreement. In the aid of understanding this Guide has produced a number of examples but these are for illustrative purposes only and do not constitute commercial advice. Views or conclusions may have also been expressed but these should not be taken as legal or commercial advice.

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Summary: Finding the Rules of Origin Provisions in the AANZFTA

To find the AANZFTA ROO for a particular good, these steps should be followed:

Step 1: Check whether the good meets AANZFTA requirements for a wholly obtained or produced good as set out in Article 3 of the Rules of Origin Chapter (see Box 1 below), **OR** the good is produced in a Party exclusively from originating materials from one or more of the Parties.

If the good meets either of these requirements, then it is deemed to be an AANZFTA originating good. If the good does not meet these requirements, proceed to Step 2.

Step 2: Check whether the good is covered by the Agreement's Product Specific Rules (PSR) set out in Annex 2. If the good is covered by one of the tariff sub-headings listed in Annex 2, then it needs to meet the PSR set out in Column 4 of the Annex to be deemed to be an AANZFTA originating good. If the good is not covered by Annex 2, proceed to Step 3.

Step 3: For goods not covered by Step 1 or Step 2, the general rule set out in Article 4.1 of the Rules of Origin Chapter applies. This general rule provides that a good will be deemed to be AANZFTA originating if it meets either of the following alternative RVC or CTC tests: it has an RVC of not less than 40 percent, and the final process of production has been performed in an AANZFTA Party; or, all non-originating materials used in its production have undergone a change in tariff classification at the four-digit level (i.e., a change in tariff heading).

Note: The full text of the Agreement including all Chapters and Annexes can be found at <http://www.dfat.gov.au/trade/fta/asean/aanzfta/contents.html>

Summary: Operational Certification Procedures (OCP): Step-by-step

Step 1 - Register with an AANZFTA Issuing Authority/ Body such as a Chamber of Commerce. This usually entails registering your company and all authorized signatories (including agents and brokers) with a Chamber of Commerce seeking to register for exports under the AANZFTA. The “AANZFTA Exporter Registration Form” (Form CO4A) should be used. See *Attachment A: AANZFTA Certificate of Origin – Model Formats*

Step 2 – Pre-Export Examination (if necessary). Once the manufacturer/exporter decides on which rule of origin (ROO) approach he wishes to follow, he should consider whether a pre-export examination is necessary. Note: if the manufacturer/exporter has registered with a Chamber of Commerce the exporter makes an undertaking that the exports will comply with the ROO of AANZFTA under the conditions of form CO4A and also in accordance with the Exporters Declaration (Box 11) on the final AANZFTA Certificate of Origin (CO) issued. While Issuing Authorities reserve the right to conduct a pre-export examination, this usually will not be the case.

Note: In Australia, the onus is on the exporter to determine that the exported goods comply with the ROO conditions of AANZFTA. As with all preferential trade agreements, harsh penalties can arise if an exporter’s goods are claimed to comply with the ROO of an agreement and it is later found to not be the case. See *Appendix 1: Verification Procedures under AANZFTA ROOs* for more information.

Step 3 – Application for a CO. The exporter next needs to apply to the Chamber of Commerce for an AANZFTA Certificate of Origin (CO). The application needs to include supporting evidence proving that the good qualifies as originating, as well as minimum data requirements. The minimum data requirements include information on the exporter; shipment details; a full description of the goods; and, an exporter’s declaration. Minimum data requirements are detailed in Table 6A below “Minimum Data Requirements – Application for a Certificate of Origin”.

Step 4 – Issuance of the CO. The AANZFTA specifies that a CO should be issued as near as possible to, but no later than three working days after the date of exportation. If there are valid causes, Certificates of Origin may also be issued retroactively – but no longer than 12 months from the date of exportation. A CO must comply with minimum data requirements specified in the AANZFTA (detailed in Table 6B). A CO is valid for a period of 12 months and must be submitted to Customs authorities in an importing country within that period.

Step 5 – Send the CO to the Importer. Both the exporter and the Issuing Authority / Body should keep copies of the CO but the original CO needs to be forwarded by the exporter to the importer for submission to the Customs authorities in the importing country. It is permissible to declare multiple goods on the same CO provided that each good is originating in its own right.

Step 6 – Importer submits CO with import declaration. At the time of import declaration, the importer submits the CO to the Customs authorities of the importing country and claims preferential tariff treatment for the good under AANZFTA.

1. Introduction to AANZFTA – Rules of Origin (ROO)

1.1 The Rules of Origin (ROO) Provisions of AANZFTA

The rules of origin (ROO) that apply in the AANZFTA were crafted in a way that enhances exporters' ability to take advantage of opportunities under the FTA by providing a flexible approach to proving originating good status. This flexibility will make it easier for products to qualify as originating goods than it would be under a rigid one-rule-only system.

For some 83 percent of all tariff sub-headings, the AANZFTA ROO is based on a “co-equal” approach, where exporters will be given the choice of meeting either a “regional value content” (RVC) rule or the so-called “change in tariff classification” (CTC) approach. How these ROOs operate is discussed in detail below.

For another ten percent of tariff sub-headings, a CTC-only approach applies and for about one percent of sub-headings (mainly in the automotive sector) an RVC-only rule applies. Waste and scrap products accounting for about 1.4 percent of sub-headings are covered by special rules. Normal product-specific ROOs are not relevant for the remaining 4.5 percent of tariff sub-headings which will need to be wholly produced or obtained within the AANZFTA region. Finally, about two-thirds of chemicals sub-headings will be able to make use of a chemical reaction test to demonstrate that they are originating goods if the goods cannot satisfy the RVC or CTC ROO.

