



Australian  
**BORDER FORCE**

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# Peru-Australia Free Trade Agreement (PAFTA) Rules of Origin

Guide to claiming preferential tariff treatment under  
PAFTA 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 Peru-Australia Free Trade Agreement (PAFTA) as in force from 11 February 2020 in accordance with the *Customs Act 1901* and the PAFTA rules of origin.

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<b>Approved by</b>	Matthew Duckworth, Assistant Secretary, Customs and Border Revenue Branch
<b>Approval date</b>	31 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 Peru Australia Free Trade Agreement (the Agreement or PAFTA).
- 1.1.2 Peru and Australia signed the PAFTA on 12 February 2018 and it entered into force on 11 February 2020.
- 1.1.3 Importers may claim preferential tariff treatment on eligible goods in accordance with PAFTA on the basis that they can satisfy the requirements contained in Division 1EA of Part VIII of the *Customs Act 1901*. The eligible goods are referred to under new Division 1EA as 'Peruvian originating goods'.
- 1.1.4 Further information is available at [the Australian Border Force website PAFTA webpage](#) and on [the Department of Foreign Affairs and Trade's PAFTA webpage](#).
- 1.1.5 This document is a detailed guide for traders to claim preferential tariff treatment for goods under the PAFTA. Questions relating to the treatment of goods under PAFTA 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, 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 Peruvian originating goods are:

ICS field	Code	Definition	Legislative reference
Preference Scheme Type	PFTA	Peru-Australia Free Trade Agreement	Customs Act, Division 1EA
Preference Rule Type	WO	Goods wholly obtained or produced in Peru or in Peru and Australia.	Customs Act, Division 1EA, Subdivision B.
	PE	Goods produced in Peru or in Peru and Australia from originating materials.	Customs Act, Division 1EA, Subdivision C.
	PSR	Goods produced in Peru or in Peru and Australia from non-originating materials.	Customs Act, Division 1EA, Subdivision D; and PAFTA ROO Regulations

1.2.2 The code to obtain a refund for overpaid duties under PAFTA is:

Refund Reason Code	Description	Conditions
23A2A	Peruvian originating goods	Duty has been paid on the goods.
	Goods that would have been Peruvian originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a Certificate of Origin (within the meaning of section 153ZIM 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 2A and 2B 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 Notices (DHAN) and Department of Immigration and Border Protection Notices (DIBPN))
<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>PAFTA</b>	Peru-Australia Free Trade Agreement done at Canberra on 12 February 2018, as amended from time to time.
<b>PAFTA Regulation</b>	<i>Customs (Peruvian Rules of Origin) Regulation 2019</i>
<b>PE</b>	Goods produced entirely in Peru or in Peru 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>	Customs Tariff Regulations 2004
<b>Working Tariff</b>	Combined Australian Customs Tariff Nomenclature and Statistical Classification
<b>WO</b>	Goods wholly obtained or produced entirely in Peru or in Peru 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 PAFTA 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 6A
- *Customs Act 1901* (Customs Act)
  - Division 1EA of Part VIII – Peruvian originating goods
  - Division 4DA of Part VI – Verification powers – Exportation of goods to Peru
- *Customs (Peruvian Rules of Origin) Regulation 2019* (PAFTA Regulations)
- *Customs (International Obligations) Regulation 2015* (the Customs (International Obligations) Regulation)
  - Section 23 – refund circumstance

### 2.2 PAFTA treaty text

2.2.1 The most pertinent chapters of PAFTA for the purposes of importing or exporting goods under PAFTA originating goods to or from Australia are the following:

- Chapter 1 Initial Provisions and General Definitions
- Chapter 2 National Treatment and Market Access for Goods
  - Annex 2-A National Treatment and Import and Export Restrictions
  - Annex 2-B Tariff Commitments
  - General Notes to Tariff Schedule of Australia
  - Tariff Schedule of Australia
  - General Notes to Tariff Schedule of Peru
  - Tariff Schedule of Peru
- Chapter 3 Rules of Origin and Origin Procedures
  - Annex 3-A Data Requirements
  - Annex 3-B Product-Specific Rules of Origin
  - Section A: General Interpretive Notes
  - Section B: Product-Specific Rules



2.2.2 These texts are available under “PAFTA text and associated documents” from [the Department of Foreign Affairs and Trade PAFTA webpage](#) or as [2020] ATS 6 in [the Australian Treaty Series on AustLII](#).

## 3 Definitions

### 3.1 The Customs Act

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

3.1.2 **Agreement** means the Peru-Australia Free Trade Agreement, done at Canberra on 12 February 2018, as amended from time to time.

**Note:** The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](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 **Australian originating goods** means goods that are Australian originating goods under a law of Peru that implements the Agreement.

3.1.5 **Certificate of Origin** means a certificate that is in force and that complies with the requirements of Article 3.17 of Chapter 3 of the Agreement.

3.1.6 **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>).

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

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

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

3.1.10 **Harmonized System** means:

- (a) the Harmonized Commodity Description and Coding System as in force on 12 December 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.

