Australian Government

Guidance on the use of Wholly Obtained (WO) or Change to Tariff Classification (CTC) when claiming originating status under an FTA

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AUSTRALIA

Only “originating goods” can qualify for preferential tariff treatment under a free trade agreement. There are several different ways that this can occur, but none of these is more or less valid than any other.

The purpose of this paper is to provide guidance to traders seeking a Certificate of Origin to demonstrate that their good is an originating good. Specifically, the paper provides guidance on when a good may be classified as “Wholly Obtained”, and when it may be more appropriate to use an appropriate product-specific rule of origin as the origin criterion.

Making a claim of “Wholly Obtained” when another rule of origin may have been more appropriate can result in additional tariffs, costs and delays at the point of import. This paper explores how to avoid these issues.

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This paper provides an overview of the ways in which a good can qualify as originating and explores the following topics:

Economic nationality or origin

Categories and important concepts

- Wholly obtained or produced
- Produced entirely from originating materials
- Product-specific rules and substantial transformation

Other relevant rules

Using Change in Tariff Classification (CTC) Rules and de minimis

Given the variations between rules of origin across FTAs, this paper is necessarily general.

Economic Nationality, or 'Origin'

Rules of Origin (ROO) are used to determine the "economic nationality" or "origin" of a product, and therefore whether that product is eligible for preferential tariff treatment under an FTA. There are "originating goods" and "non-originating goods", but only originating goods are eligible for preferential treatment. The economic nationality of a product is distinct from where it has been shipped from.

For simple products this is a simple question – for example, if an apple was grown in Australia, it is Australian-originating. But apple juice may be made from apples grown in Australia, or in another party to a relevant FTA, or in a third country. The juice may include additives such as preservatives, which have their own origins. For complex manufactured goods with many inputs this can become very complicated.

Each FTA has its own rules of origin. While similar, they can differ in meaningful ways which can have substantial effect on the tariff treatment available to exporters. It is therefore important exporters carefully consider the rules in the agreement under which they intend to claim preferential treatment. If more than one Australian FTA covers the export destination, they should also consider whether any of those agreements contains more advantageous rules for that product.

When in doubt, exporters should seek expert advice. Penalties for inaccurate documentation, back-payment of duties, and shipping delays can be costly.

Categories and important concepts

Products can be categorised as an originating good if they are:

1. Wholly obtained or produced (sometimes "Wholly Originating" or "WO")
    a. Wholly obtained products include minerals mined from a Party, agricultural goods grown in a Party, fish caught in a Party's waters and so on.
    b. Wholly produced products are produced in a Party exclusively from wholly obtained or wholly produced goods from one more Parties.
2. Produced entirely in one or more Party/ies from originating materials, (i.e. not necessarily wholly obtained or produced, but materials that have gained originating status before being incorporated into the good);[1] and
3. Goods which are deemed 'substantially transformed' by virtue of satisfying the relevant product-specific rule for that good.

Importantly, goods produced in Australia which qualify as originating are still Australian-originating goods no matter what origin criteria may be used during the import/export process.

The following sections expand on these concepts further.

1 TAFTA does not include this category; not all FTAs use this name; irrelevant to the more flexible ROOs in the Closer Economic Relations agreement with New Zealand.

Wholly obtained or produced

Wholly obtained products are typically defined as products that are grown, caught, mined, or recycled entirely in the territory of a party - without the addition of ***any*** non-originating materials. Our Free Trade Agreements (FTAs) include provisions that set out the definitions of what is a wholly obtained good, as per the example from AANZFTA below:

Article 3 Wholly Produced or Obtained

For the purposes of Article 2.1(a) (Originating Goods), the following goods shall be considered as wholly produced or obtained in a Party:

a. plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered in a Party;
b. live animals born and raised in a Party;
c. goods obtained from live animals in a Party;
d. goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a Party;
e. minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
f. 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;
g. 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 Subparagraph (f);
h. 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;
i. goods which are:
   i. 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
   ii. used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and
j. goods produced or obtained in a Party solely from products referred to in Subparagraphs (a) to (i) or from their derivatives.

Exporters should note that subparagraph (j) in the above example applies to goods wholly produced in Australia using materials from subparagraphs (a) to (i) that were themselves wholly originating in Australia. It does not apply to foreign materials that have been processed and gained originating status in their own right and which have then been used to produce further goods in Australia.

If the final good being exported includes **any** non-originating materials, the good cannot be classified as wholly originating.

Whilst it may be important to Australian producers to be seen to have a wholly originating product, if WO is claimed and there are any inputs used that do not originate in Australia, even in very small amounts, they run the risk of having goods held up whilst customs agencies try and verify the origin criteria, or even having the request for tariff concession denied.