Flexibility in the application of the AANZFTA ROOs is further enhanced by “*de minimis*” provisions and by provision for regional cumulation.

1.2 Regional Cumulation: Promoting Greater Integration

The fact that AANZFTA ROOs provide for regional cumulation in calculations to determine eligibility for preferential treatment is expected to be of considerable value to the manufacturing sector as it will support greater integration into regional supply chains. In the AANZFTA ROOs regime, originating materials or components from any AANZFTA country used in the production of goods in another member country are treated the same way as materials or components from that second country in determining the origin of the final goods. For example, a producer in Vietnam is able to treat imported components from Singapore and Malaysia that are AANZFTA-originating in the same way as Vietnamese components in calculating the eligibility of his final product to meet ROOs requirements in Australia.

1.3 Wholly Obtained Originating Goods in AANZFTA

As noted earlier, in the case of a number of goods, eligibility for preferential treatment under the FTA's ROOs is normally based on the concept that they are wholly produced or obtained within the country of export. AANZFTA specifically lists goods considered as wholly obtained (see Box 1). Trade covered by roughly 4.5 percent of tariff sub-headings is covered by the wholly obtained approach to ROO in the agreement.

Box 1: Wholly Obtained Goods

Article 3 of the Rules of Origin Chapter of AANZFTA lists as wholly obtained goods:

- Plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in a Party;
- Live animals born and raised in a Party;
- Goods obtained from live animals in a Party;
- Goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a Party;
- Minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
- Goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law, by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;
- Goods produced on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in the previous paragraph;
- Goods taken by a Party, or a person of a Party from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with international law;
- Goods which are:
 - Waste and scrap derived from production and consumption in a Party provided that such goods are fit only for the recovery of raw materials; or
 - Used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and
- Goods produced or obtained in a Party solely from products referred to in all of the previous paragraphs or from their derivatives.

1.4 ROOs Incorporating a Substantial Transformation Test

For a good that is not wholly obtained, the AANZFTA requires that it meets an alternative test to ensure that non-originating materials used in its production have been “substantially transformed”. For most goods (covered by some 83 percent of tariff sub-headings) will be treated as originating goods if they can satisfy either the change in tariff classification (CTC) or regional value content (RVC) tests. For other goods, there is only an RVC test or only a CTC test, or the test requires that specific processing requirements be met. In the case of the CTC test, all materials used in the production of the good that are not AANZFTA-originating (e.g. as they are imported from a country outside the AANZFTA area), must undergo a change in tariff classification at a specified level. More detail on how these tests apply is provided below.

1.5 The ROO provisions in AANZFTA

The ROO provisions in the AANZFTA are set out in:

- Chapter 3 of the Agreement, which is entitled “Rules of Origin”;
- An Annex to Chapter 3, which is entitled “Operational Certification Procedures”. This Annex also includes two Appendices setting out minimum data requirements for:

- Applications for a CO
 - Certificates of Origin; and,
- Annex 2 to the Agreement, which is entitled “Product Specific Rules”.

For those products covered by the tariff sub-headings listed in Annex 2 on Product Specific Rules (PSR), the ROO applicable to them is set out in that Annex.

For products covered by tariff sub-headings not listed in Annex 2, a “general rule” applies. This general rule is set out in Article 4.1 of the Rules of Origin Chapter and provides that a good will be considered as an AANZFTA originating good if it meets either of the following tests:

- The good has an RVC of not less than 40 percent of the FOB (free on board) value and the final process of production is performed within a Party.
- All non-originating materials used in the production of the good have undergone a CTC change at the 4 digit level (i.e., a change in tariff heading).

1.6 Where are the ROO Provisions in the AANZFTA?

To find the AANZFTA ROO for a particular good, these steps should be followed:

Step 1: Check whether the good meets AANZFTA requirements for a wholly obtained or produced good as set out in Article 3 of the Rules of Origin Chapter (see Box 1), **OR** the good is produced in a Party exclusively from originating materials from one or more of the Parties.

If the good meets either of these requirements, then it is deemed to be an AANZFTA originating good. If the good does not meet these requirements, proceed to Step 2.

Step 2: Check whether the good is covered by the Agreement’s Product Specific Rules (PSR) set out in Annex 2. If the good is covered by one of the tariff sub-headings listed in Annex 2, then it needs to meet the PSR set out in Column 4 of the Annex to be deemed to be an AANZFTA originating good. If the good is not covered by Annex 2, proceed to Step 3.

Step 3: For goods not covered by Step 1 or Step 2, the general rule set out in Article 4.1 of the Rules of Origin Chapter applies. This general rule provides that a good will be deemed to be AANZFTA originating if it meets either of the following alternative RVC or CTC tests: it has an RVC of not less than 40 percent, and the final process of production has been performed in an AANZFTA Party; or, all non-originating materials used in its production have undergone a change in tariff classification at the four-digit level (i.e., a change in tariff heading).

Greater details on the use of regional value content (RVC) tests and the change in tariff classification (CTC) tests used in the AANZFTA are provided below (see Appendix 1).

2. Calculation of Regional Value Content (RVC)

Originating goods status can be determined in the case of 83 percent of all AANZFTA tariff lines through either the CTC approach or through a RVC calculation. Another one percent of tariff sub-headings require an RVC only approach. In the AANZFTA, there are two approaches that can be used to calculate RVC: the “Direct Formula” calculation; and the “Indirect / Build-Down Formula” calculation. In nearly all cases, the RVC must equal at least 40 percent of the free-on-board (FOB) value of the good before it can be considered as an originating good under the AANZFTA ROOs.