3.1.11 **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 of buildings or the operation of equipment 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

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- (g) spare parts and materials; and
- (h) lubricants, greases, compounding materials and other similar goods.
- 3.1.12 **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.
- 3.1.13 **non-originating materials** means goods that are not originating materials.
- 3.1.14 **non-Party** has the same meaning as it has in Chapter 3 of the Agreement.
- 3.1.15 **originating materials** means:
  - (a) Peruvian 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.
- 3.1.16 **person of Peru** means:
  - (a) a national within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement; or
  - (b) an enterprise of Peru.
- 3.1.17 **Peruvian originating good** means goods that, under this Division, are Peruvian originating goods.
- 3.1.18 **production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.
- 3.1.19 **territory of Australia** means territory within the meaning, so far as it relates to Australia, of Article 1.3 of Chapter 1 of the Agreement.
- 3.1.20 **territory of Peru** means territory within the meaning, so far as it relates to Peru, of Article 1.3 of Chapter 1 of the Agreement.

## 3.2 Geographical area covered by the Agreement

- 3.2.1 The Agreement covers the territories of Australia and Peru as defined in paragraphs 3.1.19 and 3.1.20 of this Guide.

## 4 Principles of the PAFTA Rules of Origin

### 4.1 Goods covered by PAFTA

- 4.1.1 This Agreement covers all goods imported into Australia from Peru that are Peruvian originating goods.
- 4.1.2 Paragraph 18(2)(la) of the Tariff Act provides that the rates of customs duty for Peruvian 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 6A.

### 4.2 Explanation of concept of Peruvian originating goods

- 4.2.1 ROO are essential for determining whether imported goods are eligible for claiming the preferential rates of duty available under PAFTA. ROO define the methods for ascertaining whether a good has undergone sufficient work or processing, or substantial transformation in its production, to obtain benefits under PAFTA. ROO preclude goods made in other countries from obtaining benefit by merely transiting through Australia or Peru.
- 4.2.2 Peruvian originating goods are those that satisfy the requirements of:
- Division 1EA of Part VIII of the Customs Act, and
  - the PAFTA Regulations.
- 4.2.3 In summary, the following requirements must be met:
- the goods are Peruvian originating goods,
  - the importer claiming preferential treatment satisfies the documentary requirements, and
  - the goods meet the consignment provision.
- 4.2.4 Division 1EA of Part VIII of the Customs Act sets out the ROO for the following categories of goods originating under PAFTA:
- goods that are wholly obtained or produced entirely – Customs Act Section 153ZIN
  - goods that are produced from originating materials only – Customs Act Section 153ZIO
  - goods produced from non-originating materials only or from non-originating materials and originating materials – Customs Act Section 153ZIP and 153ZIQ.
- 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 territory of Peru, or the territories of Peru and 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 PAFTA are:
- CTC;
  - RVC; and
  - specific production processing rules.
- 4.2.7 Non-originating goods are those that originate from outside Australia or Peru, those that are produced in Australia or Peru but fail to meet the ROO or are of undetermined origin.

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## 4.3 Harmonized Commodity Description and Coding System

- 4.3.1 The PAFTA 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 PAFTA 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 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. Peru uses nine digits for their tariff classification.
- 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 6A 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 PAFTA.

## 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.
- 4.4.2 These include the following concepts:
- Accessories, spare parts and tools (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 (See paragraph 8.7)

## 5 Goods wholly obtained or produced entirely

5.1.1 Section 153ZIN of the Customs Act contains provisions relating to goods that are wholly obtained or produced entirely in Peru or in Peru and Australia:

### **Section 153ZIN of the Customs Act: Goods wholly obtained or produced entirely in Peru or in Peru and Australia**

- (1) Goods are *Peruvian originating goods* if:
- (a) they are wholly obtained or produced entirely in Peru or in Peru and Australia; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.
- (2) Goods are wholly obtained or produced entirely in Peru or in Peru 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 territory of Peru or in the territory of Peru and the territory of Australia; or
  - (b) live animals born and raised in the territory of Peru or in the territory of Peru and the territory of Australia; or
  - (c) goods obtained from live animals in the territory of Peru; or
  - (d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of Peru; or
  - (e) goods obtained from aquaculture conducted in the territory of Peru; or
  - (f) minerals, or other naturally occurring substances, extracted or taken from the territory of Peru; or
  - (g) fish, shellfish, other goods of sea-fishing or other marine life taken from the sea, seabed or subsoil beneath the seabed:
    - (i) outside the territory of Peru and the territory of Australia; and
    - (ii) in accordance with international law, outside the territorial sea of non-Parties; by vessels that are registered or recorded with Peru and are entitled to fly the flag of Peru; or
  - (h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered or recorded with Peru and is entitled to fly the flag of Peru; or
  - (i) goods (except fish, shellfish, other goods of sea-fishing or other marine life) taken by Peru, or a person of Peru, from the seabed, or subsoil beneath the seabed, outside the territory of Peru and the territory of Australia, and beyond areas over which non-Parties exercise jurisdiction, but only if Peru, or the person of Peru, 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 in the territory of Peru and that is fit only for the recovery of raw materials; or
    - (ii) has been derived from used goods that are collected in the territory of Peru and that are fit only for the recovery of raw materials; or
  - (k) goods produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

- 5.1.2 Section 153ZIN provides that goods are Peruvian originating goods if they fall into any category of goods in the specified list as outlined in 5.1.1. For example:
- coal extracted in Peru
  - fish caught in international waters by a vessel registered in Peru and entitled to fly the flag of Peru
  - plant products produced in Peru from plants that are initially grown in Australia and subsequently exported to Peru.
- 5.1.3 In order for a good to be considered Peruvian 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 Peruvian originating goods under section 153ZIN of the Customs Act if derived from either production or collection in Peru and if fit only for the recovery of raw material.

