

AANZFTA First Protocol

THE FIRST PROTOCOL

The First Protocol to the Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) [the First Protocol] entered into force for the following Parties on 1 October 2015:

- Australia
- New Zealand
- Brunei Darussalam
- Laos
- Malaysia
- Myanmar
- Philippines
- Singapore
- Thailand
- Vietnam

The First Protocol entered into force for Cambodia in January 2016.

The First Protocol will enter into force for Indonesia as soon as Indonesia notifies the other Parties that it has completed its domestic requirements.

The First Protocol to amend AANZFTA:

- A. Removes, for most shipments, the requirement for the FOB value to be included by the exporter on the origin documentation needed to be given to the importer if the latter is to claim AANZFTA tariff treatment when importing goods into an AANZFTA Party.
- Currently, the FOB value needs to be included on the certificate of origin (COO) that is required to claim AANZFTA tariff treatment when importing goods. Exporters¹ from Australia and New Zealand have the option of not including the FOB value on the COO which they need to obtain from an authorised body, but in this case include it in a separate Exporter Declaration which is provided with the COO to the importer of the goods.
 - The First Protocol will amend AANZFTA to provide that the FOB value will only need to be included on the COO, or in a separate Export Declaration in the case of exporters from Australia and New Zealand, in cases where the exporter is claiming AANZFTA originating status on the basis of a value-added rule of origin (i.e. a regional value content (RVC) rule). The FOB value will not need to be provided in cases where origin is claimed on the basis of the wholly obtained rule, or the change in tariff classification (CTC) rule, or a specific process rule.

¹ The manufacturer, producer or exporter of the goods, or an authorised representative, can apply for a COO.

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- B. Simplifies the presentation of the Rules of Origin (ROO), which should assist business in understanding them and in completing the COO.
- Currently, AANZFTA’s ROO are a combination of:
 - an Annex setting out product specific rules (PSR) that apply to those products listed in the Annex; and
 - a general rule that applies to those products not listed in the Annex. The general rule is an option of meeting either (a) an RVC of 40 per cent, with the final process of production being performed in an AANZFTA Party, or (b) a CTC requirement that all non-originating materials used in the production of the good have undergone a change in tariff heading (i.e. at the four-digit level of the Harmonized System (HS)² within an AANZFTA Party.
 - The First Protocol will amend AANZFTA to make it consistent with Australia’s other FTAs by removing the reference to a general rule and listing the ROO applying to all products in a consolidated PSR Annex.
- C. Provides that in future the Parties will be able to make any agreed administrative changes to the list of data requirements to be included on the COO more expeditiously, and without the need for a treaty amendment. This will allow the Parties to respond in a more timely fashion to any future problems identified by business.
- D. Uses the consolidation of the ROO into a single Annex to also implement HS 2012 in AANZFTA’s ROO.
- Currently, exporters need to ensure that goods, which they claim are AANZFTA originating, comply with ROO set out using the previous version of the HS, HS 2007, and the details on the AANZFTA COO also need to be in HS 2007. However, when importing these goods into an AANZFTA Party, importers need to complete the import declaration in the current version of the HS, HS 2012. This introduces unnecessary complexity into the trading process and could lead to traders inadvertently making mistakes when claiming AANZFTA tariff preferences.
 - The Protocol will provide for ROO in HS 2012 so that exporters and importers will only need to use the current HS, and the COO and the import declaration will both be in the same HS.

² The Harmonized Commodity Description and Coding System or HS is an internationally harmonized nomenclature for classifying and differentiating between goods for the purposes of levying tariffs, specifying rules of origin and collecting trade statistics. It is internationally harmonized up to the six-digit level. It is updated by the World Customs Organization (WCO) every five years to maintain its relevance to changes in technology and trade patterns. The current HS used by Australia and most other countries is HS 2012, and the previous HS was HS 2007.

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- E. Makes clear the process for future introduction of an updated HS into AANZFTA's ROO. This introduction ("transposition" of the ROO from one HS into an updated HS) shall be:
- Carried out without impairing existing commitments;
 - Completed in a timely manner; and
 - Promptly published following its adoption by the FTA Joint Committee.³
- F. Provides for the Parties to work together to agree on methodologies and procedures to ensure timely updating ("transposition") of each AANZFTA Party's schedule of tariff commitments from one HS into an updated HS.
- The timely updating of the tariff schedules is important in facilitating business use of the Agreement.
 - The Protocol amends the Agreement to provide that the transposition shall be carried out in accordance with procedures adopted by the Committee on Trade in Goods, and sets out some minimum requirements for these procedures. The Protocol also provides that the transposition of each Party's schedule shall be carried out without impairing existing tariff concessions.

³ The FTA Joint Committee consists of representatives of all 12 AANZFTA Parties and meets, usually at least annually, to review and oversee the operation of the Agreement.

What the First Protocol Means for Business

1. The amendments to AANZFTA made by the Protocol should assist business usage of the Agreement when trading goods in the region:
 - a) The removal of the FOB value requirement from the COO, for most shipments, will assist businesses which are currently reluctant to use the Agreement because they view this requirement as forcing them to provide commercial-in-confidence information to their customers.
 - b) The consolidation of the ROO into a single PSR Annex should make it easier for businesses to understand the ROO and identify the rules that apply to the products of interest to them. This change will make AANZFTA more consistent with the approach taken in Australia's other FTAs. It will also simplify the information about the origin of the goods which exporters need to include on the COO form.
 - c) The updating of the ROO into HS 2012 will simplify the trading process and rectify the current situation where AANZFTA's ROO are still in HS 2007.
 - i. Currently businesses making use of AANZFTA need to be familiar with both the previous version of the Harmonized System (HS), HS 2007, and the present version, HS 2012. Businesses need to use HS 2012 when filling out export and import declarations, but have to determine that goods meet AANZFTA's ROO requirements using HS 2007 and complete the COO in HS 2007.
 - ii. Once the Protocol is fully implemented business will only need to refer to the current HS 2012 when importing or exporting goods.
2. The amendments to AANZFTA also provide improvements in the administrative arrangements by which the Parties manage the Agreement which should bring ongoing benefits to business:
 - a) Any future problems that business identifies with the data requirements on the COO will be able to be addressed more quickly, without the need for treaty amendments.
 - b) The five yearly updating of the ROO and tariff schedules into an updated HS should be done in a more efficient and timely manner.