How the two different calculations are performed is addressed in the below, complete with example calculations

2.1 Regional Value Content (RVC) Formulas:

2.1A The Direct Formula

The Direct Formula calculation is performed according to the following equation:

$$\text{RVC} = \frac{\text{AANZFTA Material Cost} + \text{Labour Cost} + \text{Overhead Cost} + \text{Profit} + \text{Other Costs}}{\text{FOB}} \times 100\%$$

Box 2: Sample Direct Formula Calculation

A Vietnamese manufacturer of outdoor chairs sells chairs in sets of four for Đông 1,800,000. The manufacturer imports raw wood and metal screws from China valued at Đông 1,052,200. Plastic parts imported from Singapore that are AANZFTA originating materials cost Đông 285,000, metal hardware from New Zealand that is AANZFTA originating material costs Đông 169,000 and the manufacturer himself produces cane seats from his own materials that cost Đông 160,000 per set of chairs.

The labour cost involved in producing a set of chairs is Đông 44,500; overhead costs come to Đông 27,000; the cost of shipping to Hai Phong and loading onto a ship come to Đông 9,000 per set of chairs; and the manufacturer aims to make a profit of 3 percent (Đông 53,300) on his sales. Does the set of four chairs meet the AANZFTA RVC?

$$\begin{array}{r} 285,000 \\ 169,000 \\ 160,000 + 44,500 + 27,000 + 53,300 + 9,000 = 747,800 \end{array}$$
$$\text{RVC} = \frac{\quad}{1,800,000} \times 100\% = \frac{747,800}{1,800,000} \times 100\%$$

Therefore **RVC = 41.5 percent** and the set of chairs meets the AANZFTA 40 percent RVC rule and are “originating goods”

2.1B The Indirect Formula (Build-Down) Formula

In those cases where it is possible for the manufacturer to readily and accurately identify the value of non-originating materials used in the production of the goods, AANZFTA ROOs permit a calculation using an equation known as the “Indirect / Build-Down” formula. This operates as:

$$\text{RVC} = \frac{\text{FOB} - \text{Value of Non-Originating Materials}}{\text{FOB}} \times 100\%$$

If we perform this calculation using the example of the Vietnamese chair manufacturer from Box 3 and assume that the manufacturer can accurately account for spending Đông 1,052,200 for the imported Chinese wood and metal screws, we can calculate:

$$\text{RVC} = \frac{\text{Đông } 1,800,000 - \text{Đông } 1,052,200}{\text{Đông } 1,800,000} = \frac{747,800}{1,800,000} \times 100\% = 41.5\%$$

Note: In both examples used to illustrate the RVC calculations, the AANZFTA ROOs cumulation rule allows the Vietnamese chair manufacturer to count inputs from Singapore and

New Zealand in the same way as self-produced inputs in the chair manufacture process. However, this is only the case if the inputs from Singapore and New Zealand comply with the relevant ROO so that they are deemed to be AANZFTA-originating goods.

Box 3: RVC Definitions

AANZFTA Material Cost = the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;

Labour Cost = wages, remuneration and other employee benefits;

Overhead Cost = the producer's total overhead expense;

Other Costs = costs incurred in placing the good in the ship or other means of transport for export, including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges;

FOB = the free-on-board value of the goods, inclusive of the cost of transport to the port or site of final shipment abroad. This value is to be arrived at in accordance with the GATT rules on customs valuation;

Value of non-originating materials = the cost-insurance-freight (CIF) value at the time of importation or the earliest ascertained price paid for all non-originating materials parts or produce that are acquired by the producer in the production of the good. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced;

CIF = the value of the good imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation. This value is to be arrived at in accordance with the GATT rules on customs valuation.

2.2 Minimal Operations and Processes

Certain kinds of processes and operations cannot be counted toward satisfying RVC under the ROOs for AANZFTA. Whether they are undertaken by themselves or in combination with each other, the following cannot be taken into account in a calculation of RVC:

- Ensuring preservation of goods in good condition for the purpose of transport or storage;
- Facilitating shipment or transportation;
- Packaging (excluding encapsulation in the electronics sector) or presenting goods for transportation or sale;
- Simple processes, consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations;
- Affixing of marks, labels or other like distinguishing signs on products or their packaging;
- and,

- Mere dilution with water or another substance that does not materially alter the characteristics of the goods.

2.3 CTC vs. RVC Allowances

At this point, it is important to reiterate that certain special allowances associated with the CTC approach are not permitted in RVC calculations. More detail on the CTC approach is provided below in Section 3.

Under the CTC *de minimis* rule, up to 10 percent of the value of a good can be accounted for by non-originating materials that do not undergo the required change in tariff classification. No such *de minimis* rule applies in the case of RVC calculations.

Under the CTC approach, *accessories, spare parts and tools* presented with the good and not invoiced separately are generally disregarded for purposes of the CTC determination; however, the value of these items must be factored into the calculation for RVC purposes.

Under the CTC approach, *packing materials and containers* in which a good is packaged for retail sale – when classified together with that good – are not taken into account in determining whether all of the nonoriginating materials used in the production of the good have met the change in tariff classification requirements.

However, when calculating RVC, the value of the packing materials and containers are taken into account as originating or non-originating materials.

