



Australian  
**BORDER FORCE**

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# Free Trade Agreement between Australia and Hong Kong, China (A-HKFTA) Rules of Origin

Guide to claiming preferential tariff treatment under  
A-HKFTA for goods imported to Australia

This guide explains how to determine whether goods that are imported into Australia are eligible for preferential rates of customs duty under the Free Trade Agreement between Australia and Hong Kong, China (commonly known as A-HKFTA) as in force from 17 January 2020 in accordance with the *Customs Act 1901* and the Hong Kong rules of origin.

Hong Kong is a Special Administrative Region of the People's Republic of China. Under its Basic Law, Hong Kong is a separate customs territory, which means it can enter into its own trade agreements with foreign states and relevant international organisations, such as the WTO. In this guide 'Hong Kong, China' and 'Hong Kong' mean the Hong Kong Special Administrative Region of the People's Republic of China. ABF publishes a separate guide for Australia's Free Trade Agreement with China, which does not cover Hong Kong at: <https://www.abf.gov.au/importing-exporting-and-manufacturing/free-trade-agreements/china>.

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<b>Approved by</b>	Matthew Duckworth, Assistant Secretary, Customs and Border Revenue Branch
<b>Approval date</b>	16 January 2020
<b>Contact</b>	Trade Policy Section <a href="mailto:tradeagreements@abf.gov.au">tradeagreements@abf.gov.au</a>

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# 1 Overview

## 1.1 Coverage of the Guide

- 1.1.1 This Guide deals with origin issues as they relate to the Free Trade Agreement between Australia and Hong Kong, China (the Agreement or A-HKFTA).
- 1.1.2 A-HKFTA was signed on 26 March 2019 and entered into force on 17 January 2020.
- 1.1.3 Importers may claim preferential tariff treatment on eligible goods in accordance with A-HKFTA on the basis that they can satisfy the requirements contained in Division 1M of Part VIII of the *Customs Act 1901*. The eligible goods are referred to under Division 1M as 'Hong Kong originating goods'.
- 1.1.4 Further information is available at [the Australian Border Force A-HKFTA webpage](#) and on [the Department of Foreign Affairs and Trade's A-HKFTA website](#).
- 1.1.5 This document is a detailed guide for traders to claim preferential tariff treatment for goods under the A-HKFTA. Questions relating to the treatment of goods under A-HKFTA being imported into Australia should be directed to: [origin@abf.gov.au](mailto:origin@abf.gov.au).

## 1.2 Import declaration codes

- 1.2.1 Before making a claim for preferential tariff treatment under A-HKFTA, importers must take reasonable care to ensure that their goods meet the relevant rules of origin (ROO) and consignment rules. The codes that must be input into the Integrated Cargo System (ICS) or noted on the appropriate hard-copy form (e.g. B650 N10, Import Declaration) to claim preferential tariff treatment for Hong Kong originating goods are:

ICS field	Code	Definition	Legislative reference
Preference Scheme Type	HFTA	Free Trade Agreement between Australia and Hong Kong, China	Customs Act, Division 1M
Preference Rule Type	WO	Goods wholly obtained or produced in Hong Kong, China or in Hong Kong, China and Australia.	Customs Act, Division 1M, Subdivision B.
	PE	Goods produced in Hong Kong, China or in Hong Kong, China and Australia from originating materials.	Customs Act, Division 1M, Subdivision C.
	PSR	Goods produced in Hong Kong, China or in Hong Kong, China and Australia from non-originating materials.	Customs Act, Division 1M, Subdivision D; and A-HKFTA ROO Regulations

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1.2.2 The code to obtain a refund for overpaid duties under A-HKFTA is:

Refund Reason Code	Description	Conditions
23A15	Hong Kong originating goods	Duty has been paid on the goods.
	Goods that would have been Hong Kong originating goods if, at the time the goods were imported, the importer held a Declaration of Origin or a copy of a Declaration of Origin for the goods	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Declaration of Origin (within the meaning of section 153ZPB of the Customs Act) for the goods, or a copy of one, at the time of making the application for the refund.

1.2.3 Conditions are set out in Items 15 and 16 of the table in section 23(a) of the Customs (International Obligations) Regulation.

## 1.3 Abbreviations

1.3.1 The following abbreviations and terminology are used throughout this Guide:

<b>ABF</b>	Australian Border Force
<b>ACN</b>	Australian Customs Notice (also includes Department of Home Affairs Notice (DHAN) and Department of Immigration and Border Protection Notices (DIBPN))
<b>A-HKFTA</b>	The Free Trade Agreement between Australia and Hong Kong, China done at Sydney, Australia on 26 March 2019, as amended from time to time.
<b>A-HKFTA Regulation</b>	<i>Customs (Hong Kong Rules of Origin) Regulations 2019</i>
<b>CTC</b>	change in tariff classification
<b>Customs Act</b>	<i>Customs Act 1901</i>
<b>Customs (International Obligations) Regulation</b>	<i>Customs (International Obligations) Regulation 2015</i>
<b>FTA</b>	free trade agreement
<b>HS</b>	Harmonized Commodity Description and Coding System
<b>ICS</b>	Integrated Cargo System
<b>PE</b>	Goods produced in Hong Kong, China or in Hong Kong, China and Australia from originating materials only
<b>PSR</b>	product specific rule(s) of origin
<b>ROO</b>	rule(s) of origin
<b>RVC</b>	regional value content

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<b>Tariff Act</b>	<i>Customs Tariff Act 1995</i>
<b>Tariff Regulations</b>	<i>Customs Tariff Regulations 2004</i>
<b>Working Tariff</b>	Combined Australian Customs Tariff Nomenclature and Statistical Classification
<b>WO</b>	Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia.

## 2 Legislation

### 2.1 General outline of legislation

2.1.1 The following documents contain the requirements for claiming preferential tariff treatment under A-HKFTA for goods imported into Australia:

- Combined Australian Customs Tariff Nomenclature and Statistical Classification, commonly known as the ‘Working Tariff’
- *Customs Tariff Act 1995* (the Customs Tariff)
  - Schedule 10
- *Customs Act 1901* (Customs Act)
  - Division 1M of Part VIII – Hong Kong originating goods
  - Division 4K of Part VI – Verification powers – Exportation of goods to Hong Kong, China
- *Customs (Hong Kong Rules of Origin) Regulation 2019* (A-HKFTA Regulations)
- *Customs (International Obligations) Regulation 2015* (the Customs (International Obligations) Regulation)
  - Section 23 – refund circumstance

### 2.2 A-HKFTA treaty text

2.2.1 The most pertinent chapters of A-HKFTA for the purposes of importing or exporting Hong Kong originating goods to or from Australia are the following:

- Chapter 1 Initial Provisions and General Definitions and Interpretations
- Chapter 2 Trade in Goods
- Chapter 3 Rules of Origin
  - Annex 3-A: Data Requirements
  - Annex 3-B: Product-Specific Rules of Origin

2.2.2 These texts are available under “A-HKFTA Text and associated documents” from [the Department of Foreign Affairs and Trade A-HKFTA webpage](#) or as [2020] ATS 4 at <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2020/4.htm>.



## 3 Definitions

### 3.1 The Customs Act

3.1.1 This part sets out the important definitions in section 153ZPB of the Customs Act that are relevant in determining whether goods are Hong Kong originating goods.

3.1.2 **Agreement** means the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, as amended from time to time.

**Note:** The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

3.1.3 **aquaculture** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

3.1.4 **Area of Australia** means Area within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.

3.1.5 **Area of Hong Kong, China** means Area within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement, as affected by the following letters related to the geographical application of the Agreement for Hong Kong, China:

(a) a letter to the Minister for Trade, Tourism, and Investment from the Secretary for Commerce and Economic Development, Hong Kong Special Administrative Region, The People's Republic of China dated 26 March 2019;

(b) a letter to that Secretary from that Minister dated 26 March 2019.

**Note:** The letters could in 2019 be viewed on the website of the Department of Foreign Affairs and Trade.

3.1.6 **Australian originating goods** means goods that are Australian originating goods under a law of Hong Kong, China that implements the Agreement.

3.1.7 **Convention** means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time.

**Note:** The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

3.1.8 **customs value** of goods has the meaning given by section 159 of the Customs Act.

3.1.9 **Declaration of Origin** means a declaration that is in force and that complies with the requirements of Article 3.16 of Chapter 3 of the Agreement.

3.1.10 **enterprise** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

3.1.11 **Harmonized Commodity Description and Coding System** means the Harmonized Commodity Description and Coding System that is established by or under the Convention.

3.1.12 **Harmonized System** means:

(a) the Harmonized Commodity Description and Coding System as in force on 1 January 2017;  
or

(b) if the table in Annex 3 B of the Agreement is amended or replaced to refer to Chapters, headings and subheadings of a later version of the Harmonized Commodity Description and Coding System—the later version of the Harmonized Commodity Description and Coding System.