**Example: Waste and scrap**

Steel pipes imported into Peru from China and 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.

As the unused scrap pipe off-cuts have resulted from a production process in Peru and fit only for the recovery of raw materials, it fits the definition of waste and scrap and they are considered to be “wholly obtained or produced entirely” under 153ZIN(2)(j).

Therefore, the scrap qualifies as Peruvian originating goods and may claim preferential treatment, if all other requirements are met.



## 6 Goods produced from originating materials

6.1.1 Section 153ZIO of the Customs Act sets out the ROO that apply to goods produced entirely in Peru, or in Peru and Australia, from originating materials:

**Section 153ZIO of the Customs Act: Goods produced in Peru, or in Peru and Australia, from originating materials**

- (1) Goods are *Peruvian originating goods* if:
- (a) they are produced entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from originating materials only; and
  - (b) either:
    - (i) the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

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

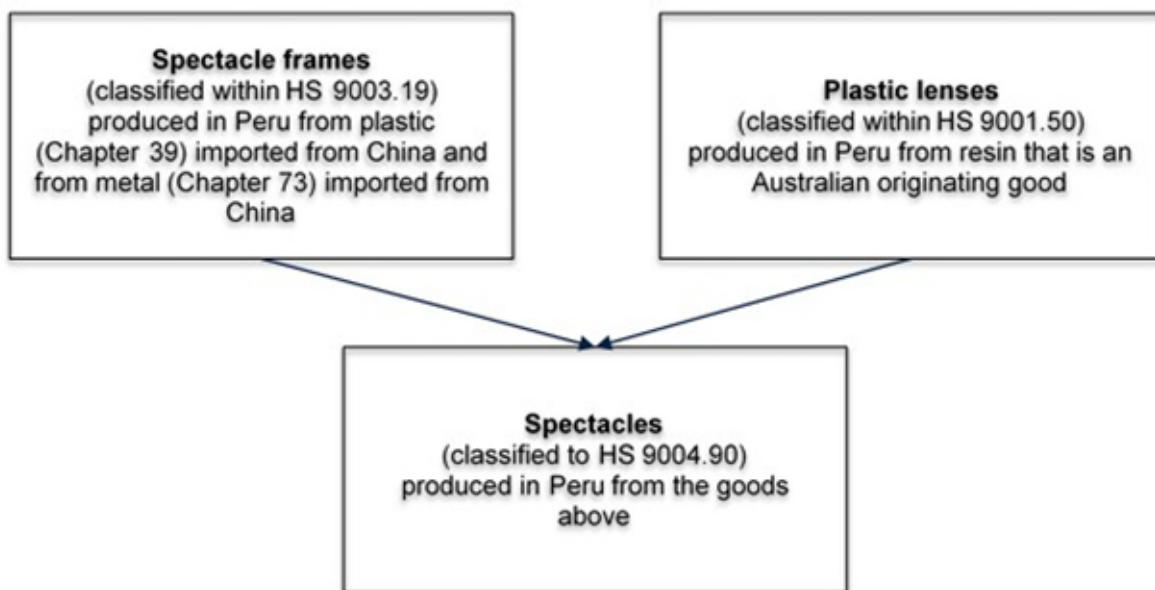
6.1.3 Refer to Section 10 of this Guide for information on record keeping obligations.

## 6.2 Goods produced using originating materials

- 6.2.1 Section 153ZIO of the Customs Act allows for the production of Peruvian originating goods to occur from originating materials. Originating materials include indirect materials, Peruvian originating materials and Australian originating materials.

### Example: Goods produced in Peru 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 PSRs specified in the PAFTA Regulations while the plastic lenses are produced in Peru from a wholly produced or obtained material (Australian originating goods).



As the materials used in the production of the spectacles are originating materials and the **spectacles are therefore** Peruvian originating goods in accordance with section 153ZIO.

## 7 Goods produced from non-originating materials

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

### **Section 153ZIP of the Customs Act: Goods produced in Peru, or in Peru and Australia, from non-originating materials**

- (1) Goods are *Peruvian 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 territory of Peru, or entirely in the territory of Peru and the territory 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 Certificate of Origin, or a copy of one, for the goods; or
    - (ii) Australia has waived the requirement for a Certificate of Origin for the goods.

**Note:** Subsection (9) sets out a limitation for goods that are put up in a set for retail sale.

- (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 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 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;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

**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 153ZIM(2).**

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

***Goods put up in a set for retail sale***

(8) If:

(a) goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3(c) of the Interpretation Rules;

the goods are Peruvian originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are Peruvian originating goods; or

(d) the total customs value of the goods (if any) in the set that are not Peruvian originating goods does not exceed 20% of the customs value of the set of goods.