3. Change in Tariff Classification (CTC)

The concept of CTC is applied only to non-originating materials. To meet the CTC requirement, a non-originating material or component that is used to produce another good must not have the same classification under the Harmonized System (HS) as the final good into which it is incorporated. The CTC rules are written in such a way as to ensure that the required transformation of non-originating materials occurs within the FTA territory to justify the claim that the goods are the produce of the FTA territory.

We can make use of an example to see how the CTC approach would work in practice. Imagine that a Malaysia-based company is manufacturing vacuum cleaners that it wants to sell in the Australian and New Zealand markets. Vacuum cleaners produced by the company are classified under HS tariff heading 8508 and under subheading 8508.11. (See Annex 2: Product Specific Rules p.212).

The AANZFTA ROO for vacuum cleaners is a flexible one that can be met through the CTC approach (a change in tariff heading (CTH)), the RVC approach (an RVC of at least 40 percent) or a combination of the two (a change in tariff sub-heading provided the good has an RVC of at least 35 percent).

The Malaysian vacuum cleaner manufacturer is able to source most of his materials and components at home or from other sources in the AANZFTA region, but the firm finds it necessary to import steel springs from China (HS 7320), electric motors from Japan (HS 8412) and ball bearings (HS 8482) from Germany.

Under the AANZFTA, the vacuum cleaner exported to Australia and New Zealand qualifies as an originating good from Malaysia under the CTC approach because the imported, non-originating, components are classified under different headings than heading 8508 which covers vacuum cleaners. The good may also qualify under one of the other two tests that exist for goods of sub-heading 8508.11, but this does not need to be tested – as the AANZFTA ROOs state that the good only needs to meet one of any alternative tests for the good in question.

In other words, while the ball bearings (HS 8482) come from Germany, and the steel springs (HS 7320) come from China, and the motors (HS 8412) come from Japan, because these goods are “transformed” in Malaysia into the final good – a vacuum cleaner (HS 8508) – this vacuum cleaner can be exported as a qualifying good under AANZFTA.

In many cases, the product-specific rules for products traded under AANZFTA specify that the change in tariff classification must involve a change in tariff classification at the HS chapter (2-digit) level. In many other cases, there must be a change in the tariff heading (4-digit) level. For some products, the change in tariff classification is specified at the 6-digit (change in tariff sub-heading) level of the schedule.

Some examples, taken from Annex 2 of the AANZFTA help to illustrate this further:

3.1 Examples: How the CTC ROO Operates

Change in Tariff Classification at 2-digit Chapter Level (“CC”)

Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
5806	5806.31	Other woven fabrics: of cotton	CC

The 2-digit chapter heading “58” is “Special Woven Fabrics”. Single cotton yarn, of combed fibres, quite possibly the input to making woven fabric, is classified in chapter 52 “Cottonyarn” (for example in 5206.25). Changing non-originating cotton yarn into narrow woven cotton fabric makes the fabric an originating product under AANZFTA.

Change in Tariff Classification at 2-digit Chapter Level (“CC”)

Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
7321	7321.12	Cooking appliances and plate warmers: for liquid fuel	RVC (40) or CTH or RVC (35) + CTSH

The 4-digit section heading “7321” groups “Stoves, ranges, grates, cookers, barbecues and other similar appliances”. The production of a cooking appliance classified in 7321 no doubt involves the use of iron or steel screws classified in category 7318 and pipes classified in 7304. These goods can be non-originating and incorporated into a cooking appliance classified in category 7321 with the cooking appliance treated as an originating good under AANZFTA. This is because when the good is assembled it results in the 7321 heading (ie. a change in tariff heading “CTH”).

Change in Tariff Classification at 2-digit Chapter Level (“CC”)

Tariff Heading	Tariff Sub-Heading	Product Description	Product-Specific Rule
8467	8467.11	Pneumatic: rotary type [tools] (including combined rotary percussion?)	RVC (40) or CTSH

This 6-digit sub-heading for pneumatic hand-held tools may incorporate parts of pneumatic tools (classified in 8467.92) and other parts (classified in 8467.99). If a manufacturer were to purchase non-originating parts classified in 8467.92 or 8467.99 and then incorporate them in a hand tool classified in 8467.11, this latter product when exported to an AANZFTA market would be an originating product for purposes of AANZFTA.

3.2 AANZFTA CTC Flexibility: the *de minimis* Provision

For exporters that wish to avail themselves of the CTC approach, AANZFTA ROOs provide additional flexibility through a *de minimis* provision. The *de minimis* provision does not apply to the RVC approach.

Under the *de minimis* provision, goods that do not completely satisfy the CTC requirement, can nevertheless qualify as originating goods if:

- The value of all non-originating materials used in the production of the good – other than the textiles and apparel products covered in HS Code Chapters 50 to 63 - that did not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good and the good meets all other applicable criteria in AANZFTA’s ROO requirements;
- In the case of the textiles and apparel products covered in HS Code Chapters 50 to 63 either:
 - the weight of all non-originating materials used in the production of a good that did not undergo the required change in tariff classification does not exceed 10 percent of the total weight of the good or
 - the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 percent of the FOB value of the good.

And the good meets all other applicable criteria in AANZFTA’s ROO requirements.