- 3.1.13 **Hong Kong originating goods** means goods that, under this Division, are Hong Kong originating goods.
- 3.1.14 **indirect materials** means:
- (a) goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
  - (b) goods or energy used in the maintenance or operation of equipment or buildings associated with the production of goods;
- including:
- (c) fuel (within its ordinary meaning); and
  - (d) catalysts and solvents; and
  - (e) gloves, glasses, footwear, clothing, safety equipment and supplies; and
  - (f) tools, dies and moulds; and
  - (g) spare parts and materials; and
  - (h) lubricants, greases, compounding materials and other similar goods.
- 3.1.15 **Interpretation Rules** means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention.
- 3.1.16 **non-originating materials** means goods that are not originating materials.
- 3.1.17 **non-Party** has the same meaning as it has in Chapter 3 of the Agreement.
- 3.1.18 **originating materials** means:
- (a) Hong Kong originating goods that are used in the production of other goods; or
  - (b) Australian originating goods that are used in the production of other goods; or
  - (c) indirect materials.
- 3.1.19 **person of Hong Kong, China** means:
- (a) a natural person of a Party within the meaning, so far as it relates to Hong Kong, China, of Article 1.3 of Chapter 1 of the Agreement; or
  - (b) an enterprise of Hong Kong, China.
- 3.1.20 **production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.
- 3.1.21 **sea-fishing** has the same meaning as it has in Chapter 3 of the Agreement.

## 3.2 Geographical area covered by the Agreement

- 3.2.1 The Agreement covers the Area of Hong Kong, China and the Area of Australia as defined in paragraphs 3.1.4 and 3.1.5 of this Guide.

## 4 Principles of the A-HKFTA Rules of Origin

### 4.1 Goods covered by A-HKFTA

- 4.1.1 This Agreement covers all goods imported into Australia from Hong Kong that are Hong Kong originating goods.
- 4.1.2 Paragraph 18(2)(s) of the Tariff Act provides that the rates of customs duty for Hong Kong originating goods are free unless the goods are classified to a heading or subheading in Schedule 3 that is specified in column 2 of an item in the table in Schedule 13.

### 4.2 Explanation of concept of Hong Kong originating goods

- 4.2.1 ROO are essential for determining whether imported goods are eligible for claiming the preferential rates of duty available under A-HKFTA. ROO define the methods for ascertaining whether a good has undergone sufficient work or processing, or substantial transformation in its production, to obtain the benefits under A-HKFTA. ROO preclude goods made in other countries from obtaining benefit by merely transiting through Australia or Hong Kong.
- 4.2.2 Hong Kong originating goods are those that satisfy the requirements of:
- Division 1M of Part VIII of the Customs Act, and
  - the A-HKFTA Regulations.
- 4.2.3 In summary, the following requirements must be met:
- the goods are Hong Kong originating goods,
  - the importer claiming preferential treatment satisfies the documentary requirements, and
  - the goods meet the consignment provision.
- 4.2.4 Division 1M of Part VIII of the Customs Act sets out the ROO for the following categories of goods originating under A-HKFTA:
- goods that are wholly obtained or produced entirely – Customs Act Section 153ZPC
  - goods that are produced from originating materials only – Customs Act Section 153ZPD
  - goods produced from non-originating materials only or from non-originating materials and originating materials – Customs Act Section 153ZME and 153ZMF.
- 4.2.5 Goods that fall within the third category under 4.2.4 must satisfy the applicable PSR as listed in Annex 3-B of the Agreement, as a result of processes performed entirely in the Area of Hong Kong, China, or the Area of Hong Kong, China and Area of Australia by one or more producers.
- 4.2.6 A PSR is the rule that must be met either solely or in conjunction with another rule for the good to qualify for preferential treatment. The PSR that apply in A-HKFTA are:
- CTC;
  - RVC; and
  - specific production processing rules.

- 4.2.7 Non-originating goods are those that originate from outside the Area of Hong Kong, China and Area of Australia, those that are produced in the Area of Hong Kong, China and Area of Australia but fail to meet the ROO, or are of undetermined origin.

## 4.3 Harmonized Commodity Description and Coding System

- 4.3.1 The A-HKFTA PSR are based on the HS. The HS is a structured nomenclature that organises products according to the degree of production and assigns them numbers known as tariff classifications. The A-HKFTA PSR were finalised in HS 2017 and the Agreement's PSR are implemented in that version of the nomenclature.
- 4.3.2 HS 2017 is arranged into **97 Chapters** (including the blank Chapter 77), covering all products. **Chapters** are divided into headings. **Headings** are divided into subheadings. **Subheadings** are divided into tariff classifications by each country. As shown in the example below, Chapters are identified by a two-digit number. A heading is identified by a four-digit number, a subheading by a six-digit number, and the tariff classifications for goods imported into Australia have an eight digit number. Hong Kong also uses eight digits for its tariff classification<sup>1</sup>.
- 4.3.3 Subheadings provide more specific descriptions than headings. Headings provide more specific descriptions than Chapters. The HS is internationally standardised at the **subheading** level.

### Example: Harmonized System of Tariff Classification

Chapter 62	Articles of apparel and clothing accessories, not knitted or crocheted
Heading 6209	Babies' garments and clothing accessories
Subheading 6209.20	Of cotton

- 4.3.4 Under the HS, the Chapters, headings, and subheadings are identical in all countries using the same version of the HS. Additional digits of the tariff classification beyond the sixth, however, are set by individual countries, and therefore vary between countries. In Australia, these final two digits of the eight digit number are referred to as 'domestic splits'.
- 4.3.5 Goods covered by Schedule 13 of the Tariff Act are in HS 2017 nomenclature which has been the prevailing nomenclature for Australia's working tariff since 1 January 2017.
- 4.3.6 Importers need to determine the HS classification of the imported good (up to the six-digit level) and use that classification to find the specific PSR for that classification in Annex 3-B of the Agreement. If the good meets the PSR and all other relevant requirements (such as the consignment provision), it is an originating good under A-HKFTA.

## 4.4 Other concepts in ROO

- 4.4.1 Section 8 of this Guide explains a number of important ROO concepts that may be applicable when determining the origin of an imported good.

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<sup>1</sup> <https://www.censtatd.gov.hk/hkstat/sub/sp230.jsp?productCode=B2XX0023>

4.4.2 These include the following concepts:

- Accessories, spare parts, tools, and instructional or other information materials (See paragraph 8.1)
- Accumulation (See paragraph 8.2)
- Consignment provision (See paragraph 8.3)
- *De minimis* provision (See paragraph 8.4)
- Fungible goods and materials (See paragraph 8.5)
- Indirect materials (See paragraph 8.6)
- Packaging materials and containers for retail sale (See paragraph 8.7)

## 5 Goods wholly obtained or produced entirely

5.1.1 Section 153ZPC of the Customs Act contains provisions relating to goods that are wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia:

### **Section 153ZPC of the Customs Act: Goods wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia**

- (1) Goods are **Hong Kong originating** goods if:
- (a) they are wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.
- (2) Goods are **wholly obtained or produced entirely in Hong Kong, China or in Hong Kong, China and Australia** if, and only if, the goods are:
- (a) plants, or goods obtained from plants, that are grown, cultivated, harvested, picked or gathered in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or
  - (b) live animals born and raised in the Area of Hong Kong, China or in the Area of Hong Kong, China and the Area of Australia; or
  - (c) goods obtained from live animals in the Area of Hong Kong, China; or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the Area of Hong Kong, China; or
  - (e) goods obtained from aquaculture conducted in the Area of Hong Kong, China; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the Area of Hong Kong, China; or
  - (g) goods of sea fishing, or other marine goods, taken from the high seas, by any vessel that is entitled to fly the flag of Hong Kong, China; or
  - (h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered, listed or recorded with Hong Kong, China and is entitled to fly the flag of Hong Kong, China; or
  - (i) goods, other than fish, shellfish or other marine life, taken by Hong Kong, China, or a person of Hong Kong, China, from the seabed, or subsoil beneath the seabed, outside the Area of Hong Kong, China and the Area of Australia, and beyond territories over which non Parties exercise jurisdiction, but only if Hong Kong, China, or the person of Hong Kong, China, has the right to exploit that seabed or subsoil in accordance with international law; or
  - (j) waste or scrap that:
    - (i) has been derived from production or consumption in the Area of Hong Kong, China and that is fit only for the recovery of raw materials; or
    - (ii) has been derived from used goods that are collected in the Area of Hong Kong, China and that are fit only for the recovery of raw materials; or
  - (k) goods produced in the Area of Hong Kong, China, or in the Area of Hong Kong, China and the Area of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

- 5.1.2 Section 153ZPC provides that goods are Hong Kong originating goods if they fall into any category of goods in the specified list as outlined in 5.1.1. For example:
- Clay extracted in Hong Kong
  - fish caught in Hong Kong waters
  - plant products produced in Hong Kong from plants that are initially grown in Australia and subsequently exported to Hong Kong.
- 5.1.3 In order for a good to be considered as Hong Kong originating goods, the importer must have the correct supporting documentation at the time preferential treatment is sought. Refer to Section 10 of this Guide for information on record keeping obligations.
- 5.1.4 Waste and scrap can qualify as Hong Kong originating goods under Section 153ZPC(2)(j) of the Customs Act if derived from either production, consumption or collection in Hong Kong, China and if fit only for the recovery of raw material.