**Example: A mirror, brush and comb are put up in a set for retail sale. The mirror, brush and comb have been classified under Rule 3(c) of the Interpretation Rules according to the tariff classification applicable to combs.**

**The effect of paragraph (c) of this subsection is that the origin of the mirror and brush must now be determined according to the tariff classifications applicable to mirrors and brushes.**

7.1.2 In determining whether goods are produced in the territory of Peru, or in the territories of Peru and Australia, subsections 153ZIM(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 specifying 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 PAFTA Regulations prescribe matters for the purposes of section 153ZIP and subsections 153ZIM (3) and (4).

- 7.1.4 As subsection 4(3A) of the Customs Act defines tariff classification with respect to the Tariff Act, subsection 153ZIM(4) provides that the tariff classification for the purposes of Division 1EA, is that in Annex 3-B of the Agreement.
- 7.1.5 Section 153ZIP of the Customs Act sets out the rules for determining whether a good is a Peruvian originating good if the good incorporates non-originating materials in its production process in Peru, or in both Peru and Australia.
- 7.1.6 Goods are Peruvian originating goods if all the requirements of subsection 153ZIP(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 the territory of Peru, or entirely in the territory of Peru and the territory of Australia, from non-originating materials only or from non-originating materials and originating materials; and
  - 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 3-B of the Agreement lists the tariff classifications of goods at the heading or subheading level based on HS 2017. Column 2 provides the product description for the goods. Column 3 sets out the PSR relevant to the tariff classifications in Column 1.
- 7.1.8 Under 153ZIP(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 PAFTA the following abbreviations apply:
- **CC** means Change of Chapter (non-originating materials must be classified in a different chapter (2 digits) from the classification of the good);
  - **CTH** means Change of Heading (non-originating materials must be classified in a heading (4 digits) different from the classification of the good);
  - **CTSH** means Change of Subheading (non-originating materials must be classified in a different subheading (6 digits) from the classification of the good); and
  - **RVC** means Regional Value Content, as established in Article 3.4.

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

### 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 of subheading 2001.10, the PSR is a change to subheading 0811.10 from any other Chapter

Column 1	Column 2	Column 3
HS Classification (HS2017)	Description	Product-Specific Rules of Origin
2001.10	Cucumbers and gherkins, prepared or preserved by vinegar or acetic acid	CC

### PSR – CTC except from certain classifications

The rule may require that the 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, the PSR rule for semi-finished products of iron or non-alloy steel which are of rectangular cross section of HS subheading 7207.11, is a change in heading except from heading 7206. This means that these goods will not qualify as originating if they include inputs such as ingots classified to 7206.

Column 1	Column 2	Column 3
HS Classification (HS2017)	Description	Product-Specific Rules of Origin
7207.11	Semi-finished products of iron or non-alloy steel.  --Of rectangular (including square) cross-section, the width measuring less than twice the thickness	CTH except 72.06

### PSR – CTC or no CTC provided certain requirements have been met

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

For example, for *Animal fats and oils and their fractions* of subheading 1516.10, the PSR is either

- a change to subheading 1516.10 from any other Chapter or
- no change in tariff classification is required provided that the good has been refined in the territory of the Parties.

This means that a good refined from animal fat and oils of this subheading in Peru would be originating.

Column 1	Column 2	Column 3
HS Classification (HS2017)	Description	Product-Specific Rules of Origin
1516.10	- Animal fats and oils and their fractions	CC or no change in tariff classification is required provided that the good has been refined in the territory of the Parties.

### PSR – CTC or RVC

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

For example, for *Cigars, cheroots and cigarillos* of subheading 2402.10, the PSR is a change to subheading 2402.10 from any other Chapter or an RVC of 40 per cent. These rules are described as being co-equal.

Column 1	Column 2	Column 3
HS Classification (HS2017)	Description	Product-Specific Rules of Origin
2402.10	Cigars, cheroots and cigarillos	CC or RVC 40

## PSR – Specific Production Processing Requirement

Chapter 30 contains a note stating that notwithstanding the applicable PSR for a good in the table, all goods are also originating if the good is the product of a chemical reaction that occurred in the territory of Peru or territories of Australia and Peru.

For example, for *Immunological products, mixed, not put up in measured doses or in forms or packings for retail sale* of subheading 3002.14 the PSRs require the non-originating materials have undergone a change at the subheading level (i.e. 6 digits) or, on the basis of the note, that they are the product of a chemical reaction that took place in Peru or in Australia and Peru

Column 1	Column 2	Column 3
HS Classification (HS2017)	Description	Product-Specific Rules of Origin
3002.14	- Immunological products, mixed, not put up in measured doses or in forms or packings for retail sale	CTSH

## 7.3 Change in tariff classification

- 7.3.1 Subsection 153ZIP(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 of the PAFTA 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 Peruvian originating good.
- 7.3.3 Subsection 153ZIP(3) directly addresses the CTC test.
- 7.3.4 It may be possible for a good to be a Peruvian 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 Peru from imported bananas (subheading 0803) and pineapples (subheading 0804.30), combined with oranges grown in Peru.

The PSR for a good that is classified to the subheading of 2009.90 is CC except 0804.50 or RVC 40.

This means that the non- originating materials need to undergo a change to subheading 2009.90 from any other Chapter except from subheading 0804.50 or no change in tariff classification is required provided that there is a regional value content of at least 40%.

In the case that the trader chooses to use the CTC rule for determining whether the tropical fruit juice is a Peruvian 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 Chapter 20 and heading 0804.50.

