

A Guide to Determining the Origin of Goods under the Australia-US Free Trade Agreement (AUSFTA)

How to read this guide

This guide is set out in a step-by-step process. A number or an alpha/number combination identifies each step. The steps ask the user a question; denoted by **red text**.

Depending on the answer supplied, the guide may direct the user to the next appropriate step. Guiding information for each step is detailed in black text.

Many steps include definitions of terms used throughout AUSFTA, these definitions are indicated in *blue, italicized text*.

Process to qualify for preferential tariff treatment

Among other access improvements, the US will eliminate its tariffs on Australian originating goods. Reduced or zero tariffs will only be available to those companies that can prove that their exported goods qualify for preferential tariff treatment, by undertaking the following steps.

STEP 1 Ensure the goods being exported meet the rules of origin.

STEP 2 Supply your US importer with documentary proof of the goods' originating status.

Confirming originating status of your goods

In the first instance, exporters should determine whether the exported good already receives duty free entry into the US. If a good is duty free without using AUSFTA, no action is required to determine if the goods are Australian originating goods. Current US tariffs and the tariff reduction commitments under AUSFTA are available at http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html.

If the exported goods are not duty free under normal entry requirements and you wish to access preferential tariffs available under AUSFTA for the exported goods, the next step is to determine whether they qualify as originating Australian goods. This publication will step you through this process.

Documentary Evidence

Exporters of Australian originating goods are required to maintain, for up to five years after the date of export, records necessary to demonstrate that a good qualifies as an Australian originating good. The evidence must show that the goods meet the rules of origin requirements of AUSFTA.

Penalties for non-compliance

If either Customs authority finds that the exported goods are not Australian originating goods or cannot determine if the exported goods are Australian originating goods because there is insufficient information to justify the claim for preferential rates of duty, extra duty will be payable. Depending on the circumstances, you may also be liable for additional penalties applied by US Customs.

Consignment provisions

A good shall not be considered to be an originating good if the good undergoes subsequent production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party.

Step 1 Last Processed in Australia?

Were the goods last produced in Australia?

If yes, go to Step 2.

If no, the goods are not originating goods under AUSFTA.

Produce means grow, raise, mine, harvest, fish, trap, hunt, manufacture, process, assemble or disassemble. *Producer* and *production* have corresponding meanings.

Fungible Goods. Where the goods involve fungible goods (ie a collection or pool of like substances, materials or articles, such as grain or other horticultural produce in bulk), some of which were last processed in the AUSFTA region and some of which were not, origin must be determined either by physical segregation of the goods or through the use of an inventory management method, such as averaging, last-in, first-out, or first-in, first out. The same inventory management method must be used throughout a fiscal year.

Accessories, spare parts or tools delivered with originating goods that form part of the standard accessories, spare parts, or tools for those goods, shall be treated as originating goods, provided that:

- (a) the accessories, spare parts, or tools are not invoiced separately from the originating goods;
- (b) the quantities and value of the accessories, spare parts, or tools are customary for the originating goods;
- (c) if the goods are subject to an RVC requirement, the value of the accessories, spare parts, or tools was taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the originating goods; and
- (d) the accessories, spare parts or tools have not been added solely for the purpose of artificially raising the regional value content of the goods.

Packaging materials and containers for retail sale. Each Party shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 5-A or Annex 4-A, and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Step 2 Wholly obtained goods?

Are the goods “wholly obtained goods” or were they derived from or obtained from “wholly obtained goods”?

If no, go to Step 4.

If yes, the goods are “wholly obtained goods” and are therefore originating goods under AUSFTA.

If you cannot establish the origin of any material or component, you have to assume it does not originate in Australia or the US.

If any inputs to the final good uses any materials or components, at any stage of their manufacture, which come from outside Australia or the US, the goods are not “wholly obtained”.

“Wholly obtained goods” means:

- (a) a mineral good extracted in Australia;
- (b) a vegetable good, as such good is defined in the Harmonized System, harvested in Australia;
- (c) a live animal born and raised in Australia;
- (d) a good obtained from hunting, trapping, fishing, or aquaculture conducted in Australia;
- (e) a good (fish, shellfish, and any other marine life) taken from the sea by vessels registered or recorded with Australia and flying the Australian flag;
- (f) a good produced exclusively from products referred to in subparagraph (e) on board factory ships registered or recorded with Australia and flying the Australian flag;
- (g) a good taken by Australia, or a person of Australia, from the seabed or beneath the seabed outside territorial waters, provided that Australia has rights to exploit such seabed;
- (h) a good taken from outer space, provided it is obtained by Australia or a person of Australia and not processed in the territory of a non-Party;
- (i) waste and scrap derived from
 - (i) production there; or

- (ii) used goods collected there, provided such goods are fit only for the recovery of raw materials;
- (j) a recovered good derived there, from goods that have passed their life expectancy, or are no longer useable due to defects, and utilized there in the production of remanufactured goods; or
- (k) a good produced there exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production.