**Example: Waste and scrap**

Steel pipes imported into Hong Kong from Korea are used in the production of steel frames. In making the frames, the pipe is cut to the required length and the off-cuts of the pipe are fit only for the recovery of raw materials.

Since the pipe off-cuts are waste and scrap that have resulted from a production process in Hong Kong and are fit only for the recovery of raw materials, they are considered to be “wholly obtained or produced entirely” goods under 153ZPC(2)(j)(i), Therefore they are Hong Kong originating goods.

## 6 Goods produced from originating materials

6.1.1 Section 153ZPD of the Customs Act sets out the ROO that apply to goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials:

**Section 153ZPD of the Customs Act: Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from originating materials**

Goods are *Hong Kong originating goods* if:

- (a) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from originating materials only; and
- (b) either:
  - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
  - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.

6.1.2 In order for a good to be considered a Hong Kong originating good, the importer must have the correct supporting documentation at the time preferential treatment is sought.

6.1.3 Refer to Section 10 of this Guide for information on record keeping obligations.

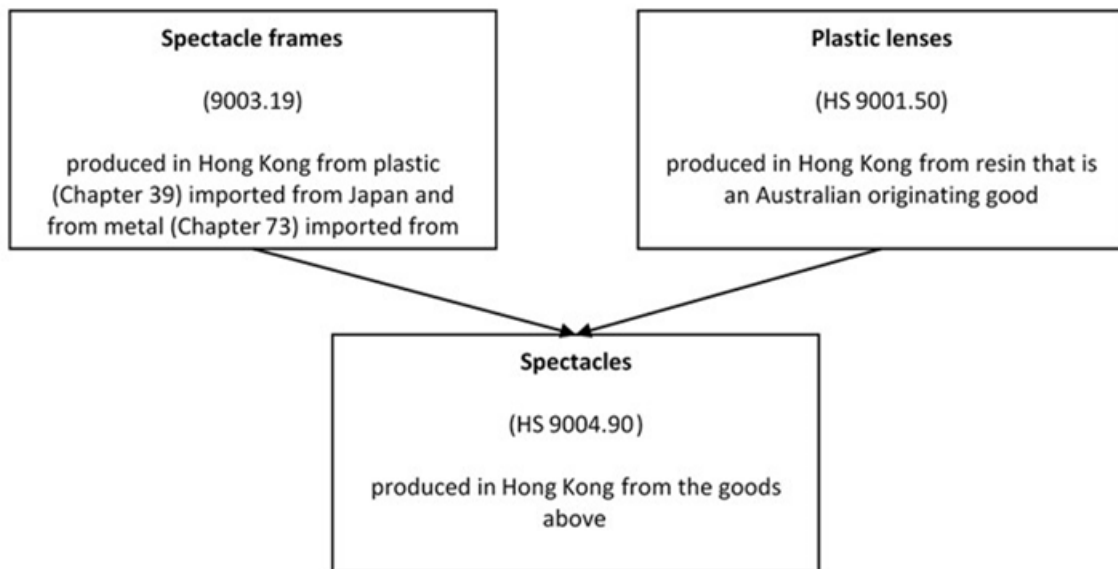


## 6.2 Goods produced using originating materials

6.2.1 Section 153ZPD of the Customs Act allows for the production of Hong Kong originating goods to occur from originating materials. Originating materials include indirect materials, Hong Kong originating materials and Australian originating materials.

### Example: Goods produced in Hong Kong using a combination of originating materials

In this example, the spectacle frames and the plastic lenses are originating materials as the spectacle frames meet the PSR specified in the A-HKFTA Regulations while the plastic lenses are produced in Hong Kong from an originating material (Australian originating goods).



As the materials used in the production of the spectacles are originating materials and the spectacles are Hong Kong originating goods in accordance with section 153ZPD.

## 7 Goods produced from non-originating materials

7.1.1 Section 153ZPE of the Customs Act contains provisions that apply to goods produced in Hong Kong, China, or Hong Kong, China and Australia, that incorporate non-originating materials:

### **Section 153ZPE of the Customs Act: Goods produced in Hong Kong, China, or in Hong Kong, China and Australia, from non-originating materials**

- (1) Goods are **Hong Kong originating goods** if:
- (a) they are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3 B of the Agreement; and
  - (b) they are produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - (c) the goods satisfy the requirements applicable to the goods in that Annex; and
  - (d) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Declaration of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Declaration of Origin for the goods.
- (2) Without limiting paragraph (1)(c), a requirement may be specified in the table in Annex 3 B of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.

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

- (3) If a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification, the regulations may prescribe when a non-originating material used in the production of the goods is taken to satisfy the change in tariff classification.
- (4) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total value of the non-originating materials covered by paragraph (b) does not exceed 10% of the customs value of the goods.
- (5) If:
- (a) a requirement that applies in relation to the goods is that all non-originating materials used in the production of the goods must have undergone a particular change in tariff classification; and
  - (b) the goods are classified to any of Chapters 50 to 63 of the Harmonized System; and
  - (c) one or more of the non-originating materials used in the production of the goods do not satisfy the change in tariff classification;
- then the requirement is taken to be satisfied if the total weight of the non-originating materials covered by paragraph (c) does not exceed 10% of the total weight of the goods.

### **Regional value content**

- (6) If a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way:
- (a) the regional value content of the goods is to be worked out in accordance with the Agreement; or
  - (b) if the regulations prescribe how to work out the regional value content of the goods—the regional value content of the goods is to be worked out in accordance with the regulations.
- (7) If:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
  - (d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
  - (e) the accessories, spare parts, tools or instructional or other information materials are non-originating materials;
- the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.
- Note:** The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZPB(2).
- (8) For the purposes of subsection (7), disregard section 153ZPG in working out whether the accessories, spare parts, tools or instructional or other information materials are non-originating materials.

7.1.2 In determining whether goods are produced in the Area of Hong Kong, China, or in the Area of Hong Kong, China and the Area of Australia, subsections 153ZPB (2), (3) and (4) should also be considered, as stated below:

#### Value of goods

(2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

#### Tariff classifications

(3) In prescribing tariff classifications for the purposes of this Division, the regulations may refer to the Harmonized System.

(4) Subsection 4(3A) does not apply for the purposes of this Division.

7.1.3 The A-HKFTA Regulations prescribes matters for the purposes of section 153ZPE and subsections 153ZPB (2) and (3).

- 7.1.4 As subsection 4(3A) of the Customs Act defines tariff classification with respect to the Tariff Act, subsection 153ZPB (4) provides that the tariff classification for the purposes of Division 1M, is that in Annex 3-B of the Agreement.
- 7.1.5 Section 153ZPE of the Customs Act sets out the rules for determining whether a good is a Hong Kong originating good if the good incorporates non-originating materials in its production process in the Area of Hong Kong, China, or in the Area of Hong Kong, China and the Area of Australia.
- 7.1.6 Goods are Hong Kong originating goods if all the requirements of subsection 153ZPE(1) have been met. The requirements of this subsection are that:
- the goods are classified to a Chapter, heading or subheading of the Harmonized System that is covered by the table in Annex 3-B of the Agreement
  - the goods are produced entirely in Area of Hong Kong, China, or in the Area of Hong Kong, China and the Area of Australia, from non-originating materials only or from non-originating materials and originating materials
  - the goods satisfy the requirements applicable to the goods in that Annex, and
  - the importer of the goods has the correct supporting documentation in relation to the goods at the time the goods are imported.
- 7.1.7 Annex 3-B of the Agreement lists the PSR that must be met (i.e. CTC, RVC, or specific manufacturing or processing operation) for determining whether the goods have undergone substantial transformation. Column 1 of the Table in Annex 4-C of the Agreement lists the tariff classifications of goods at the Chapter or heading level and Column 2 lists the tariff classifications of goods at the subheading level based on HS 2017. Column 3 provides for the product description for the goods. Column 4 sets out the PSR relevant to the tariff classifications in Column 2.
- 7.1.8 Under 153ZPE(2), a requirement may be specified in the table in Annex 3-B of the Agreement by using an abbreviation that is given a meaning for the purposes of that Annex.
- 7.1.9 In A-HKFTA the following abbreviations apply:
- **CC** means change of Chapter (i.e. non-originating materials used in the production of the good must be classified in a different Chapter (two digits) from the classification of the good);
  - **CTH** means change of heading (i.e. non-originating materials used in the production of the good must be classified in a different heading (four digits) from the classification of the good);
  - **CTSH** means change of subheading (i.e. non-originating materials used in the production of the good must be classified in a different subheading (six digits) from the classification of the good); and
  - **RVC(40)** means that the good must have a regional value content of not less than 40%, as calculated in accordance with Article 3.4.