Produced entirely from originating materials

These are goods made solely from inputs (components, raw materials, or parts) that already qualify for preferential originating status under the relevant free trade agreement. This could mean materials that are wholly originating, or materials that are non-originating that have been substantially transformed and met the product specific rule for that material and gained originating status (see below). If the FTA being used has a provision for Produced Entirely (PE) and any non-originating material has originating status gained through sufficient transformation **before** being used in the final good, then the good can be classified as Produced Entirely.

Product-specific rules and substantial transformation

Product-specific rules are rules applying to a product or category of products which defines when processing or transformation of that product or category of products is considered to change non-originating materials into originating goods. These rules vary between categories of products and across FTAs.

Non-originating materials are materials used in production of a good that are not considered to have qualified as 'originating' under Rules of Origin. Non-originating materials include all directly imported materials, as well as imported materials bought into Australia that have undergone processing that is not deemed sufficient to confer 'origin' under the rules of an FTA. It may also include materials whose origin is unknown. Only non-originating materials (components, raw materials, or parts imported from outside the free trade agreement area) are subject to *product-specific rules*.

Product-specific rules that show substantial transformation typically fall into three categories that are used to determine if a finished good qualifies for preferential tariff treatment:

- **Change of Tariff Classification (CTC):** The finished product must fall into a different HS (Harmonised System) code category than the non-originating materials used to make it.
- **Regional Value Content (RVC):** Non-originating materials can only make up a certain maximum percentage (e.g. usually calculated as a percentage of the ex-works price) of the final product.
- **Specific Process:** Certain products require specific manufacturing processes to be completed locally (e.g. chemical reaction or textile dying and weaving processes).

Change in Tariff Classification (CTC) are products made partly or wholly from inputs originating outside the FTA area, but which have undergone a sufficient transformation in a Party and changed tariff classification to qualify as originating. Each FTA will have specific rules for what constitutes a sufficient change in tariff classification for certain goods, and which can be highly technical in nature. The three primary types of tariff changes are:

a. Change to Chapter (CC): where the finished product must be classified under a different **2-digit HS Chapter** to any of the non-originating materials used to make it.
b. Change to Heading (CTH): where the finished good must be classified under a different **4-digit HS Heading** to any of the non-originating materials used in its production.
c. Change to Subheading (CTSH): where the finished good must be classified under a different **6-digit HS Heading** to any of the non-originating materials used in its production.

Using a CTC on a Certificate of Origin does not mean that a good is not of Australian origin or Australian made.

Regional value content (RVC) is also known in some agreements as qualifying value content (QVC). Some FTAs establish thresholds that require a minimum quantity of materials originating from countries that are Parties to the FTA to represent a substantial transformation. This minimum threshold is the regional value content or RVC. For example, RVC(40) means that at least 40 per cent of the value, or the weight depending on the good, of the materials used in the good must originate from one or more of the Parties to the FTA. The minimum threshold may differ depending on the FTA, even for goods of the same type.

Importantly, different FTAs take different – and overlapping – approaches to these concepts for the purposes of determining a good's origin. Each FTA will set out the rules/formula for calculating RVC/QVC under that specific FTA.

Specific Process are products made from non-originating materials that undergo specific types of processing. Certain products (like textiles or chemicals) require highly specific manufacturing steps (e.g., weaving, chemical refining, or distillation) to be performed in the origin country, regardless of any tariff code change.

Note: It is the exporter's responsibility to know the original source of the materials use in a good. For example, it is not enough to purchase chemicals from an Australian company and assume that those chemicals are of Australian origin. An exporter must confirm that those chemicals were either produced in Australia, have gained originating status through processing, or that the further processing being done, will enable the final good to meet the PSR.

Other relevant rules

There are also additional rules of origin that interconnect with product specific rules as follows:

De minimis — (often called the tolerance rule) is a vital flexibility provision. Included in all of Australia's FTAs,[2] it acts as an exception to standard product-specific rules of origin and provides that a small quantity of non-originating inputs in a good does not disqualify it from being an originating good.

However, the exception only applies to the change in tariff classification. Where there is an RVC applicable, the value of all non-originating materials are included in the value requirement for the good. There is no de minimis allowance on any relevant regional value content.

In Australian FTAs, de minimis applies only to non-originating materials and not to wholly obtained or produced goods or Produced Entirely (PE) goods.

Cumulation/accumulation — where goods originating in one Party to an FTA are treated as originating in another Party if used in the production of goods in that other Party. This means Parties to an FTA may count each other's materials when determining origin.

2 Called "Tolerance" in AUKFTA and un-named in TAFTA and JAEPA, and irrelevant to the more flexible ROOs in the Closer Economic Relations agreement with New Zealand.