<i>Example: The de minimis Provision in CTC</i>	
Textiles and Apparel Products	Other CTC-Eligible Products
(A) FOB Value of Final Product = \$ 1,000	(A) FOB Value of Final Product = \$ 1,000
Value of inputs not undergoing CTC = < \$ 100	Value of inputs not undergoing CTC = < \$ 100
Or	
(B) Weight of Final Product = 1,500 kilograms	
Weight of inputs not undergoing CTC = < 150 kilograms	

3.3 Treatment of Accessories, Spare Parts and Tools

Under the CTC approach in the AANZFTA, accessories, spare parts, tools and instructional or information materials presented with the good are – under certain specified circumstances –

considered to be part of the good and are disregarded when making a determination of whether all of the non-originating materials used in the production of the originating good have undergone the required change in tariff classification. The following conditions are attached to this treatment:

- The accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and
- The quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

An example of how this rule might operate in practice might involve trade in lawn mowers. Imagine a Singapore-based manufacturer of large lawn mowers for lawns, parks or sports grounds who wants to export his firm's product to New Zealand. The mower is classified in HS 8433.11 which must meet a product specific rule of RVC(40) or CTSH. Because mowers such as this typically must use different cutting blades for different operations (sports fields vs. golf courses) it is normal practice for manufacturers to include several different cutting blade assemblies (classified as parts under HS 8433.90.90) as well as adjustable hand operated wrenches (classified under HS 8204.12) for use in changing the blades. The blade assemblies and wrenches could be of Chinese origin and not be required to have undergone a change in tariff classification in order for the mower to be considered as an originating good.

Please note that the value of accessories, spare parts and tools is not disregarded in the calculation of RVC and are to be treated as originating or non-originating, as the case may be, in RVC calculations.

We have so far shown how the AANZFTA ROOs RVC and CTC approaches to satisfying proof of substantial transformation operate. More examples are provided in Appendix 1.

4. Product-specific ROOs other than CTC and RVC

As noted above in Section 1.5, a relatively small number of products are required to meet the test of originating goods for AANZFTA purposes through special product-specific rules. In many cases, these rules specify a process that must be undergone in order for the good to be considered as originating. Traders of goods falling into these categories will need to familiarise themselves with the specific rules outlines in Annex 2 to the AANZFTA.

While this is not an exclusive list, see for example the Chapter Notes related to Chapter 28: Inorganic Chemicals; Organic or Inorganic Compounds of Precious Metals, of Rare-earths, of Radioactive Elements of Isotopes; Chapter 29: Organic Chemicals; and Chapter 32: Tanning or Dyeing Extracts, Tannins and their Derivatives, Dyes, Pigments and other Colouring Matter; Paints and Varnishes, Putty and other Mastics, Inks and also see below, 4.2 Examples of Other Specific Rules.

4.1 The Chemical Reaction Rule

The inorganic chemicals classified in HS chapter 28, the organic chemicals classified in HS chapter 29, and tanning and dyeing extracts and other products classified in HS chapter 32, may fail to satisfy the RVC and CTC rules provided in Annex 2. See the Chapter Note for these headings.

In such cases, the chemicals are considered to be originating if the chemical is a product of a chemical reaction that occurred in a Party. 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.

4.2 Example of Other Special Rules

In the table below, we illustrate some examples of the specific rules found in Annex 2:

Illustrations of Product-specific Rules Specifying Process

Tariff Heading	Tariff Sub-Heading	Product Description	Product-specific rule
1509	1509.10	Olive oil – virgin	RVC (40) or CC or no change in tariff classification is required provided that the good is

			produced by refining
2620	2620.11	Slag, ash and residues ... containing mainly zinc: hard zinc spelter	Origin shall be conferred to a good of this sub-heading that is derived from production or consumption in a Party
3808	3808.92	Insecticides, rodenticides ... Other: fungicides	RVC (40) or CTSH, provided that at least 50 percent by weight of the active ingredient or ingredients is originating
5407	5107.10	Woven fabrics of synthetic filament yarn – obtained from high tenacity yarn of nylon, etc.	CTH or a change from fabric that is constructed but not further prepared or finished provided that it is dyed or printed and undergoes at least two subsequent finishing processes in the territory of one or more of the parties to render it directly usable
6104	6104.13	Women's or girl's suits... of synthetic fibres	RVC (40) provided that the good is cut or knit to shape and assembled in the territory of one or more of the parties or CC
6302	6302.31	Bed linen: of cotton	CC 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

5. Other Aspects to Meeting AANZFTA ROOs Requirements

5.1 Direct Consignment

An AANZFTA originating good retains its originating status if it is transported to the importing Party:

- without passing through any non-Party; or
- it has transited through a non-Party and certain conditions are met (see below).

Transportation to the importing Party through another AANZFTA Party does not affect the originating status of the good. Furthermore, if the good is imported into another AANZFTA Party and then re-exported, it may be eligible for a “backto-back” certificate to enable it to retain originating status on the basis of the original CO (see the section on back-to-back certificates in Part 9).

Under AANZFTA, a good that transits through a non-Party will retain its originating status provided that:

- The good has not undergone subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, storing or any other operations necessary to preserve them in good condition or to transport them to the importing Party;
- The good has not entered the commerce of the non-Party; and,
- The transit entry is justified for geographical, economic, or logistical reasons.

Box 4: Direct Consignment

Consider the case of microwave ovens produced in Viet Nam and shipped to Australia by container ship. The goods are routed through Hong Kong because it is the cheapest shipping route. In Hong Kong, the containers are unloaded from one ship, briefly stored and then reloaded onto another ship. The microwaves **never enter the commerce** of Hong Kong. Another ship then sails on to Melbourne. Such an operation does not change the origin status of the microwave ovens.