As bananas are classified to heading 0803 and pineapples to subheading 0804.30, these non-originating materials meet the CTC requirement. Since Peru produces the oranges, these are an originating material, which is not required to undergo the CTC test.

The tropical fruit juice is therefore a Peruvian originating good.

## 7.4 Regional Value Content (RVC)

7.4.1 Subsection 153ZIP(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 PAFTA Regulations sets out the rules for calculation of RVC, as follows:

### Build-down method

For the purposes of subsection 153ZIP(6) of the Customs Act, the RVC of goods under the build down method is worked out using the formula:

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

### Build-up method

For the purposes of subsection 153ZIP(6) of the Customs Act, the RVC of goods under the build-up method is worked out using the formula:

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

Where:

**customs value** means the customs value according to Division 2 of Part VIII of the Customs Act

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

**value of originating materials** means the value, worked out under Part 4 of the PAFTA Regulations, of the originating materials used in the production of the goods.

7.4.4 In both cases, the RVC must be expressed as a percentage.

## Unclassified

#### Example: RVC calculation - Build-down method

A Peruvian producer sells a good to an Australian importer for \$200. The value of non-originating materials used in the good is \$60. Using the build-down method, 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, using the build-down method, 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 Chapter or heading level.

7.5.2 For some goods, the PSRs provide for a specific process as an alternative path to attaining origin. For example, crabs of subheading 0306.14 can be originating if they have undergone the relevant change in tariff classification at the Chapter level or if they have been smoked in the exporting Party.

7.5.3 Similarly, Chapters 27 to 40 in the PSR schedule offer a series of alternative chemical rules that, if satisfied - that is, if the chemical reaction mentioned in the notes at the start of these Chapters, occurs in the territory of one or both Parties - then the good is Peruvian originating.

**Example: Production Process Rule:**

A manufacturer in Australia makes the chemical compound diethylamine hydrochloride (C<sub>4</sub>H<sub>11</sub>N classified as HS 2921.11) for use as a corrosion inhibitor and exports the product to Peru from non-originating inputs.

The diethylamine hydrochloride (C<sub>4</sub>H<sub>12</sub>CIN) is manufactured through the reaction of diethylamine that is also classified in HS 2921.11 with hydrochloric acid (HCl) 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 fomenting new bonds.



This process meets the Chemical Reaction Rule specified in the Chapter Note to Chapter 29 of the PAFTA PSR schedule.

**Chapter Note 1: Chemical Reaction Rule**

Notwithstanding the applicable product-specific rules of origin, a good of Chapter 29 that is the product of a chemical reaction is an originating good if the chemical reaction occurs in the territory of one or both Parties.

For the purposes of this 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 fomenting new intramolecular bonds or by altering the spatial arrangement of atoms in a molecule.

The following are not chemical reactions:

- a) dissolving in water or other solvents;
- b) the elimination of solvents, including solvent water; or
- c) the addition or removal of water of crystallization.

The diethylamine hydrochloride is considered an originating good under PAFTA, if all other relevant requirements under the agreement are met.

## 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;
- an RVC requirement with an additional requirement such as that the change in heading is not the result exclusively from packaging for retail sale;
- a CTC requirement as an alternative to a process rule.

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 Peruvian 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 Peruvian originating good.

## 8 Other originating goods and provisions

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

8.1.1 Section 9 of the PAFTA 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.

8.1.2 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 153ZIP(7) of the Customs Act - Value of accessories, spare parts, tools or instructional or other material**

(7) If:

- (a) a requirement that applies in relation to the goods is that the goods must have a regional value content 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;

the regulations must provide for the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account for the purposes of working out the regional value content of the goods (whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials).

#### **Section 9 of the PAFTA Regulations – Value of accessories, spare parts, tools or instructional or other information materials**

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

- (a) the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account for the purposes of working out the regional value content of the goods under Part 3 of this instrument; and
- (b) if the accessories, spare parts, tools or instructional or other information materials are non-originating materials – for the purposes of sections 6 and 8 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; and
- (c) if the accessories, spare parts, tools or instructional or other information materials are originating materials—for the purposes of sections 7 and 8 of this instrument, those accessories, spare

parts or tools or instructional or other information materials are taken to be originating materials used in the production of the goods.