## 7.2 Examples of PSR that appear in Annex 3-B of A-HKFTA

### PSR - CTC only

The rule may require a CTC from input materials to the final good at Chapter, heading or subheading level.

For example, for cucumbers and gherkins, prepared or preserved by vinegar or acetic acid) of HS subheading 2001.10, the PSR is a change to subheading 2001.10 from any other Chapter

Column 1	Column 2	Column 3	Column 4
HS2017	Subheading	Description	Product-Specific Rule of Origin
2001		Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid	
	2001.10	- Cucumbers and gherkins	CC

### PSR – CTC except from certain classifications

The rule may require a change in tariff classification from input materials to the final good at Chapter, heading or subheading level but excludes certain Chapters, headings or subheadings.

For example, for *solid sodium hydroxide (caustic soda)* of subheading 2815.11, the PSR is a change to subheading 2815.11 from any other subheading except from subheading 2815.12 *sodium hydroxide (caustic soda) in aqueous solution (soda lye or liquid soda)*. This means that these goods will not qualify as originating if they include sodium hydroxide (caustic soda) in aqueous solution (soda lye or liquid soda) classified in 2815.12.

Column 1	Column 2	Column 3	Column 4
HS2017	Subheading	Description	Product-Specific Rule of Origin
	2815.11	- Sodium hydroxide (caustic soda): solid	CTSH except from 2815.12

### PSR – CTC with an additional requirement

The rule may require that the change in tariff classification from input materials to the final good at Chapter, heading or subheading level with an additional requirement.

For example, for other latex products of subheading 4002.91, the PSR is a change to subheading 4002.91 from any other subheading provided that at least 40 per cent by weight of the rubber content is originating.

This means that at least 40 per cent of the rubber content, by weight, needs to meet A-HKFTA ROO in their own right, whether wholly obtained or produced entirely, produced from originating material or meeting the relevant PSR.

Column 1	Column 2	Column 3	Column 4
HS2017	Subheading	Description	Product-Specific Rule of Origin
	4002.91	- Other: latex	CTSH provided that at least 40 per cent by weight of the rubber content is originating

### PSR – CTC or RVC

Some PSRs allow for the option of meeting either a CTC or a QVC rule.

The rule may require a change in tariff classification from input materials to the final good at Chapter, heading or subheading level or meet a RVC requirement.

For example, for *soya sauce* of subheading 2103.10, the PSR is a change to subheading 2103.10 from any other Chapter or an RVC of 40 per cent.

Column 1	Column 2	Column 3	Column 4
HS2017	Subheading	Description	Product-Specific Rule of Origin
	2103.10	- Soya sauce	CC or RVC(40)

### PSR – Specific Production Processing Requirement

The rule may require that the specific production processing requirement be met.

For example, for lard described in subheading 1501.10, the PSR is either:

- a change to subheading 1501.10 from any other Chapter; or
- No change in tariff classification is required provided that the good has been refined in the Area of one or both of the Parties.

This means that, in order to be Hong Kong originating, it is sufficient to demonstrate that non-originating materials were refined into lard of subheading 1501.10 in the area of one or both of the Parties.

Column 1	Column 2	Column 3	Column 4
HS2017	Subheading	Description	Product-Specific Rule of Origin
	1501.10	- Lard	CC or No change in tariff classification is required provided that the good has been refined in the Area of one or both of the Parties

## 7.3 Change in tariff classification

- 7.3.1 Subsection 153ZPE(3) of the Customs Act states that the regulations may prescribe that each non-originating material used in the production of goods is required to satisfy a prescribed CTC. This requirement is set out in Part 2, Section 5 of the A-HKFTA Regulations.
- 7.3.2 The CTC concept applies only to non-originating materials. This means that non-originating materials must not have the same classification as the final good into which they are incorporated at the level identified in the PSR. In other words, the tariff classification of the final good (after the production process) must be different to the tariff classification of each non-originating material used in the production of the good. This approach ensures that non-originating materials incorporated into a good have undergone substantial transformation to support a claim that the good is a Hong Kong originating good.
- 7.3.3 Subsection 153ZPE(3) directly addresses the CTC test.
- It may be possible for a good to be a Hong Kong originating good in cases where not all of the non-originating materials have undergone the required CTC provided the *de minimis* provision has been met. A detailed explanation of the *de minimis* provision can be found in 8.4.

### Example : CTC rule

Tropical fruit juice (subheading 2009.90) is made in Hong Kong from imported bananas (heading 0803) and pineapples (subheading 0804.30), combined with oranges grown in Hong Kong.

The PSR for a good of subheading of 2009.90 is CC.

In determining whether the tropical fruit juice is a Hong Kong originating good, the CTC requires that all the non-originating materials that go into the making of the tropical fruit juice must come from inputs that are classified outside of Chapter 20.

As the banana and pineapples are both classified to Chapter 8, these non-originating materials meet the CTC requirement. Since Hong Kong produces the oranges, these are an originating material, which is not required to undergo the CTC test.

The tropical fruit juice is therefore a Hong Kong originating good.

## 7.4 Regional Value Content (RVC)

- 7.4.1 Subsection 153ZPE(6) of the Customs Act states that the RVC of goods for the purposes of this Division is to be worked out in accordance with the regulations.
- 7.4.2 The regulations may prescribe different levels of regional value content for different types of goods and these must be expressed as a percentage.

7.4.3 Part 3 of the A-HKFTA Regulations sets out the rules for calculation of RVC, as follows:

- For the purposes of subsection 153ZPE(6) of the Act, the regional value content of goods is worked out using the formula:

$$\frac{\text{Customs value} - \text{Value of non-originating material}}{\text{Customs value}} \times 100$$

7.4.4 Where:

**customs value** means the customs value of the goods worked out under Division 2 of Part VIII of the Act.

**value of non originating materials** means the value, worked out under Part 4, of the non-originating materials that are used in the production of the goods.

#### **Example: RVC calculation**

A Hong Kong producer sells a good to an Australian importer for \$200. The value of non-originating materials used in the good is \$60. The producer calculates the RVC as follows:

$$\begin{aligned} RVC &= \frac{\text{Customs value} - \text{Value of non-originating material}}{\text{Customs value}} \times 100 \\ &= \frac{\$200 - \$60}{\$200} \times 100 \\ &= 70 \text{ per cent} \end{aligned}$$

Therefore, the RVC of the good is 70%.

## 7.5 Specific production processing requirement

7.5.1 Annex 3-B of the Agreement may specify:

- a specific production processing requirement for a particular subheading; or
- a specific production processing requirement at the Section or Chapter level.

7.5.2 Where a good is produced using the specific production process set out in the PSR, that good is a Hong Kong originating good.



### Example: Specific Production Process Rule

A manufacturer in Australia makes the chemical compound diethylamine hydrochloride (classified as HS 2921.11) for use as a corrosion inhibitor and exports the product to Hong Kong.

The diethylamine hydrochloride is manufactured through the reaction of diethylamine that is also classified in HS 2921.11 with hydrochloric acid that is classified in HS 2806.10. This process transforms the input substances into a new molecule with a new structure by breaking intramolecular bonds and forming new bonds.



This process meets the Chemical Reaction Origin Rule specified in the Section B of the A-HKFTA PSR.

### Section B: Chemical Chapter Origin Rules

9: Chemical Reaction Origin Rule:

Notwithstanding the applicable product-specific rules of origin, a good of Chapters 28 through 40, heading 2707 or heading 2710 that is the product of a chemical reaction shall be considered to be an originating good if the chemical reaction occurred in the Area of a Party.

For the purposes of the chemical reaction origin rule, 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 atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a good 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 crystallisation.

## 7.6 Alternative or additional rules

7.6.1 For some goods, Annex 3-B of the Agreement may specify:

- an RVC requirement as additional to the CTC requirement; or
- an RVC requirement as alternative to a CTC requirement.

7.6.2 In cases where a RVC requirement is specified as additional to a CTC requirement, goods need to satisfy both the CTC requirement and the specified RVC requirement to qualify as Hong Kong originating goods.

7.6.3 In cases where the PSR provides for options to determine origin, all the requirements of the option chosen (e.g. the CTC requirement only or an RVC requirement only) must be met for the good to qualify as a Hong Kong originating good.