Step 3 Goods produced in the US exclusively from originating materials?

Were the goods produced exclusively from originating materials, entirely in the US or the US and Australia?

If no, go to Step 4.

If yes, the goods are originating goods under AUSFTA.

Non-originating material means a material that has not satisfied the requirements of Chapter 4 or 5 of AUSFTA.

Step 4 Goods produced using non-originating materials, Product Specific Rules

Determine the Harmonized System (HS) classification number for the exported good.

HS Classifications. The HS is an international convention for the classification of goods. For AUSFTA rules of origin purposes, it is necessary to classify goods down to the six-digit level. Tariff classification advice is available from:

- (a) your freight forwarder or customs broker (for established exports); or
- (b) Australian Customs on ahccadvice@customs.gov.au; or
- (c) United States Customs Border Protection on www.customs.gov

Using the HS classification number, identify the specific rule of origin in Annex 5-A (or Annex 4-A for textiles and apparel) that applies to that HS number.

AUSFTA Agreement and Annexes can be viewed at http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html

For details on how to satisfy the requirements of the product specific rules:

- A “Change in Tariff Classification” (CTC) requirement, go to Part A.
- A “Regional Value Content” (RVC) requirement, go to Part B.
- Any other requirement, go to Part C.

When reading the AUSFTA product specific rules the “General Interpretive Notes” to Annex 5A and 4A must be used.

Product specific rules may contain one or more of the following three requirements. The requirements can be used alone, in combination with one another and/or as alternatives to one another (the rule states which requirements apply):

A. Change in Tariff Classification (CTC) requirement

CTC requirement state that the imported inputs and the final exported product must come from different parts of the HS Code. Any given CTC requirement will state whether the inputs must come from different Chapters, (represented by the first two digits of the code), Headings (the first four digits) or Subheadings (all six digits), and may also state other exceptions. Example: “a change to (the tariff classification for the goods) from any other (tariff classification)”.

B. Regional Value Content (RVC) requirement

RVC requirement states that the value of local content in the exported product must reach a certain proportion of its total value, eg. “a regional value content of no less than (x%)”.

C. Other requirements

These rules generally require certain processes to be performed within the region, for example “Product of (nominated process or processes)”.

The product specific rules may also provide a choice of rules within the rule. If so, you can choose which rule is the easiest for your good to meet. Only one of the choices has to be met. All requirements included in the chosen rule have to be met for the good to be originating.

To satisfy a product specific rule that includes more than one requirement, always start with the CTC requirement if it applies. You can then move to any applicable RVC requirement, and then to any other requirement. A good is originating when it satisfies all applicable requirements. If it fails to satisfy any requirement the good is non-originating.

PART A - CTC requirement

Step A1 CTC Requirement

Determine the HS classification of the non-originating materials or components used to produce the good.

Go to Step A2.

Goods meet a CTC requirement if each of the non-originating materials used to produce the final good come from the different level of the tariff code (chapter, heading or subheading) stipulated in the product specific rule.

Different Level CTC requirements. *The difference needed to meet a CTC requirement can be at a number of different levels. Some rules require a change at Chapter level, others at Heading level and others at Subheading level, noting that:*

- (a) *Chapters are different if the first two digits differ;*
- (b) *Headings are different if the first four digits differ;*
- (c) *Subheadings are different if the first six digits differ.*

If the goods include any materials or components produced by other Australian or US suppliers, and if these materials are claimed to be Australian originating materials you must obtain evidence of such from those suppliers.

Non-originating materials are any materials:

- (a) *that are imported into Australia or the US; or*
- (b) *that are produced within Australia or the US but that do not meet the rules of origin under AUSFTA.*

How to establish the HS classification of materials:

- (a) *for materials imported into Australia, through the import entry for those materials, or a tariff advice issued by Australian Customs;*
- (b) *for materials produced by Australian suppliers, through an AHECC advice;*
- (c) *for any goods imported into US, through the import entry for those goods, or a through a tariff advice issued by the US Customs Border Protection.*
- (d) *for the materials specified in the following notes, through any of the documents mentioned in those Notes for those materials, if a tariff classification for the materials is specified in those documents.*

Evidence of the origin of materials may take the form of:

- (a) *for materials imported into Australia or the US, a statement to that effect;*
- (b) *for materials wholly obtained in Australia or the US, sufficient documentary proof provided directly by the producer of the materials;*
- (c) *for materials produced in and exported from the US under the FTA, sufficient documentary proof from the US producer that the materials are originating; or*
- (d) *for materials produced in Australia, sufficient documentary proof from the Australian producer that the materials are originating.*

Failure to Establish Origin. *If you cannot establish the origin of any material or component, you have to assume it does not originate in Australia or the US under AUSFTA. This may be the easiest option if the goods would meet CTC rule whether the material was originating or not. For example, if evidence of the origin of any material is hard to find, and a change in chapter is required (see Step A2), if that material and the goods clearly fall within different chapters, it may be easier to obtain sufficient evidence to support that conclusion, rather than to establish the origin of the materials.*

Step A2

Does the HS classification for the each of the non-originating materials differ sufficiently from the HS classification for the good?