On the other hand, surgical instruments exported from the Philippines to New Zealand in bulk and not sterilized for end-user applications would lose their originating goods status if the shipment passed through Hong Kong where a sterilisation process took place and the instruments were re-packed for end-user sales.

5.2 Identical and Interchangeable Materials

The provisions in the FTA addressed to identical and interchangeable materials are designed to deal with inputs to production that frequently come from multiple country origins and – because they are inherently fungible – are difficult to keep track of.

For the purposes of the AANZFTA ROOs, a determination of whether identical and interchangeable materials are originating materials must be made either by physical

segregation of each of the materials or by generally accepted accounting principles of stock control or inventory management practice in the exporting country.

Identical and interchangeable materials are defined in the AANZFTA as “materials that are fungible as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which, once they are incorporated into the finished product cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination.”

5.3 Indirect Materials

Under the AANZFTA, indirect materials are always treated as originating materials without regard to where they are produced. Their value is the cost registered in the accounting records of the producer of the good.

The AANZFTA defines an indirect material as “a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

- Fuel and energy;
- Tools, dies and moulds;
- Spare parts and materials used in the maintenance of equipment and buildings;
- Lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
- Gloves, glasses, footwear, clothing, safety equipment and supplies;
- Equipment, devices and supplies used for testing or inspecting goods;
- Catalysts and solvents; and
- Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.”

6. Operational Certification Procedures for AANZFTA

Under the AANZFTA, a process is established through which exporters apply for and obtain a Certificate of Origin (CO) that officially attests to the eligibility for preferential treatment of the product they intend to export to another AANZFTA market.

There are a number of stages to the process which are discussed below and illustrated in Section 6.1.

Before making an application to initiate the certification process, the exporter should be familiar with the concepts and approaches detailed in this guide because in most instances, the exporter will want to choose between meeting the CTC or RVC tests and choose the test that is easiest for his or her product to satisfy. Depending upon the nature of the product and the extent to which it incorporates inputs from outside the country, record-keeping considerations may also be important in the selection of ROO test.

The exporter also needs to know who acts as the “Issuing Authority / Body” for ROO purposes in the exporting country. In the case of Australia these bodies are the Australian Chamber of Commerce and Industry (ACCI) and the Australia Industry Group (AI Group).

6.1 Operational Certification Procedures (OCP): Step-by-step

Step 1 - Register with an AANZFTA Issuing Authority/ Body such as a Chamber of Commerce. This usually entails registering your company and all authorized signatories (including agents and brokers) with a Chamber of Commerce seeking to register for exports under the AANZFTA. The “AANZFTA Exporter Registration Form” (Form CO4A) should be used.

Step 2 – Pre-Export Examination (if necessary). Once the manufacturer/exporter decides on which rule of origin (ROO) approach he wishes to follow, he should consider whether a pre-export examination is necessary. Note: if the manufacturer/exporter has registered with a Chamber of Commerce the exporter makes an undertaking that the exports will comply with the ROO of AANZFTA under the conditions of form CO4A and also in accordance with the Exporters Declaration (Box 11) on the final Certificate of Origin (CO) issued. While Issuing Authorities reserve the right to conduct a pre-export examination, this usually will not be the case.

Note: In Australia, the onus is on the exporter to determine that the exported goods comply with the ROO conditions of AANZFTA. As with all preferential trade agreements, harsh penalties can arise if an exporter’s goods are claimed to comply with the ROO of an agreement and it is later found to not be the case. See *Appendix 1: Verification Procedures under AANZFTA ROOs* for more information.

Step 3 – Application for a CO. The exporter next needs to apply to the Chamber of Commerce for an AANZFTA Certificate of Origin (CO). The application needs to include supporting evidence proving that the good qualifies as originating, as well as minimum data requirements. The minimum data requirements include information on the exporter; shipment details; a full description of the goods; and, an exporter’s declaration. Minimum data

requirements are detailed in Table 6A below “Minimum Data Requirements – Application for a Certificate of Origin”.

Step 4 – Issuance of the CO. The AANZFTA specifies that a CO should be issued as near as possible to, but no later than three working days after the date of exportation. If there are valid causes, Certificates of Origin may also be issued retroactively – but no longer than 12 months from the date of exportation. A CO must comply with minimum data requirements specified in the AANZFTA (detailed in Table 6B). A CO is valid for a period of 12 months and must be submitted to Customs authorities in an importing country within that period.

Step 5 – Send the CO to the Importer. Both the exporter and the Issuing Authority / Body should keep copies of the CO but the original CO needs to be forwarded by the exporter to the importer for submission to the Customs authorities in the importing country. It is permissible to declare multiple goods on the same CO provided that each good is originating in its own right.

Step 6 – Importer submits CO with import declaration. At the time of import declaration, the importer submits the CO to the Customs authorities of the importing country and claims preferential tariff treatment for the good under AANZFTA.

**Table 6A
Minimum Data Requirements – Application for a Certificate of Origin**

The minimum data to be included in an application for a Certificate of Origin are:

Exporter details	The name, address and contact details of the exporter
Shipment details (a separate application must be made for each shipment)	(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
Full description of goods	(i) Detailed description of the goods, including HS Code (6-digit level), and, if applicable, product number and brand name (ii) The relevant origin conferring criteria
Exporter’s declaration	Declaration completed by the exporter or its authorised representative, signed and dated, and annotated with the signatory’s name and designation. The declaration shall include a statement that the details provided in the application are true and correct.