Using Change in Tariff Classification (CTC) Rules and de minimis

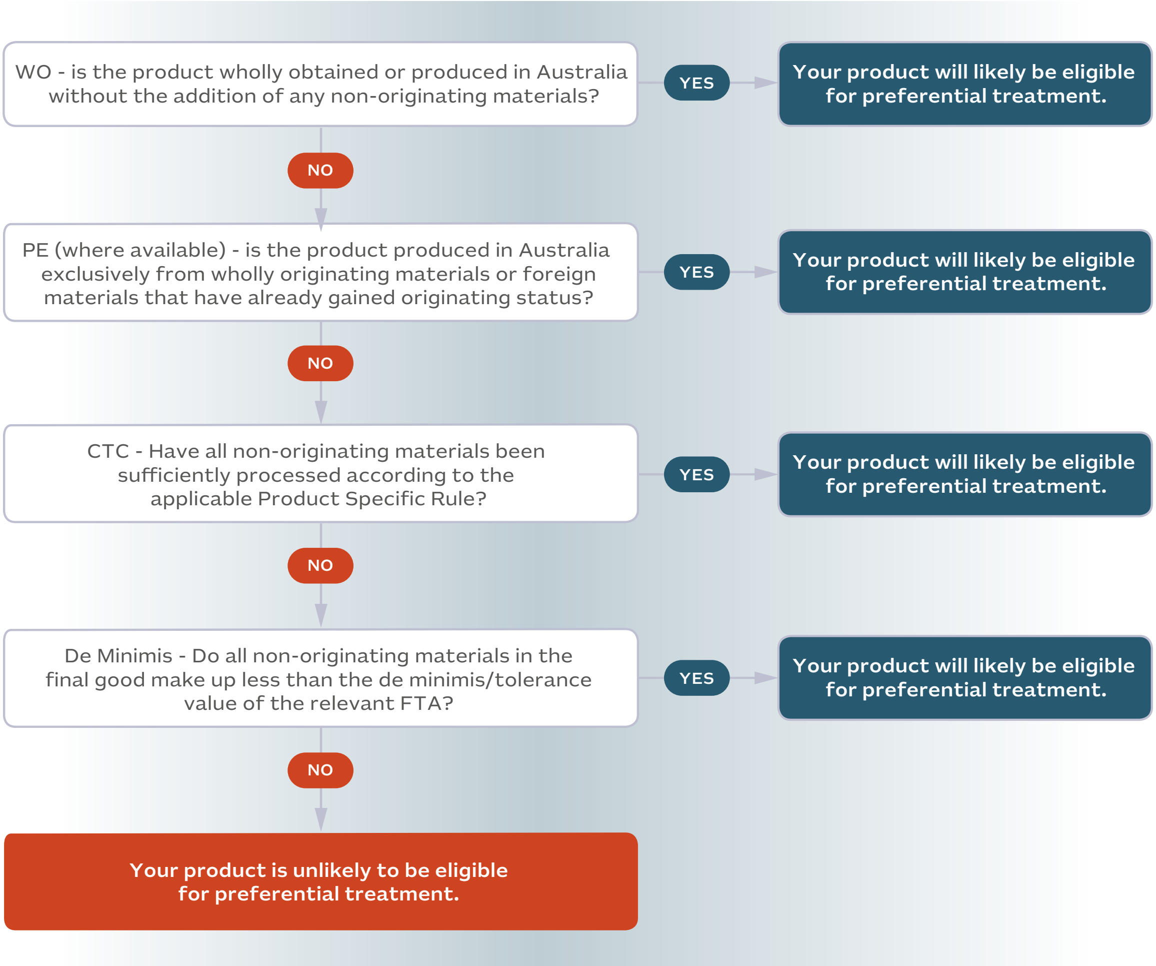
For goods that may have a minimal amount of non-originating materials, the use of a PSR allows greater flexibility (and avoids reliance on the good being 100 per cent originating) through the application of de minimis/tolerance. Using de minimis, a producer can state that those small inputs are of indetermined origin, treat them as non-originating, and meet the Change in Tariff Classification (CTC) rule. This means that if producers are using non-originating inputs that account for a very small component (usually less than 10 per cent value), the goods will likely meet the product specific rule.

With good recordkeeping, a producer may be able to prove that all the materials are originating. However, this can be administratively burdensome as it requires strict compliance with the wholly originating or produced (WO) requirements in the relevant FTA's ROO Chapter.

For these reasons it is valuable for FTAs to include a CTC for all goods that involve processing of some kind in the PSR schedule, even if the goods appear to be essentially WO such as wine, fruit juice or some dairy products.

If the final good has any non-originating materials that are directly used in the production of the good, and those materials are unable to satisfy the relevant product specific rule of the final good, those non-originating materials must not be in excess of the de minimis rule or the good will not qualify as originating.

The graph below details the process for determining whether products may be eligible for origin status.