NOTE: the product specific rules may provide a choice of CTC rules. If so, you can choose which rule is the easiest to meet. Only one of the choices has to be met. All the non-originating materials have to meet one of the CTC rules.

If yes, the CTC rule is met. Does the rule require any other requirement to be satisfied? If so, go to Part B or Part C, otherwise, the good is originating.

If no, determine whether the goods satisfy the *de minimis* exemption. Go to Step A3

Step A3 *De minimis* exemption

(a) For Annex 5A goods:

- **Determine the FOB value of the exported good.**
- **Determine the value of each of the non-originating materials that does not meet the change in tariff classification rule. Add all of these values together.**

Divide the aggregated value determined above, by the FOB value for the good, and express as a percentage. Eg $(b) / (a) \times 100$.

De Minimis. 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 originating good.

Therefore, the Agreement incorporates a *de minimis* provision that allows Annex 5-A goods to qualify as an originating good provided the total value of all non-originating materials used to produce the good that does not undergo the required CTC does not exceed 10% of the value of the final good.

In the case of Annex 4-A goods (being textiles and apparel), the *de minimis* provision allows non-originating content being certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in Annex 4A, shall nonetheless be considered to be an originating good if the total weight of all such fibres or yarns in that component is not more than seven percent of the total weight of that component. Elastomeric yarn content however, must be originating no matter the percentage of content they constitute.

The value of non-originating materials is:

- for a material imported by the producer of the good, the adjusted value of the material;
- for a material acquired in Australia, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, i.e., in the same manner as for imported goods, with such reasonable modifications as may be required due to the absence of an importation; or
- for a material that is self-produced, the sum of all expenses incurred in the production of the material, including general expenses, and an amount for profit equivalent to the profit added in the normal course of trade.

For non-originating materials, where included above, the following expenses may be deducted from the value of the material:

- the costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the US and Australia to the location of the producer;
- duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;
- the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products;

- (iv) *the cost of processing incurred in the territory of a Party in the production of the non-originating material; and*
- (v) *the cost of originating materials used in the production of the non-originating material in the territory of a Party.*

• **Is the result equal to or less than 10%?**

If yes, the CTC rule is met. Does the rule require any other requirement to be satisfied? If so, go to Part B or Part C. Otherwise, the good is originating.

If no, go to Step A4.

The de minimis requirement does not apply to:

- (a) *non-originating material provided for in Chapter 4 of the Harmonized System or in subheading 1901.90 that is used in the production of a good provided for in Chapter 4 of the Harmonized System;*
- (b) *non-originating material provided for in Chapter 4 of the Harmonized System or in subheading 1901.90 that is used in the production of a good provided for in the following provisions: subheadings 1901.10, 1901.20 or 1901.90; heading 2105; or subheadings 2106.90, 2202.90, or 2309.90;*
- (c) *non-originating material provided for in heading 0805 or subheadings 2009.11 through 2009.30 that is used in the production of a good provided for in subheadings 2009.11 through 2009.30, or subheadings 2106.90 or 2202.90;*
- (d) *non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514 or 1515;*
- (e) *non-originating material provided for in heading 1701 that is used in the production of a good provided for in headings 1701 through 1703;*
- (f) *non-originating material provided for in Chapter 17 of the Harmonized System or heading 1805 that is used in the production of a good provided for in subheading 1806.10;*
- (g) *non-originating material provided for in headings 2203 through 2208 that is used in the production of a good provided for in headings 2207 or 2208; and*
- (h) *non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this Article.*

(b) For Annex 4A goods: Is the total weight of non-originating fibres or yarns used in the production of the component of the good that determines the tariff classification of the good that does not undergo the applicable change in tariff classification set out in Annex 4A (excluding elastomeric yarns) equal to or less than 7%?

If yes, the CTC rule is met. Does the rule require any other requirement to be satisfied? If so, go to Part B or Part C. Otherwise, the good is originating

If no, go to Step A4.

Step A4 Accumulation provision

Were all of the non-originating materials that did not meet a CTC rule for the goods produced in the US or Australia?

If no, the CTC rule has not been met. Go to Step A5.

If yes, trace the inputs back through the production chain until all of the inputs are either originating in their own right, or meet the CTC rule.