## 8 Other originating goods provisions

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

8.1.1 Section 153ZPG of the Customs Act sets out rules for goods that are accessories, spare parts, tools or instructional or other information materials for other goods.

8.1.2 Where the other goods are

- Hong Kong originating goods;
- imported with the accessories, spare parts, tools or instructional or other information materials;
- the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods

the accessories, spare parts, tools or instructional or other information materials are considered Hong Kong originating.

8.1.3 Where goods are imported into Australia together with accessories, spare parts, tools or instructional or other information materials, these accompanying items must be disregarded if the good is subject to a rule other than RVC. That is, these accompanying items do not need to meet the requirements other non-originating must undergo, if the requirements of Section 153ZPG have been met.

#### **Section 153ZPG of the Customs Act: Goods that are accessories, spare parts, tools or instructional or other information materials**

Goods are *Hong Kong originating goods* if:

- (a) they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
- (b) the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
- (c) the other goods are Hong Kong originating goods; and
- (d) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the other goods; and
- (e) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

8.1.4 Subsection 153ZPE(7) and (8) of the Customs Act and Section 9 of the A-HKFTA Regulations sets out the treatment that applies to accessories, spare parts, tools or instructional or other information materials in respect of goods imported into Australia where a good is required to satisfy an RVC requirement.

**Unclassified**

- 8.1.5 Where a good is required to satisfy the RVC requirement, then the value of spare parts, accessories, tools or instructional or other information materials must be taken into account as originating or non-originating materials, as the case may be, in working out the RVC for the good.

**Subsection 153ZPE(7) and (8) of the Customs Act - Value of the goods that are accessories, spare parts, tools or instructional or other information materials**

- (7) If:
- (a) requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
  - (c) the accessories, spare parts, tools or instructional or other information materials are classified with, delivered with and not invoiced separately from the goods; and
  - (d) the types, quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the goods; and
  - (e) the accessories, spare parts, tools or instructional or other information materials are non-originating materials;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph (e) to be taken into account for the purposes of working out the regional value content of the goods.

Note: The value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the regulations: see subsection 153ZPB(2).

- (8) For the purposes of subsection (7), disregard section 153ZPG in working out whether the accessories, spare parts, tools or instructional or other information materials are non-originating materials.

**Regulation 8 of the A-HKFTA Regulations –Value of accessories, spare parts, tools or instructional or other information materials**

If paragraphs 153ZPE(7)(a), (b), (c), (d) and (e) of the Act are satisfied in relation to goods:

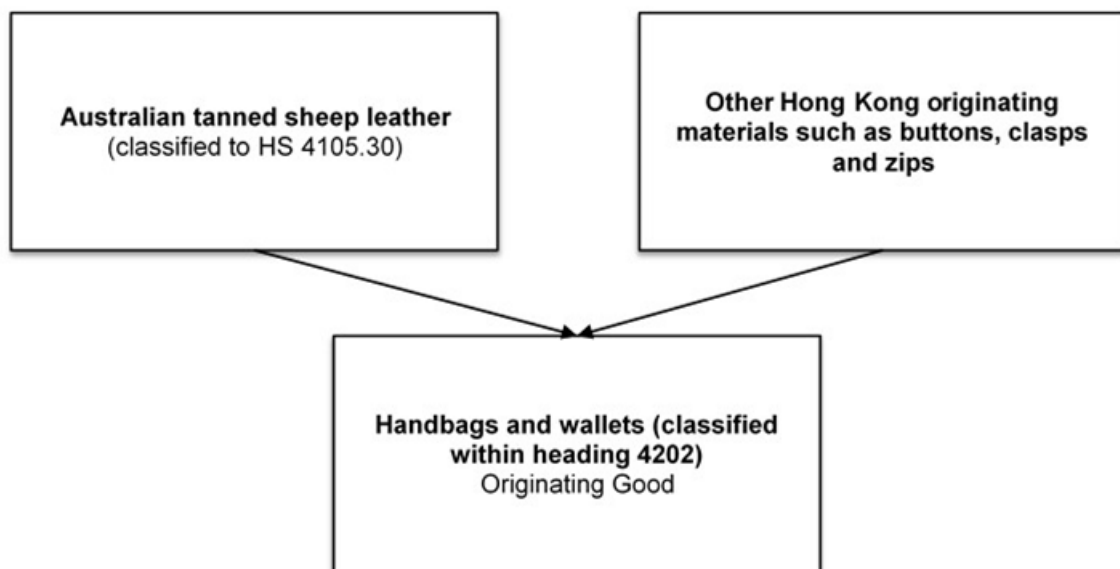
- (a) the value of the accessories, spare parts, tools or instructional or other information materials covered by paragraph 153ZPE(7)(e) of the Act must be taken into account for the purposes of working out the regional value content of the goods under section 6 of this instrument; and
- (b) for the purposes of sections 6 and 7 of this instrument, those accessories, spare parts, tools or instructional or other information materials are taken to be non-originating materials used in the production of the goods.

## 8.2 Accumulation

- 8.2.1 Under A-HKFTA, Australian originating materials used in the production of a good in Hong Kong shall qualify as originating for the purpose of determining if the good is a Hong Kong originating good.

### **Example: Goods produced in Hong Kong using a combination of Australian and Hong Kong originating materials**

A Hong Kong producer imports Australian tanned sheep leather (classified to 4105.30.00) from Australia. This leather is an Australian originating material.



The tanned sheep leather is used in Hong Kong to produce handbags and wallets using a number of Hong Kong originating materials (metal clasps, plastic zippers, cotton thread, etc).

The finished handbags and wallets (classified within heading 4202) are Hong Kong originating goods because they are produced from originating materials.

## CTC Requirement

- 8.2.2 Section 5 of the A-HKFTA Regulations sets out that each non-originating material must satisfy the relevant CTC in order to be originating.
- 8.2.3 Subsection 5(a) and (b) of the A-HKFTA Regulations provide that a final good is taken to satisfy the CTC if its production includes non-originating material/s that are also, in turn, produced involving non-originating materials, if each of those subsequent materials satisfies the CTC for the final good, entirely in the Area of Hong Kong, China or entirely in the Area of Hong Kong, China and the Area of Australia.
- 8.2.4 Materials that are originating goods (that is they satisfy the PSR for the material when considered as a final good) do not need to meet the CTC requirements.

### **Section 5 of the A-HKFTA Regulations: CTC requirement for non-originating materials**

For the purposes of subsection 153ZPE(3) of the Act, a non-originating material used in the production of goods that does not satisfy a particular change in tariff classification is taken to satisfy the change in tariff classification if:

- (a) it was produced entirely in the Area of Hong Kong, China, or entirely in the Area of Hong Kong, China and the Area of Australia, from other non-originating materials; and
- (b) each of those other non-originating materials satisfies the change in tariff classification, including by one or more applications of this section.

### Example - CTC requirement for non-originating materials

This example considers a good manufactured entirely in the Area of Hong Kong, China. The diagram relates to the repeated application of Section 5 of the A-HKFTA Regulations to determine whether a good (the Final Good) being imported into Australia satisfies the relevant CTC rule. The Final Good was made in the exporter's factory from a range of originating and non-originating materials that include two non-originating materials: Non-originating Materials 1 and 2. Non-originating Material 1 satisfies the CTC rule for the Final Good but Non-originating Material 2 does not. Any originating material used in the production of this good is not included in the diagram as originating materials do not need to meet the CTC requirement.

All non-originating materials (subject to the *de minimis* rule) must meet the CTC requirement for the Final Good to be a Hong Kong originating good. Therefore, in this example, without the ability to accumulate, the Final Good would be non-originating because it was made using one non-originating material (Material 2) that failed to meet the CTC rule.

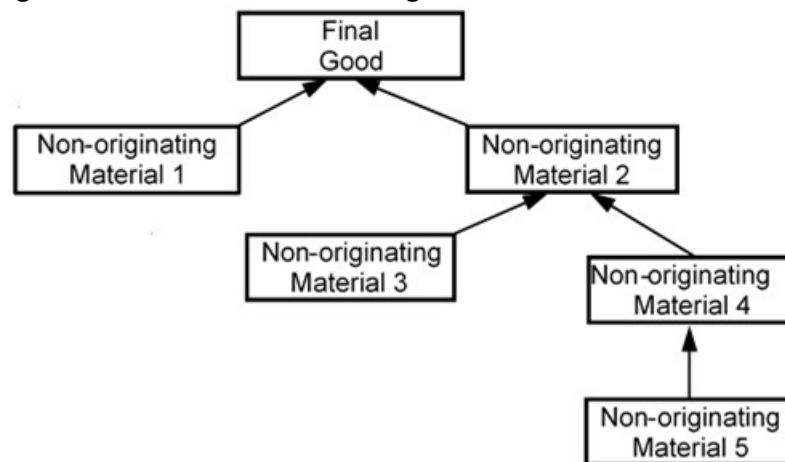
Subsection 5(b) of the Regulations provides that the materials that went into making Non-originating Material 2 can also be considered against the Final Good to determine whether the goods meet the CTC rule. In this case, the exporter purchased Non-originating Material 2 from a Hong Kong supplier who provided the necessary information that the goods were made from several materials including two non-originating materials: Non-originating Material 3 and Non-originating Material 4.