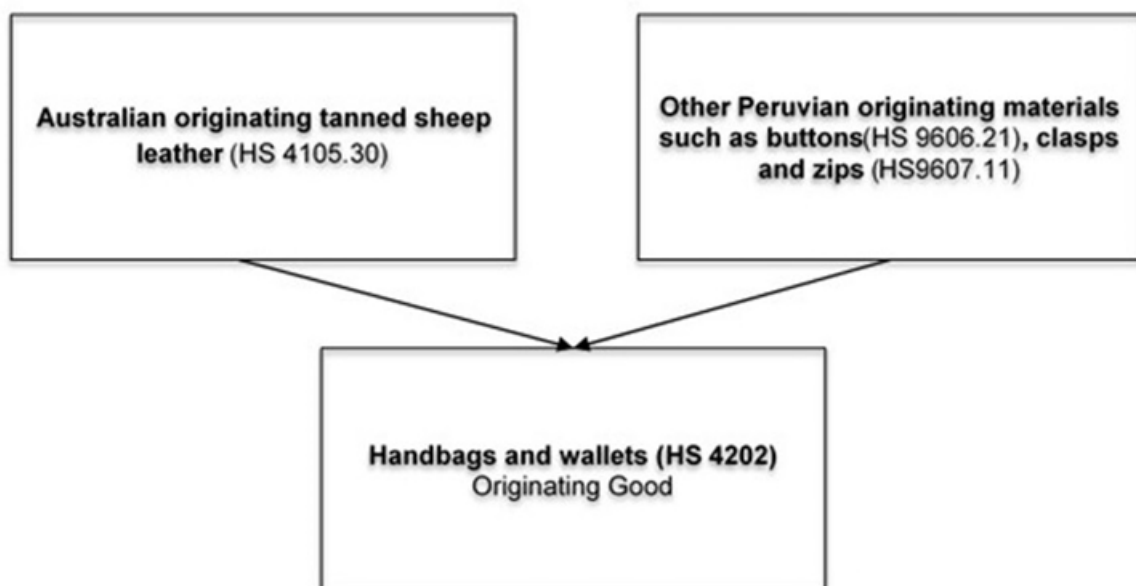
- 8.1.3 Where goods are imported into Australia together with accessories, spare parts, tools or instructional or other material, the accessories, spare parts, tools or instructional or other information material do not have to undergo the CTC requirement that the originating goods must undergo, if the requirements at paragraphs 153ZIP(7)(c) and (d) have been met.

## 8.2 Accumulation

- 8.2.1 Under PAFTA, Australian originating materials used in the production of a good in Peru shall qualify as originating materials for the purpose of determining if the final good is a Peruvian originating good.
- 8.2.2 If the Australian good, described in 8.2.1 used as a material in the production of a good in Peru, is manufactured using non-originating materials, once the goods have satisfied the relevant PSR when imported into Peru, the non-originating material is no longer considered in the calculations to determine whether the final good is originating.

### **Example: Goods produced in Peru using a combination of Australian and Peruvian originating materials**

A Peruvian producer imports Australian tanned sheep leather (classified to HS 4105.30) from Australia. This leather is an Australian originating material.



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

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

### **CTC Requirement**

- 8.2.3 Section 5 of the PAFTA Regulations sets out that each non-originating material must satisfy the relevant CTC in order to be originating.
- 8.2.4 Subsection 5(a) and (b) of the PAFTA 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

**Unclassified**

the final good, entirely in the territory of Peru, or entirely in the territory of Peru and the territory of Australia.

- 8.2.5 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.

**Regulation 5 of the PAFTA Regulations - CTC requirement for non-originating materials**

For the purposes of subsection 153ZIP(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 territory of Peru, or entirely in the territory of Peru and the territory 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 Peru. The diagram relates to the repeated application of Section 5 of the PAFTA 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 Peruvian 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.

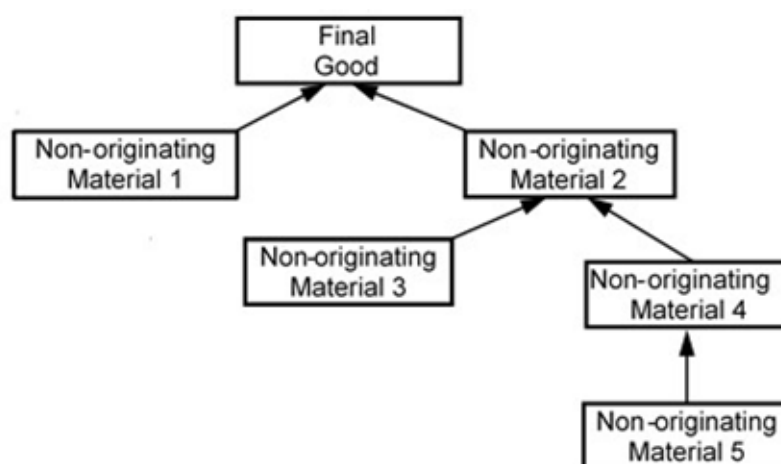
Subsection 5(b) of the Regulations provides that the materials that went into making Non-originating Material 2 can also be considered against the Final Good to determine whether the goods meet the CTC rule. In this case, the exporter purchased Non-originating Material 2 from a Peruvian supplier who 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 PAFTA 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 Peru 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 Peruvian originating good for the purposes of PAFTA.

### Origin determination using Section 5 of the PAFTA 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.

Unclassified



## Regional Value Content

- 8.2.6 Paragraph 8(5) of the PAFTA Regulations sets out that the value of originating materials and other costs incurred in Australia or Peru in the production of non-originating materials may be deducted from the value of non-originating materials for the purpose of determining the RVC
- 8.2.7 In accordance with Article 3.5 of PAFTA, the value of processing and the value of any originating material used in the production of the non-originating material undertaken in the territory of one or both Parties may be counted as originating content for the purpose of determining whether the good meets a RVC.

### Example: Meeting the RVC requirement using accumulation

A Peruvian producer sells a good to an Australian importer for \$200. The value of non-originating material used in Peru to produce the good is \$150. Using the build-down method, 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 a 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 Peruvian producer has evidence of this, they can include that value in the RVC calculation, provided they meet the record keeping requirements.

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

Therefore, the RVC of the good is 40%.