Accumulation Provision. Under AUSFTA, the product specific rules of origin can be met by one or more producers within Australia or the US. A good may be made from materials produced by one producer from components produced by another producer. To determine whether a good meets a CTC test, treat all the production done in both countries as if it occurred in one, and treat the production done by all producers in the AUSFTA region (Australia and the US) as if it were completed by one. You can also concurrently apply the de minimis exemption to non-originating materials produced within Australia or the US at any stage of production.

The accumulation provision does not extend to non-originating materials produced outside Australia or the US. Producers cannot accumulate all processes performed in Australia or the US if processing outside of Australia and the US interrupts production. As the returned materials will be classed as non-originating materials the accumulation begins again at zero after the return of such materials to Australia or the US.

- **Did all of the non-originating materials identified above meet a CTC rule for the goods?**

If yes, the CTC rule is met. Does the rule require any other requirement to be satisfied? If so, go to Part B or Part C. Otherwise, the good is originating

If no, go to Step A5.

Step A5 Apply the *de minimis* exemption to the accumulation provision

Do the non-originating materials (inputs back through the production chain) that did not meet the CTC rule for the goods, satisfy the *de minimis* exemption?

If yes, the CTC rule is met. Does the rule require any other requirement to be satisfied? If so, go to Part B or Part C. Otherwise, the good is originating

If no, the CTC rule(s) have not been met. The good is non-originating.

PART B - RVC requirement

Step B1 Which RVC test?

The product specific rule for your good will indicate which of the RVC method can be used.

If your goods are automotive goods, the rule of origin will stipulate that the 'Net Cost method' is to be used, go to Step B3.

For all other goods go to Step B2

AUSFTA uses the Build-up, Build-down and Net Cost methods to calculate the regional value content. The Net Cost method is used for specified automotive goods only. Unless specified in the rule, exporters can choose the RVC method to be used.

Step B2 Calculate Build-up or Build-down RVC

Determine the actual price paid for the good, the value of the non-originating materials, and the originating materials used to produce it. Using the selected formula below, calculate the RVC percentage.

(a) Build-up RVC is determined using the following formula:

$$\text{RVC} = \frac{\text{VOM} \times 100}{\text{AV}}$$

where RVC is the regional value content, expressed as a percentage;
AV is the adjusted value (the value for Customs purposes); and
VOM is the value of originating materials acquired or self-produced, and used by the producer in the production of the good.

(b) Build-down RVC is determined using the following formula:

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

where RVC is the regional value content, expressed as a percentage;
AV is the adjusted value (the value for Customs purposes); and
VNM is the value of non-originating materials acquired and used by the producer in the production of the good. VNM does not include the value of a material that is self-produced.

Does this percentage equal or exceed the amount specified in the RVC test?

Note: if the product specific rule allows you to choose between the build down method or the build-up method then use the method which is easier for you to obtain the required percentage.

If yes, the RVC test is met. Does the rule require any other requirement to be satisfied? If so, go to Part A or Part C. Otherwise, the good is originating

If no, the RVC requirement is not met. The good is non-originating.

Step B3 Calculate Net Cost RVC

Net Cost RVC (for certain automotive goods only) is determined using the following formula:

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

where RVC is the regional value content, expressed as a percentage
NC is the net cost of the good; and
VNM is the value of non-originating materials acquired and used by the producer in the production of the good. VNM does not include the value of a material that is self-produced.

Net cost means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

Automotive goods covered by the net cost method are: HS 8407.31 through 34 (engines), 8407.20 (diesel engines for vehicles), 84.09 (parts of engines) 87.01 through 87.05 (motor vehicles), 87.06 (chassis), 87.07 (bodies), and 87.08 (motor vehicle parts).

- **Does this percentage equal or exceed the amount specified in the RVC test?**

If yes, the RVC test is met. Does the rule require any other requirement to be satisfied? If so, go to Part A or Part C. Otherwise, the good is originating

If no, the RVC requirement is not met. The good is non-originating.

PART C - Other requirement

Step C1 Other Requirements?

Do the goods meet any other requirement (other than a CTC rule or an RVC test) specified against the HS classification for the goods?

If yes, the other requirements rule is met. Does the rule require any other requirement to be satisfied? If so, go to Part A or Part B. Otherwise, the good is originating.

If *no*, the other requirements rule is not met. The good is non-originating.

The evidence required to establish that a particular requirement has been met will be determined by the requirement in question.

Contacts and further information

The text of the Thai Agreement is available on the Department of Foreign Affairs and Trade website: www.dfat.gov.au.

Australian Customs Manual volume 8D provides full details of how the Agreement will be administered by Customs. The manual is available on the Customs website: www.customs.gov.au/site/page.cfm?u=5341