Table 6B
Minimum Data Requirements – Certificate of Origin

The minimum data to be included in a Certificate of Origin are:

Exporter details	The name, address and contact details of the exporter
Shipment details (a Certificate 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
Full description of goods	(i) Detailed description of the goods, including HS Code (6-digit level), and, if applicable, product number and brand name (ii) The relevant origin conferring criteria (iii) FOB value*
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 Rules of Origin requirements
Certificate of Origin Number	A unique number assigned to the Certificate of Origin by the Issuing Authority / Body

**** Note: In the case of Australia and New Zealand, a Certificate of Origin or a back-to-back Certificate of Origin which does not state the FOB value shall be accompanied by a declaration made by the exporter stating the FOB value of each good described in the Certificate of Origin. In this case it is the exporter’s responsibility to send the declaration to Customs authorities in the importing country. See Attachment A: AANZFTA Formats and Guidelines for an example of this declaration.***

7. AANZFTA Certificate of Origin Format

The Parties to the AANZFTA have agreed to a model format for AANZFTA CO. In addition, a table has been prepared as guidelines for completing the information on the origin conferring criterion on the CO form. The model format and guidelines are reproduced in Appendix 4 of this guide. In the case of exporters from Australia and New Zealand, they have the option of either including the FOB value of the good in Box 9 of the CO form, or providing this information in a separate Exporter Declaration that would need to accompany the Certificate of Origin.

7.1 Back-to-back Certificate of Origin

In some cases, it might be necessary for a shipment to be routed through an “intermediate AANZFTA country” on its way to its final destination. If an ANZFTA originating good is passing through an “intermediate AANZFTA Party”, the exporter in the “intermediate AANZFTA Party” may make an application to the Issuing Authority / Body in that country to issue a “back-to-back” CO to ensure that the good will be eligible for preferential tariff treatment in the final destination.

The AANZFTA provides that the Issuing Authority/Body must issue a back-to-back CO provided that the following conditions are met:

A valid original CO or its certified true copy is presented;

The period of validity of the back-to-back CO does not exceed the period of validity of the original CO;

The consignment which is to be re-exported using the back-to-back CO does not undergo any further processing in the intermediate AANZFTA country, except for packing or logistics activities such as unloading, reloading, storing or other operations necessary to preserve them in good condition or to transport them to the importing AANZFTA country; and,

The back-to-back CO contains relevant information from the original CO in accordance with the minimum data requirements (see Table 6B). The FOB value shall be the FOB value of the goods exported from the intermediate AANZFTA country.

Note that the verification procedures specified in Rules 17 and 18 of the AANZFTA ROOs Annex on Operational Certification Procedures also apply to the back-to-back CO.

8. Verification of Origin under the AANZFTA

At times, it is possible that the Customs authorities in an importing AANZFTA country may have reason to doubt the authenticity of a CO or the documentary evidence supporting a claim of originating goods. In such cases, the agreement provides procedures for origin verification – including investigations in the country of origin. AANZFTA verification procedures are discussed in Appendix 1.

8.1 Record Keeping Requirements

The OCP require exporters, importers, manufacturers and the issuing authorities to maintain records relating to the exportation or importation necessary to demonstrate that the relevant goods qualified for preferential treatment for a period of not less than three years. These records can be kept in electronic form.

8.2 Acceptance of the CO by Importing Authorities

Under normal circumstances, where the importing authorities do not question the legitimacy of the CO, the goods covered by the certificate are entered with the benefit of preferential tariff treatment. However, if origin verification action is being undertaken, preferential treatment may be suspended for the period of the investigation (and reinstated later if the investigation does not invalidate the CO).

If an exporter changes the destination of goods exported after their export but before clearance by the importing country, the exporter must apply for a new CO for the goods that have changed destination. The original CO must be submitted with the application for the new CO.

If the goods covered by the CO are shipped through the territory of a country that is not an AANZFTA member, the Customs authority of the importing country must be provided with the following documents:

- A through Bill of Lading issued in the exporting country;
- A CO issued by the relevant Issuing Authority/Body of the exporting country;
- A copy of the original commercial invoice in respect of the good; and,
- Supporting documents that prove that “direct consignment” requirements have been complied with.

8.3 Cumulation and Certificates of Origin

The AANZFTA’s rules on cumulation provide that a good that complies with the AANZFTA ROO, and which is used as a material in the production of another good in another Party (the “intermediate good”), shall be considered to originate in the Party where the working or processing of the finished good has taken place.

If the manufacturer/ exporter of the finished good wishes to take advantage of this provision, it will be essential that they have sufficient documentation to demonstrate that the “intermediate good” imported from another AANZFTA Party is an AANZFTA originating good. For

example, if the “intermediate good” has been imported under AANZFTA’s tariff commitments, then it would have been accompanied by a CO, and it will be important that the manufacturer/exporter of the finished good retains this CO.

8.4 Comparison of AANZFTA ROOs with Other ASEAN FTAs

The AANZFTA ROOs discussed above are designed to facilitate increased trade in the region by providing exporters with a considerable degree of flexibility in deciding which of the specified co-equal approaches to choose for proving the origin of their goods.

Additional flexibility is provided through *de minimis* provisions attached to the CTC approach and a choice of calculation methodologies for purposes of RVC calculations. That said, the AANZFTA ROOs are really not very different from those which apply in other FTAs which ASEAN has negotiated.