- 8.2.8 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 153ZIS of the Customs Act sets out the consignment provisions that apply to Peruvian originating goods imported into Australia.

### Section 153ZIS of the Customs Act: Consignment

- (1) Goods are not Peruvian originating goods under this Division if the goods are transported through the territory of one or more non-Parties and either or both of the following apply:
  - (a) the goods undergo subsequent production or any other operation in the territory of a non-Party (other than unloading, reloading, storing, separation from a bulk shipment, labelling or any other operation that is necessary to preserve the goods in good condition or to transport the goods to the territory of Australia);
  - (b) while the goods are in the territory of a non-Party, the goods do not remain under customs control at all times.
- (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 Peruvian originating goods are entitled to the benefits granted under PAFTA.

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

#### Example 1: Consignment provisions

Surgical instruments, cotton gowns and bandages, made in Peru from Peruvian 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 because they underwent operations in Singapore that are not covered by the exceptions in section 153ZIS of the Customs Act.

#### Example 2: Consignment provision

Peruvian originating cars 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 is done under customs control and the vehicles do not enter the commerce of Singapore.

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 153ZIS of the Customs Act.

## 8.4 *De minimis* provision

- 8.4.1 The CTC requirement under subsection 153ZIP(3) of the Customs Act is also satisfied if the good meets the requirement of subsections 153ZIP(4) or (5) – the *de minimis* provision.
- 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 non-originating materials to be used in a good and for it to still meet the CTC rule.
- 8.4.3 Under subsection 153ZIP(4) of the Customs Act, the *de minimis* provision allows a good to qualify as a Peruvian 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 153ZIP(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 153ZIP(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 no less 10 per cent of the value of the good it will still qualify as a Peruvian 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 Peruvian originating.

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

A good classified within Chapters 50 to 63 incorporates three non-originating materials.

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 Peruvian 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 Peruvian originating good.

Goods in Chapter 50 to 63 are able to use either the *de minimis* by value or by weight.

## 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 originating based on the:

- (1) physical segregation of each fungible good or material; or
- (2) use of any inventory management method recognised in the Generally Accepted Accounting Principles if the fungible good or material is commingled, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

- 8.5.3 Many materials involved in production processes 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.
- 8.5.6 It is important to note that once a producer has decided on an inventory management method for a particular fungible good or material, that method must continue to be used throughout the whole of the financial year.

### **Example 1: Fungible goods or materials**

Amongst the materials used by a Peruvian producer of machinery parts are ball bearings. Depending on pricing and supply, the producer may source the ball bearings, from Peru, or from China. All of the ball bearings are of identical size and construction.

On 1 January, the producer buys 1 tonne of ball bearings of Peruvian origin, and on 3 January buys 1 tonne of ball bearings of Chinese 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 Peruvian origin indistinguishable from those sourced from China.

An Australian company places an order with the Peruvian 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 Peruvian 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 Peruvian producer for machinery parts, which requires the use of 500 kg of the same ball bearings.

As the order was placed in the same financial year, the producer must continue 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 Peruvian 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.

- 8.5.7 If the origin of fungible materials is determined to be Peruvian 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.
- 8.5.8 Alternatively, if the fungible materials used in a production process are determined to be non-originating goods 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 Peruvian originating goods are treated as originating materials regardless of where they were produced.
- 8.6.2 Indirect materials are defined in paragraph 3.1.11 of this Guide and are considered originating materials in paragraph 3.1.15.

### **Indirect materials**

Tools and safety equipment, produced in China, are used by workers in Peru the production of spectacles. Such tools and safety equipment meet the terms of paragraph 3.1.11 of the definition of “indirect materials” and are thereby considered to be originating materials.

## 8.7 Packaging materials and containers

- 8.7.1 Section 153ZIQ 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 153ZIQ 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 requirement that applies in relation to the goods is that the goods must have a regional value content worked out in a particular way, 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 (whether the packaging material or container is an originating material or non-originating material).

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZIM(2).

### Regional value content of packaging materials and containers

- 8.7.2 However, subsection 153ZIQ(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 for 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 RVC of the goods.

### Example: Value of packaging material and container

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

The product specific ROO for 9503 is CTH or RVC 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 is used.

- 8.7.3 Section 10 of the PAFTA Regulations prescribes how to determine the value of the packaging materials or containers.

### **Section 10 of the PAFTA Regulations: Value of packaging materials and containers**

If paragraphs 153ZIQ(1)(a) and (b) of the Act are satisfied in relation to goods and the goods must have a regional value content worked out in a particular way:

- (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 Part 3 of this instrument; and
- (b) if that packaging material or container is a non-originating material—for the purposes of sections 6 and 8 of this instrument, that packaging material or container is taken to be a non-originating material used in the production of the goods; and
- (c) if that packaging material or container is an originating material—for the purposes of sections 7 and 8 of this instrument, that packaging material or container is taken to be an originating material used in the production of the goods.



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

### 9.1 Claiming PAFTA preferences

- 9.1.1 To claim preferential treatment under PAFTA, the provisions in Division 1EA of Part VIII of the Customs Act require the importer of the goods to have at the time of importing the goods, a COO, or a copy of one, in relation to the goods.
- 9.1.2 The COO must be completed by the exporter, producer or an authorised representative of the exporter or producer.
- 9.1.3 A sample of the PAFTA COO 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 PAFTA"](#).

