Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Rules of Origin

Guide to claiming preferential rates of customs duty under CPTPP for goods imported into Australia

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1 Overview

1.1 Purpose

1.1.1 This Guide explains how to determine whether goods that are imported into Australia are eligible for preferential rates of customs duty under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the Agreement or CPTPP) as in force from 30 December 2018, in accordance with the *Customs Act 1901* and CPTPP rules of origin.

1.2 Coverage of the Guide

1.2.1 This Guide deals with origin issues as they relate to CPTPP.

1.2.2 CPTPP was signed on 8 March 2018 in Santiago, Chile.

1.2.3 CPTPP is a free trade agreement between:

- Australia
- Brunei Darussalam
- Canada
- Chile
- Japan
- Malaysia
- Mexico
- Peru
- New Zealand
- Singapore
- Vietnam

1.2.4 CPTPP entered into force on 30 December 2018 for:

- Australia
- Canada
- Japan
- New Zealand
- Mexico
- Singapore.

1.2.5 CPTPP entered into force for Vietnam on 14 January 2019, Peru on 19 September 2021, Malaysia on 29 November 2022, Chile on 21 February 2023 and Brunei Darussalam on 12 July 2023.

1.2.6 CPTPP is a stand-alone treaty that incorporates, by reference, the provisions of the original Trans-Pacific Partnership (the TPP) as signed by Ministers on 4 February 2016 in Auckland, New Zealand (Article 1 of CPTPP refers). This means for example, that Chapters 1 and 3 of the TPP are Chapters 1 and 3 of CPTPP.

1.2.7 Importers may claim preferential rates of customs duty for eligible goods in accordance with the Agreement on the basis that importers can satisfy the requirements contained in Division 1GB of Part VIII of the Customs Act. The eligible goods are referred to under Division 1GB as 'Trans-Pacific Partnership originating goods'.

1.2.8 Further information is also available at the Australian Border Force Free Trade Agreement (FTA) webpage and on the Department of Foreign Affairs and Trade's CPTPP website.

1.2.9 The Department of Foreign Affairs and Trade has published the Guide to obtaining preferential tariff treatment when exporting and importing goods using CPTPP.

1.2.10 Questions relating to the treatment of Trans-Pacific Partnership originating goods that have not been entered for home consumption seeking to claim preferential rates of customs duty in Australia should be directed to: origin@abf.gov.au.

1.2.11 Questions concerning refunds under CPTPP that are not covered by Section 9.5 of this Guide should be directed to: nationalrefunds@abf.gov.au

1.3 Import declaration codes

1.3.1 Before making a claim for preferential rates of customs duty, importers must take reasonable care to ensure that their goods meet the relevant rules of origin (ROO) and do not breach the consignment rules of the Agreement. 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 rates of customs duty for Trans-Pacific Partnership originating goods are:

ICS field	Code	Definition	Legislative reference
Preference Scheme Type	TPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership Agreement	Customs Act, Division 1GB, Part VIII
Preference Rule Type	WO	Goods wholly obtained or produced in a Party	Customs Act, Division 1GB, Part VIII, Subdivision B
	PE[1]	Goods produced entirely from originating materials	Customs Act, Division 1GB, Part VIII, Subdivision C
	PSR	Goods produced from non-originating materials	Customs Act, Division 1GB, Part VIII, Subdivision D CPTPP Regulations

1.3.2 The code to obtain a refund for overpaid duties under CPTPP is:

Refund Reason Code	Item	Description	Conditions
23A8C	8C	Trans-Pacific Partnership originating goods	Duty has been paid on the goods.
	8D	Goods that would have been Trans-Pacific Partnership originating goods if, at the time the goods were imported, the importer held a certification of origin for the goods or a copy of certification of origin for the goods.	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a certification of origin (within the meaning of section 153ZKU of the Customs Act) or a copy of one, at the time of making the application for the refund.

1.3.3 Refund circumstances are set out in Items 8C and 8D of the table in section 23 of the *Customs (International Obligations) Regulation 2015*.

1.3.4 More information about refunds is including in Section 9.5.

[1] Previously, importers could use the WP code for goods claiming to be produced entirely from originating materials only. This has now been replaced by the PE code which should be used by importers when claiming that goods are produced exclusively from originating materials. See ACN 2019/37 for further information.