Subsection 5(b) of the A-HKFTA regulations allows for the repeated application of the Section. If Non-originating Material 3 and Non-originating Material 4 met the CTC rule, i.e. they underwent the necessary CTC in relation to the HS classification of the Final Good, then the good would be originating. Non-originating Material 3 satisfies the CTC in relation to the Final Good, however, Non-originating Material 4 does not meet the CTC.

Again, as done with Non-originating Material 2, it is possible to repeat the process of examining the materials that went into making Non-originating Material 4, we can further consider whether Non-originating Material 5, the only non-originating material used in the production of Non-originating Material 4, satisfies the CTC rule in relation to the Final Good. In this example Non-originating Material 5 is the only non-originating material used in the production in Hong Kong of Non-originating material 4 and it satisfies the CTC rule in relation to the Final Good.

As the non-originating materials that went into making the Final Good meet the required CTC rule, the Final Good is a Hong Kong originating good for the purposes of A-HKFTA.

### Origin determination using Section 5 of the A-HKFTA Regulations



Note: the exporter would need to obtain documentary evidence regarding the production process, the materials used and other relevant information regarding the production of Non-originating Material 2 and Non-originating Material 4 from the suppliers of those products.

## Regional Value Content

- 8.2.5 Paragraph 7(3)(d) and (e) of the A-HKFTA Regulations sets out that the value of originating materials and other costs incurred in the Area of Hong Kong, China and the Area of Australia in the production of non-originating materials may be deducted from the value of non-originating materials for the purpose of determining the RVC.

### Section 7 of the A-HKFTA: Value of goods that are non-originating materials

- (3) In working out the value of particular non-originating materials under subsection (1), the following may be deducted:
- (a) the costs of freight, insurance, packing and all other costs incurred in transporting the materials within the Area of Hong Kong, China to the location of the producer of the goods;
  - (b) duties, taxes and customs brokerage fees on the materials that:
    - (i) have been paid in either or both of the Area of Hong Kong, China and the Area of Australia; and
    - (ii) have not been waived or refunded; and
    - (iii) are not refundable or otherwise recoverable;
      - including any credit against duties or taxes that have been paid or that are payable;
  - (c) the costs of waste and spoilage resulting from the use of the materials in the production of goods, reduced by the value of reusable scrap or by-products;
  - (d) the costs of processing the materials in either or both of the Area of Hong Kong, China and the Area of Australia;
  - (e) the costs of originating materials used in the production of the non-originating materials in either or both of the Area of Hong Kong, China and the Area of Australia.

### Meeting the RVC requirement using accumulation

A Hong Kong producer sells a good to an Australian importer for \$200. The value of non-originating material used in Hong Kong to produce the good is \$150. The producer calculates the RVC as follows:

$$\begin{aligned} & \frac{\text{Customs value} - \text{Value of non-originating material}}{\text{Customs Value}} \times 100 \\ &= \frac{\$200 - \$150}{\$200} \times 100 \\ &= 25 \text{ per cent} \end{aligned}$$

However, the producer remembers that non-originating material sourced from Australia worth \$90 is also used in the production of the good. Of the \$90, \$30 of that value is from production that occurred in Australia. As long as the Hong Kong producer has evidence of this, they can include that value in the RVC calculation, provided they meet the record keeping requirements.

$$\begin{aligned} & \frac{\text{Customs value} - \text{Value of non-originating material}}{\text{Value}} \times 100 \\ &= \frac{200 - 120}{\$200} \times 100 \\ &= 40 \text{ per cent} \end{aligned}$$

Therefore, the RVC of the good is 40%.

- 8.2.6 At the time the goods are imported, the importer must also have the correct supporting document in relation to the goods. Refer to Section 9 of this Guide for further information.



## 8.3 Consignment provision

8.3.1 Section 153ZPH of the Customs Act sets out the consignment provisions that apply to Hong Kong originating goods imported into Australia.

### Section 153ZPH of the Customs Act - Consignment

- (1) Goods are not Hong Kong originating goods under this Division if:
  - (a) the goods are transported through the territory of one or more non-Parties; and
  - (b) the goods undergo any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, repacking, storing, labelling or marking for the purpose of satisfying the requirements of Australia or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the Area of Australia).
- (2) This section applies despite any other provision of this Division.

8.3.2 The consignment provision aims to ensure that only goods that are Hong Kong originating goods are entitled to the benefits granted under A-HKFTA.

8.3.3 A good will lose its status as a Hong Kong originating good if it undergoes any process of production or other operation while en route from Hong Kong to Australia, other than those listed in subparagraph 153ZPH(1)(b) of the Customs Act.

#### Example 1: Consignment provision

Surgical instruments, cotton gowns and bandages, made in Hong Kong from Hong Kong originating materials, are sent to Singapore where they are packaged together in a set and then sterilized for use in operating rooms. They are then sent to Australia.

Upon their arrival in Australia, the medical sets are not eligible for preferential treatment under A-HKFTA because they underwent operations in Singapore that are not covered by the exceptions in section 153ZPH.

#### Example 2: Consignment provision

Cars manufactured in Hong Kong are sent by ship to Australia. Before departure, they are coated with a protective veneer to inhibit damage to painted surfaces during transport to Australia.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Singapore so that the protective veneer can be reapplied to ensure that the vehicles are preserved in good condition for the remainder of the voyage to Australia.

This process would not affect the origin status of the vehicles that have undergone an operation that is necessary to preserve the goods in good condition as fits within the exceptions provided in section 153ZPH of the Customs Act.

## 8.4 *De minimis* provision

- 8.4.1 The CTC requirement under subsection 153ZPE(3) of the Customs Act is also taken to be satisfied if the good meets the requirement of subsections 153ZME(4) or (5) – the *de minimis* provision. See page 18.
- 8.4.2 The CTC rule requires that all non-originating materials undergo the required CTC. The *de minimis* provision allows for a low percentage of the non-originating materials to be used in a good and for it to still meet the CTC rule.
- 8.4.3 Under subsection 153ZME(4) of the Customs Act, the *de minimis* provision allows a good to qualify as a Hong Kong originating good provided the total value of all non-originating materials used in the production of the good that do not satisfy the CTC does not exceed 10 per cent of the customs value of the goods.
- 8.4.4 For goods classified in Chapters 50 to 63 of the HS, subsection 153ZPE(5) provides that a good shall be considered to be originating if the total weight of all non-originating materials of that good, that do not undergo the applicable CTC, does not exceed 10 per cent of the weight of the good.
- 8.4.5 Goods of Chapter 50 to 63 are not excluded from using the *de minimis* by value, subsection 153ZPE(4).

### **Example: CTC – *de minimis* by value**

A good uses two materials, A and B, and both are non-originating materials. As a result of its transformation into the finished good, A meets the required HS classification change, but B does not.

Because B does not make the required change, the finished good will not be considered an originating good. However, if the value of B is less than 10 per cent of the value of the good it will still qualify as a Hong Kong originating good.

The good is valued at \$100 and the value of material B is \$5. The value of B is 5 per cent of the good's value, therefore the goods is considered Hong Kong originating good.

### **Example: CTC – *de minimis* by weight**

A good classified within Chapters 50 to 63 incorporates three non-originating materials: X, Y and Z.

As a result of their transformation into the finished good, materials X and Y meet the CTC, but material Z does not.

Because Z does not meet the required change, the finished good will not qualify as originating. However if the weight of material Z is less than 10 per cent of the good's total weight it will still qualify as a Hong Kong originating good.

If the finished good weighs 50 grams and the weight of material Z is 2 grams, the weight of Z is 4 per cent of the good's total weight. Therefore the finished good is considered to be a Hong Kong originating good.

## 8.5 Fungible goods and materials

- 8.5.1 Fungible goods or materials are goods or materials that are identical or interchangeable as a result of being of the same kind and commercial quality, possessing essentially the same technical and physical characteristics.
- 8.5.2 The treatment of fungible goods and materials is covered by Article 3.10 of Chapter 3 of the Agreement.

### Article 3.10 of Chapter 3 of the Agreement: Fungible goods or materials

Each Party shall provide that a fungible good or material is treated as an originating good or an originating material based on the:

- (a) physical segregation of each fungible good or material; or
- (b) use of any inventory management method recognised in the generally accepted accounting principles if the fungible good or material is commingled.