Summary

The table below provides a comparison of the key differences between (i) wholly obtained (WO); (ii) produced exclusively from originating materials (PE); and (iii) change to tariff classification (CTC), where any non-originating materials must meet a product specific rule in order to assess whether sufficient transformation has occurred.

Feature	Wholly Produced/ Obtained (WO)	Produced Entirely (from Originating Materials)	Change to Tariff Classification
Material Source	No foreign inputs.	Made from WO or foreign materials that have been processed and gained originating status prior to being used in the final good.	Made from inputs that include non-originating materials.
Scope	Generally raw goods (animals, plants, minerals).	Generally manufactured/ finished goods.	Manufactured/finished goods.
Complexity	Simple: "Made here from scratch".	Complex: Requires verifying that all components have origin.	Complex: Requires verifying that any non-originating materials that contribute to the final good have been "sufficiently transformed" to meet the PSR, either by changing tariff classification and/or meeting any applicable regional or qualifying value content.
Key Distinction	No non-originating materials used.	Can use processed materials that have gained origin status prior to use. De minimis does not apply.	De minimis applies.
Example	Fresh fruit and vegetables, meats and fish, plants and flowers, minerals, waste and scrap. When using this provision none of the material of the good can originate outside of Australia.	Rennet is used in the production of cheese in Australia. All of the materials are wholly obtained except for the rennet. Whilst the rennet is also produced in Australia, it includes non-originating materials and therefore would not qualify as wholly obtained. However, the processing of these non-originating materials into rennet is sufficient to meet the PSR and the rennet gains originating status before being used in the production of the cheese. The final product would qualify as Produced Entirely (PE).	Pectin is used in the production of strawberry jam in Australia. All of the materials are wholly originating aside from the pectin which is imported. As the pectin is used directly in the production of the final good, the good cannot be classified as WO or PE. The pectin is imported into Australia under 1302.20 and then changes chapter to 2007.99 when used in the final product. Therefore, following processing, the pectin used meets the CTC rule for the final good of CTH or RVC (40) and the final good is classified as originating and able to access the tariff concession under AANZFTA.

Example A – Using WO or CTC rules

A producer creates unbleached kraft paper to be exported to Malaysia using AANZFTA under **4804.39** - *Uncoated kraft paper and paperboard, in rolls or sheets, other than that of 4802 or 4803*. The PSR for this paper is CTH or RVC(40).

All of the wood and the chemicals used to make the paper are wholly obtained in Australia. At this point in the process, technically the good can be classified as WO.

However, at the end of the manufacturing process, cationic starch is added for stiffness before the paper is wound onto large rolls. That starch is imported and has not gained originating status itself before being used in the final good. Adding this starch means the finished good **cannot be WO**.

(Note: Even though the starch makes up less than 10% on the value of the paper, de minimis does not apply to WO).

The starch is imported into Australia under **3505.10** *(Dextrins and other modified starches)* and then changes chapter to **4804.39** when used in the final product. Therefore, following processing, the starch used meets the CTC rule for the final good of CTH or RVC (40) and the identical product that cannot meet the WO rule is classified as originating under a CTC rule and able to access the tariff concession under AANZFTA.

Example B – Using WO or CTC rules

A producer creates wine that is made from Australian grapes to be exported to China using ChAFTA under **2204** – *(Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009)*. During processing, additional additives are used to manage fermentation, enhance flavour, improve stability, and clarify the final product.

Depending on the origin of the additives, the final product could meet three different origin criteria.

If the additives used were produced entirely in Australia exclusively from goods referred to in subparagraph (a) through (i) of Article 3.3 of ChAFTA, the good would be classified as WO or “wholly obtained”.

If the additives were produced entirely in Australia exclusively from originating materials that had gained originating status prior to being used in the final good, the good would be classified as “produced entirely”.

If any of the additives are imported and used directly in the good, the good cannot be classified as WO or PE. Under ChAFTA, the PSR for wine is CC (or ‘Change in Chapter’). In this case, as long as none of the materials in the final good, in this case the wine, are imported into Australia under Chapter 22, (in this case the additives are imported under Chapter 28 (HS2832 – *sulphites; thiosulphates*) they would be able to meet the PSR via the change to tariff classification through the process of making the wine. The good would be classified as originating through Change to Tariff Classification (CTC).

Alternatively, if all of the non-originating materials used in the good make up less than 10% of the value of the good, using a CTC as opposed to WO/PE opens up a further option for producers. Using de minimis can reduce burdensome record keeping requirements as it avoids reliance on being 100 per cent originating and having to fully address all of the smaller inputs. A producer can just say those small inputs are of indetermined origin, treat them as non-originating and meet the PSR.

Remember, de minimis is not applicable to goods that are WO or PE.


SUPPLY
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