These include: the ASEAN Trade in Goods Agreement (ATIGA) – all countries in ASEAN, the ASEAN-Japan Comprehensive Economic Partnership, the ASEAN-Korea Trade in Goods Agreement, the ASEAN-India Trade in Goods Agreement, and the ASEAN-China Trade in Goods Agreement.

8.5A Similarities in Approach

Four of the FTAs – ATIGA, the ASEAN-Japan Comprehensive Economic Partnership, and the ASEAN-Korea Trade in Goods Agreement employ a coequal approach. That is, exporters can choose between meeting a Regional Value Content (RVC) (40 percent) standard or a Change in Tariff Classification (CTC) at the four-digit HS level.

All six of the FTAs allow cumulation across the parties to the agreement, provided that the inputs in a final product each satisfy the applicable FTA ROOs.

In all of the FTAs except for ASEAN’s FTA with Japan, RVC can be calculated according to either a build-up (direct formula) or build-down (indirect formula) calculation. In the case of ASEAN’s FTA with Japan the build-down (indirect formula) is applicable only.

For the most part, the OCP that apply are the same in important respects across the FTAs.

These important similarities among the agreements are important because they go a long way towards avoiding confusion that exporters would otherwise face in trying to understand how the different ROOs operate. The strong similarities in the rules also make it easier for exporters to deal with practical issues, like record keeping requirements.

8.5B Differences in Approach

The ATIGA ROOs go further than the other agreements in facilitating cumulation of RVC calculations by permitting partial cumulation (on a pro rata basis) of the value of inputs with a RVC of at least 20 percent. The rules for how an RVC calculation are performed using partial cumulation are specified in Annex 6 to the ATIGA.

For RVC calculations, the FTA between Japan and ASEAN specify the use of only the “build-down” method of calculating RVC.

There are also considerable differences in the various agreements’ *de minimis* rules, although most permit (for most products) non-CTC qualified inputs into final products of up to 10 percent of the final product’s FOB value. There are no *de minimis* rules in the Indian and Chinese agreements because they do not permit a CTC only approach to ROOs.

Appendix 1: Verification Procedures under AANZFTA ROOs

The AANZFTA's verification procedures in respect of ROOs are detailed in Rules 17 and 18 of the Annex on Operational Certification Procedures. The procedures are summarised below.

Initiation of Verification Procedures

In those cases where the Customs authorities of the importing country have reason to suspect that the claim for AANZFTA originating status is incorrectly claimed, the agreement allows these authorities to initiate an investigation into the matter. Where this is the case, it is likely that the authorities will suspend preferential tariff treatment to the affected goods during the period of the investigation. In addition, where an investigation into a good's origin is initiated, the AANZFTA permits the importing authorities to:

- Institute retroactive checking measures to check on the validity of the CO;
- Request information from the relevant importer of the affected goods; and,
- Make a written request to the Issuing Authority / Body in the exporting country issuing the CO asking for information from the exporter or producer of the goods.

It is possible that the authorities in the importing country might find the case to be so important that they deem it necessary to undertake a visit to the exporting country for the purpose of verifying the origin of the goods concerned. Where this is the case, the importing country authorities must make their request for a verification visit at least 30 days before their proposed visit. If the Issuing Authority / Body in the exporting country that issued the CO is not a government agency, then the importing country authorities must notify the Customs authorities in the exporting country of their interest in undertaking a verification visit.

Responses to Verification Procedures

Parties requested to provide information in response to a request from the importing country authorities must respond with the information requested within 90 days of the date on which the request for information is made. In those cases where the importing authorities plan a verification visit to the exporting country, the Issuing Authority / Body under investigation will contact the exporter or producer and request them to permit a visit by the importing authorities to their premises and provide all information requested by the investigating importing authorities.

The investigating authorities of the importing country are not permitted to visit the premises or factory of an exporter or producer without written prior consent. Any consent given must be provided within 30 days of the request for a verification visit or the Issuing Authority / Body will have to advise the investigating authorities that their request for a visit is denied. Exporters and producers who find themselves subjected to a verification visit request should understand that a failure to respond positively to a request for a verification visit or failure to provide requested information is likely to lead to denial of preferential tariff treatment for the affected goods.

Exporters and producers should be aware that investigating authorities and CO issuing bodies are required to maintain the confidentiality of all information classified as confidential and collected in the course of a verification procedure under the AANZFTA.

Results of Verification Procedure

Verification procedures into ROOs under the AANZFTA must be completed by the authorities of the importing country within 150 days of the date of the request for information from the body issuing the CO for the goods under investigation. Final written advice from the investigating authorities as to the good's eligibility for preferential treatment must be provided to all relevant parties within 60 days of the receipt of the information necessary to make a decision. Where the Customs authority concludes that a good under investigation qualifies as an originating good, and where preferential treatment has been suspended for the period of the investigation, any suspended tariff treatment shall be reinstated.

AANZFTA Certificate of Origin Model Formats and Guidelines

Please also refer to *Attachment A: AANZFTA Certificate of Origin Model Formats and Guidelines*. Attachment A reproduces:

- (a) the model format agreed for the AANZFTA CO (note: the ACCI CO form is an acceptable variant of this);
- (b) the guidelines for completing the information on the origin conferring criterion on the CO form of the AANZFTA;
- (c) The Exporter Declaration on the Free-on-Board Value of Goods, which exporters from Australia and New Zealand must use if they do not provide the FOB value of the goods in Box 9 of the CO form; and
- (d) the model format agreed for the AANZFTA Continuation Sheet.