- 8.5.3 Many materials involved in production processes are interchangeable for commercial purposes, in that they are of the same kind and commercial quality (e.g. ball bearings, nuts, bolts, screws etc). These materials are considered to be fungible materials.
- 8.5.4 A producer may choose to physically separate the materials, as they may be obtained from different countries. However, in many cases this may not be practical and the producer may store all the fungible materials in one container.
- 8.5.5 When a producer mixes originating and non-originating fungible materials, which means origin of the materials used in the production of a good is unknown, the producer may determine the origin of the materials used based on one of the standard inventory management methods (e.g. last-in first-out, or first-in first-out) allowed under generally accepted accounting principles.

### Example 1: Fungible goods or materials

Amongst the materials used by a Hong Kong producer of machinery parts are ball bearings. Depending on pricing and supply availability, the producer may source the ball bearings, from Hong Kong, or from South Africa. All of the ball bearings are of identical size and construction.

On 1 January, the producer buys 1 tonne of ball bearings of Hong Kong origin, and on 3 January buys 1 tonne of ball bearings of South African origin.

The ball bearings have been stored in the one container at the producer's factory. The form of storage of the intermingled ball bearings makes those of Hong Kong origin indistinguishable from those sourced from South Africa.

An Australian company places an order with the Hong Kong producer for machinery parts, which require the use of 800 kg of ball bearings.

If the producer elects "first-in first-out" inventory procedures, the 800 kg of ball bearings used to fill the Australian order are considered to be Hong Kong originating goods, regardless of their actual origin.

### **Example 2: Fungible goods or materials**

Continuing with the above scenario, a second Australian company places an order with the same Hong Kong producer for machinery parts, which requires the use of 500 kg of the same ball bearings.

The producer, same as in the above scenario, has elected to use the “first-in first-out” inventory procedure.

1200 kg of the original 2000 kg remain, the first 200 kg of ball bearings used are considered to be Hong Kong originating goods. The remaining quantity of ball bearings used to fulfil the order (300 kg) are considered to be non-originating materials and the ball bearings must meet the specified PSR for the final good.

- 8.5.6 If the origin of fungible materials is determined to be Hong Kong originating materials under Article 3.10 of Chapter 3 of the Agreement, these materials are not subject to the PSRs, as the PSRs apply only to non-originating materials.
- 8.5.7 Alternatively, if the fungible materials used in a production process are determined to be non-originating materials under Article 3.10 of Chapter 3 of the Agreement, those fungible materials must meet the PSR requirement that is applicable to the good being produced if they are to be imported into one of the parties and claim preferential tariff treatment.

## 8.6 Indirect materials

- 8.6.1 All indirect materials used in the production of Hong Kong originating goods are treated as originating materials regardless of where they were produced.
- 8.6.2 Indirect materials are defined in paragraph 3.1.14 of this Guide and are considered originating materials in paragraph 3.1.18.

### **Indirect materials**

Tools and safety equipment, produced in Malaysia, are used by workers in Hong Kong during the production of spectacles. Such tools and safety equipment meet the terms of paragraph 3.1.14 of the definition of “indirect materials” and are thereby considered to be originating materials.

## 8.7 Packaging materials and containers

- 8.7.1 Section 153ZPF of the Customs Act outlines the treatment to be given to packaging materials and containers in which imported goods are packaged for retail sale for the purposes of determining the origin of goods.

### Section 153ZPF of the Customs Act: Packaging materials and containers

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
  - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Subdivision.

#### ***Regional value content***

- (2) However, if:
- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content of not less than a particular percentage worked out in a particular way; and
  - (b) the packaging material or container is a non-originating material;
- the regulations must provide for the value of the packaging material or container to be taken into account for the purposes of working out the regional value content of the goods.

- 8.7.2 Where the goods are packaged for retail sale in packaging material or a container it is classified with the goods in accordance with Rule 5 of the Interpretation Rules, then the packaging material or container is to be disregarded

### Regional value content of packaging materials and containers

- 8.7.3 Subsection 153ZPF(2) of the Customs Act adds that if goods are required to have a RVC of at least a particular percentage, the Regulations must provide the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods.
- 8.7.4 Section 9 of the A-HKFTA Regulations prescribes how to determine the value of the packaging materials or containers.

### Value of packaging material and container

If paragraphs 153ZPF(2)(a) and (b) of the Act are satisfied in relation to goods:

- (a) the value of the packaging material or container in which the goods are packaged must be taken into account for the purposes of working out the regional value content of the goods under section 6 of this instrument; and
- (b) for the purposes of sections 6 and 7 of this instrument, that packaging material or container is taken to be a non-originating material used in the production of the goods.

**Example: Packaging materials and containers**

Dolls (HS 9503) are made in Hong Kong. The dolls are wrapped in tissue paper and packed in cardboard boxes described with the brand logo for retail sale. Both the tissue paper and the cardboard box are of Thai origin.

The PSR for 9503 is CTH or RVC(40):

Either:

- a) a change to heading 9503 from any other heading; or
- b) no change in tariff classification is required provided that there is a regional value content of at least 40%

The tissue paper and cardboard box are disregarded for the purpose of the CTC requirement; however, their value must be counted as non-originating in calculating the RVC, if RVC was used.

## 9 Procedures and evidence required to claim preferential tariff treatment

### 9.1 Claiming A-HKFTA preferences

- 9.1.1 To claim preferential treatment under A-HKFTA, the provisions in Division 1M of Part VIII of the Customs Act require the importer of the goods to have at the time of importing the goods a DOO, or a copy of one, in relation to the goods.
- 9.1.2 A DOO is required to support a claim for A-HKFTA preferential treatment.
- 9.1.3 The DOO must be completed by the exporter, producer or importer or an authorised representative of the exporter, producer or importer.
- 9.1.4 A sample of the A-HKFTA DOO is available in Attachment B and C of the Department of Foreign Affairs and Trade's "[\*Guide to obtaining preferential tariff treatment when exporting and importing goods using A-HKFTA\*](#)".

### 9.2 Declaration of Origin

- 9.2.1 A DOO must comply with the requirements of Article 3.16 and Annex 3-A of the Agreement. The Annex sets out the data elements that the DOO must include.
- 9.2.2 A DOO may apply to multiple shipments of an identical good within any period specified in the DOO, from or after the date of issuance but not exceeding the period of validity of the declaration, which is one year.

#### Article 3.16: Declaration of Origin of the Agreement

- (1) Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a declaration of origin completed by the exporter, producer or importer or an authorised representative of the exporter, producer or importer.
- (2) Each Party shall provide that a declaration of origin:
- (a) need not follow a prescribed format;
  - (b) be in writing, including electronic format;
  - (c) be in English;
  - (d) specifies that the good is both an originating good and meets the requirements of this Chapter; and
  - (e) contains a set of minimum data requirements as set out in Annex 3-A.
- (3) Each Party shall provide that a declaration of origin may apply to:
- (a) a single shipment of a good into the Area of a Party; or
  - (b) multiple shipments of an identical good within any period specified in the declaration of origin, from or after the date of issuance but not exceeding the period of validity of the declaration.
- (4) Each Party shall provide that a declaration of origin is valid for one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.



## 9.3 Minimum data requirements

9.3.1 The data requirements for the DOO as set out in Annex 3-A of the Agreement are:

A declaration of origin that is the basis for a claim for preferential tariff treatment under this Agreement shall include the following elements:

- (1) Importer, Exporter, Producer or the Authorised Representative of the Importer, Exporter or Producer as Declarer of the Declaration of Origin

Indicate whether the declaration is made by the importer, exporter, producer or the authorised representative of the importer, exporter or producer in accordance with Article 3.16.

- (2) Authorised Representative

If an authorised representative of the importer, exporter or producer is making the declaration, provide the authorised representative's name, address (including country or place), email address and telephone number.

- (3) Exporter

Provide the exporter's name, address (including country or place), email address and telephone number if different from the declarer. This information is not required if the producer is completing the declaration of origin and does not know the identity of the exporter.

- (4) Producer

Provide the producer's name, address (including country or place), email address and telephone number, if different from the declarer or exporter or, if there are multiple producers, state "Various" or provide a list of producers. A person that wishes for this information to remain confidential may state "Available upon request by the importing authorities".

- (5) Importer

Provide, if known, the importer's name, address, email address and telephone number.

- (6) Description and HS Tariff Classification of the Good

(a) Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description should be sufficient to relate it to the good covered by the declaration of origin; and

(b) If the declaration of origin covers a single shipment of a good, indicate, if known, the invoice number related to the exportation.

- (7) Origin Criterion

Specify the rule of origin under which the good qualifies.

- (8) Blanket Period

Include the period if the declaration covers multiple shipments of an identical good for a specified period of up to 12 months as set out in Article 3.16.4.

- (9) Authorised Signature and Date

The declaration of origin must be signed and dated by the declarer and accompanied by the following statement:

I declare that the good described in this document qualifies as originating in [insert country or place] and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this declaration of origin.