### 9.2 Certificate of Origin

- 9.2.1 A COO must comply with the requirements of Article 3.17 of Chapter 3 of the Agreement and Annex 3-A of the Agreement. The Annex contains the data elements the COO must contain.

#### **Article 3.17 of Chapter 3 of the Agreement: Claims for Preferential Treatment**

- (1) Each Party shall provide that an importer may make a claim for preferential tariff treatment, based on certificate of origin completed by the exporter, producer, or an authorised representative of the exporter or producer.
- (2) Each Party shall provide that the certificate of origin:
  - (a) need not follow a prescribed format;
  - (b) be in writing;
  - (c) specifies that the good is both originating and meets the requirements of this Chapter;
  - (d) contains a set of data requirements as set out in Annex 3-A; and
  - (e) be in English or in Spanish. The importing Party may require the importer to submit a translation in the language of the importing Party.
- (3) Each Party shall provide that a certificate of origin may apply to:
  - (a) a single shipment of a good into the territory of a Party; or
  - (b) multiple shipments of identical goods within any period specified in the certificate of origin, from or after the date of issuance but not exceeding the period of validity of the certificate.
- (4) Each Party shall provide that the certificate 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 Data requirements

9.3.1 The minimum data requirements required on the COO as set out in Annex 3-A of the Agreement are:

### 1. Exporter, producer, or the authorised representative of the exporter or producer as certifier of the certificate of origin

Indicate whether the certifier is the exporter, producer, or both. In the case of an authorised representative, indicate whether the certificate has been completed on behalf of the exporter, producer, or both, in accordance with Article 3.17.

### 2. Certifier

Provide the certifier's name, address (including country), telephone number and e-mail address. The address of the certifier shall be in the exporting Party.

### 3. Exporter

Provide the exporter's name, address (including country), e-mail address and telephone number if different from the certifier. This information is not required if the producer is completing the certificate of origin and does not know the identity of the exporter. The address of the exporter shall be in the exporting Party.

### 4. Producer

Provide the producer's name, address (including country), e-mail address and telephone number, if different from the certifier 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". The address of a producer shall be in the exporting Party.

### 5. Importer

Provide the importer's name, address (including country), e-mail address and telephone number. The address of the importer shall be in the importing Party.

### 6. Description and HS tariff classification of the good

Provide a description of the good and the HS tariff classification of the good to the 6-digit level. The description may include number and kinds of packages, marks and numbers on the packages, invoice number (s) and date (s), or sufficient details to identify the good.

If the certificate of origin covers a single shipment of a good, indicate the invoice number and date related to the exportation.

### 7. Origin criterion

Specify the rule of origin under which the good qualifies according to Article 3.2.

### 8. Blanket period

Indicate the period if the certificate of origin covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 3.17.3.

## 9. Authorised signature and date

If the exporter or producer is the certifier, the certificate of origin must be signed, dated and accompanied by the following statement:

I certify that the goods described in this document qualify as originating according to the FTA between Australia and Peru 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 verification, documentation necessary to support this certificate.

If the authorised representative is the certifier, the certificate of origin must be signed, dated and accompanied by the following statement:

I certify that the goods described in this document qualify as originating according to the FTA between Australia and Peru and the information contained in this document is true and accurate. The exporter or the producer, as the case may be, assumes responsibility for providing such representations and agrees to maintain and present upon request or to make available during verification, documentation necessary to support this certificate.

## 9.4 Waiver of Certificate of Origin

9.4.1 Division 1EA of the Customs Act provides for the waiver of COO under certain conditions.

9.4.2 A COO 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 COO is not required or
- a full 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 PAFTA to present COO in accordance with [ACN No 2019/23](#)

9.4.4 Even where the requirement to obtain or present a COO 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 Peruvian originating goods because a valid COO 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 COO 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 COO was issued after the importation of the goods. The COO 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 Peruvian 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 COO.

## 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 COO, 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 Peru to allow ABF officers to review the records referring to origin — including accounting records.
- 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 1EA 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 Immigration and 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 COO that states a particular preference criterion of Division 1EA 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 COO was incorrect or unreliable; or
  - (b) the COO 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 PAFTA are set out in Division 1EA of Part VIII of the Customs Act.

- 9.6.7 The importer must have a valid COO at the time of entering the goods. An importer may be required to produce the COO 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 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 3.17 of the Agreement, the COO shall remain valid for a period of one year after the date on 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 COO, relating to the importation of the goods.

### 10.2 Exporters and Producers

10.2.1 Part 5 of the PAFTA Regulations sets out that Australian exporters and 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 also 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 Peru

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 Certificate of Origin (within the meaning of section 153ZIM of the Act) in relation to the goods	✓	✓
Notes		
i. If purchased by the producer		
ii. If produced by the producer		
iii. If purchased by the exporter		
iv. If produced by the exporter		
v. If the producer is also the exporter		

**Unclassified**

# 11 Origin advice rulings

## 11.1 Provision of origin advice rulings

11.1.1 PAFTA allows for Australian importers, Peruvian exporters and Peruvian producers of goods to obtain advance rulings (see Article 4.3 of Chapter 4 Customs Administration 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	31 January 2020	Trade Policy Section	Initial Version