## 9.4 Waiver of Declaration of Origin

9.4.1 Division 1M of the Customs Act provides for the waiver of DOO under certain conditions.

9.4.2 A DOO is not required for imports when the total customs value of the originating goods does not exceed AUD1000, provided that the importation does not form part of one or more importations that may reasonably be considered to have been undertaken or arranged for the purposes of avoiding the requirements of the Agreement.

Note: For custom clearance purposes the importer will still be required to complete either:

- a self-assessed clearance declaration when the customs value does not exceed \$1,000 and a DOO is not required or
- an import declaration if the customs value exceeds \$1,000.

9.4.3 The ABF has waived the requirement for Australian Trusted Traders importing goods under A-HKFTA to present DOO in accordance with [ACN No 2019/23](#).

9.4.4 Even where the requirement to obtain or present a DOO is waived, importers will still be required to keep evidence (for a period of at least five years from the day of importation) that imported goods are originating and present this if requested. Importers must otherwise comply with all requirements of the Agreement.

## 9.5 Refunds

9.5.1 Where duty has been paid on Hong Kong originating goods because a valid DOO or a copy of one was not available at the time the goods were imported, the importer may claim a refund of the customs duty paid on those goods.

9.5.2 In order to claim a refund the importer must have a valid DOO or a copy of one at the time the refund is sought under regulation 23 of the Customs (International Obligations) Regulation 2015.

9.5.3 A refund may be sought at any time up to 4 years from the duty payment date where the DOO was issued after the importation of the goods. The DOO must still be valid at the time of claiming the refund of duty and amending the import declaration.

9.5.4 Where an Australian Trusted Trader has paid duty on goods that were later understood to be Hong Kong originating goods, they may be able to apply for a refund of customs duty paid. An application for a refund must include evidence regarding the origin of the goods, such as commercial documentation, statements of manufacture or a valid DOO.

## 9.6 Compliance procedures for claiming preference

9.6.1 Under the Customs Act (sections 71DA, 240AA, 240AB and 240AC) the ABF may seek further evidence of good's entitlement to preferential treatment irrespective of the existence of a DOO, including through:

- (a) written requests for information from the importer;
- (b) written requests for information from the exporter or producer of the exporting Party;
- (c) verification visits to the premises of the exporter or the producer in Australia or Hong Kong to allow ABF officers to review the records referring to origin — including accounting records.

**Unclassified**

- 9.6.2 The ABF may deny a claim for preferential tariff treatment if:
- (a) it determines that the good does not meet the requirements of Division 1M of Part VIII of the Customs Act to qualify for preferential treatment; or
  - (b) the importer, exporter, producer or authorised agent fails to comply with the relevant requirements of the Customs Act; or
  - (c) after seeking further information under sections 71DA, 240AA, 240AB and 240AC of the Customs Act, the ABF does not:
    - (i) receive sufficient information to determine that the good qualifies as originating; or
    - (ii) receive written consent to conduct a verification visit from the exporter or producer, after receipt of written notification for a verification visit; or
    - (iii) receive a response to the requests in 9.6.1.
- 9.6.3 If, after making a claim for preferential tariff treatment, the importer becomes aware that the goods were ineligible for preferential rates of duty, the importer must, as soon as practicable, amend the import declaration and pay any short-fall amount of customs duty. This action may protect an importer against liability for an offence under subsections 243T(1) or 243U(1) of the Customs Act, if the amendment is considered a voluntary disclosure as explained in [Australian Customs Notice \(ACN\) 2004/05](#) and [Department of Border Protection Notice \(DIBPN\) 2016-35](#).
- 9.6.4 Where a short payment results from incorrectly claimed preferential rates of duty, an importer may be protected from liability for an offence against subsection 243T(1) or 243U(1) of the Customs Act, if, at the time of entry of the goods, the importer holds a DOO that states a particular preference criterion of Division 1M of Part VIII of the Customs Act has been met.
- 9.6.5 The protection will not apply where:
- (a) other information available to the importer indicated that the statement on the DOO was incorrect or unreliable; or
  - (b) the DOO could not be clearly related to the goods in question.
- 9.6.6 Where a customs declaration states that a preferential rate of duty is being applied for, this will be taken to indicate that the owner of the goods possesses evidence that the stated facts are correct. The criteria for eligibility for preferential rates of duty under A-HKFTA are set out in Division 1M of Part VIII of the Customs Act.
- 9.6.7 The importer must have a valid DOO at the time of entering the goods. An importer may be required to produce the DOO or other evidence either at the time of entering the goods or at some later date to demonstrate any claims made.
- 9.6.8 If the ABF finds that a claimed preference is inapplicable or that there is insufficient evidence to justify the claim for preferential rates of duty, the general rate of duty is payable on the goods and there will be a liability for the payment of any customs duty and GST that has been short-paid. In these circumstances, an offence may have been committed against subsections 243T(1) or 243U(1) of the Customs Act. An administrative penalty under the Taxation Administration Act 1953 (Taxation Administration Act) may also apply where there is a shortfall amount of GST. An infringement notice may be served in lieu of prosecution for an offence against subsections 243T(1) or 243U(1) of the Customs Act.

## 9.7 Validity

- 9.7.1 Under Article 3.16 of the Agreement, the DDO shall remain valid for a period of one year after the date that it was issued or for such longer period specified by the laws and regulations of the importing Party.

## 10 Record keeping obligations

### 10.1 Importers

10.1.1 Australian importers must maintain, for five years after the date of importation of the goods, documentation, including a copy of the DOO, relating to the importation of the goods.

### 10.2 Exporters and Producers

10.2.1 Part 5 of the A-HKFTA Regulations sets out that Australian exporters or producers of goods claiming to be Australian originating goods must keep for five years after exportation, all records necessary to demonstrate that the goods were Australian originating.

10.2.2 The exporter or producer must ensure that:

- (i) the records are kept in a form that would enable a determination of whether the goods are Australian originating goods; and
- (ii) if the records are not in English—the records are kept in a place and form that would enable an English translation to be readily made; and
- (iii) if the records are kept by mechanical or electronic means—the records are readily convertible into a hard copy in English.

10.2.3 The records may be kept at any place (whether or not in Australia).

## Records to be kept by producers and exporters of goods to the Area of Hong Kong, China

Records	Producer	Exporter
Records of the purchase of the goods	✓	✓ <sup>iii</sup>
Records of the purchase of the goods by the person to whom the goods are exported		✓
Evidence of the classification of the goods under the Harmonized System	✓ <sup>v</sup>	✓
Evidence that payment has been made for the goods	✓	✓
Evidence of the value of the goods	✓	
Records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System	✓	
Evidence of the value of those materials	✓	
Records of the production of the goods	✓	
If the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased:	✓ <sup>i</sup>	✓ <sup>iii</sup>
a. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and		
b. evidence of the value of the accessories, spare parts, tools or instructional or other information materials		
If the goods include any accessories, spare parts, tools or instructional or other information materials that were produced:	✓ <sup>ii</sup>	✓ <sup>iv</sup>
a. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and		
b. evidence of the value of the materials so purchased; and		
c. records of the production of the accessories, spare parts, tools or instructional or other information materials		
If the goods are packaged for retail sale in packaging material or a container that was purchased:	✓ <sup>i</sup>	✓ <sup>iii</sup>
a. records of the purchase of the packaging material or container; and		
b. evidence of the value of the packaging material or container		
If the goods are packaged for retail sale in packaging material or a container that was produced:	✓ <sup>ii</sup>	✓ <sup>iv</sup>
a. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and		
b. evidence of the value of the materials; and		
c. records of the production of the packaging material or container		
A copy of the declaration of origin (within the meaning of section 153ZPB of the Act) in relation to the goods	✓	✓
Notes		
i. <i>If purchased by the producer</i>		
ii. <i>If produced by the producer</i>		
iii. <i>If purchased by the exporter</i>		
iv. <i>If produced by the exporter</i>		
v. <i>If the producer is also the exporter</i>		

**Unclassified**

# 11 Origin advice rulings

## 11.1 Provision of origin advice rulings

11.1.1 A-HKFTA allows for Australian importers, Hong Kong exporters and Hong Kong producers of goods to obtain advance rulings (see Article 4.7 of Chapter 4 Customs Procedures and Trade Facilitation of the Agreement) from the ABF regarding future importations of goods into Australia.

## 11.2 Policy and practice

11.2.1 The ABF provides a guide to origin advice rulings at: <https://www.abf.gov.au/free-trade-agreements/files/origin-advice-guide.pdf>

## 12 Related policies and references

### 12.1 Practice statements:

- Free Trade Agreement Rules of Origin
- B\_INT02/6 Preferential Rules of Origin (General)

### 12.2 Associated documents

- Origin Advice Rulings Guide

## 13 Document details

### 13.1 Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	16 January 2020	Trade Policy Section	Initial Version