1.4 Abbreviations

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

Abbreviation	Description
Annex 'X-X'	Refers to Annex X-X of CPTPP. In CPTPP, the number of the Annex refers to the chapter in which the Annex is located. For example, 'Annex 3-D' is Annex D of Chapter 3 of CPTPP.
ABF	Australian Border Force
ACN	Australian Customs Notice (also includes Department of Home Affairs Notices (DHAN) and Department of Immigration and Border Protection Notices (DIBPN))
Build-down Method	Based on the Value of Non-Originating Materials
Build-up Method	Based on the Value of Originating Materials
Chapter #	Refers to Chapter # of CPTPP, available on the Department of Foreign Affairs and Trade website.
Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)	The agreement done at Santiago, Chile on 8 March 2018, as amended from time to time. This document abbreviates the full name of the agreement to 'CPTPP'. Previously the agreement was abbreviated as 'TPP-11'. The Agreement titled the Trans-Pacific Partnership (which included the USA) is incorporated into CPTPP with the exception of 22 articles that were suspended by agreement amongst the remaining 11 parties to CPTPP.
COO	Certification of Origin
CPTPP Regulations	*Customs (Trans-Pacific Partnership Rules of Origin) Regulations 2018*
CTC	change in tariff classification
Customs Act	*Customs Act 1901*
Customs (International Obligations) Regulation	*Customs (International Obligations) Regulation 2015*
Department	Unless separately identified, 'the Department' includes, for the purposes of this Guide, the Department of Home Affairs and the Australian Border Force
FTA	free trade agreement
HS	Harmonized Commodity Description and Coding System
ICS	Integrated Cargo System
NC	The net cost of the good determined in accordance with Article 3.9 (Net Cost)
PE	Goods produced entirely from originating materials only
PSR	product specific rule(s) of origin
ROO	rule(s) of origin
RVC	regional value content
Tariff Act	*Customs Tariff Act 1995*
Tariff Regulations	*Customs Tariff Regulations 2004*
VNM	value of non-originating materials
VOM	value of originating materials
WO	wholly obtained or produced
Working Tariff	Combined Australian Customs Tariff Nomenclature and Statistical Classification

2 Legislation

2.1 General outline of legislation

2.1.1 The following documents contain the requirements for claiming preferential rates of customs duty under CPTPP 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 8B – Trans-Pacific Partnership originating goods
- Customs Tariff Regulations 2004
    - Regulation 5A – Trans-Pacific Partnership originating goods—prescribed goods
    - Schedule 3 - Trans-Pacific Partnership originating goods
- *Customs Act 1901* (Customs Act)
    - Division 1GB of Part VIII – Trans-Pacific Partnership originating goods
    - Division 4EA of Part VI – Verification powers – Exportation of goods to Parties to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
- Customs (Trans-Pacific Partnership Rules of Origin) Regulations 2018 (CPTPP Regulations)
- Customs (International Obligations) Regulation 2015 (the Customs (International Obligations) Regulation)
    - Section 23 – Circumstances for refunds, rebates and remissions of duty

2.2 CPTPP treaty text

2.2.1 The most pertinent chapters of CPTPP for the purposes of importing or exporting Trans-Pacific Partnership 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-D General notes to tariff schedule for Australia
    - Annex 2-D Tariff elimination schedule for Australia
- Chapter 3 Rules of Origin and origin procedures
    - Annex 3-A: Other Arrangements,
    - Annex 3-B: Minimum Data Requirements,
    - Annex 3-C: Exception to Article 3.11; and
    - Annex 3-D: Product Specific Rules (including Chemical Reaction Rules)
    - Appendix 1 to Annex 3-D: Provisions related to the Product-Specific Rules of Origin for certain vehicles and parts of vehicles
- Chapter 4 Textiles and apparel
    - Annex 4-A: Product Specific Rules for Clothing and Textiles
    - Appendix 1 to Annex 4-A: Short Supply List of Products

2.2.2 These texts are available under “FTA text and associated documents” from the Department of Foreign Affairs and Trade CPTPP webpage or as [2018] ATS 23 in the Australian Treaty Series on AustLII.

2.2.3 As CPTPP builds on the original TPP Agreement, much of the text will be found under “Text of the Trans-Pacific Partnership”. This is the original TPP text.

2.2.4 At the time of publishing, a direct link to the original TPP text on the DFAT website is: https://www.dfat.gov.au/trade/agreements/not-yet-in-force/tpp/Pages/tpp-text-and-associated-documents. As the original TPP agreement did not enter into force, it can be found as [2016] ATNIF 2 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 153ZKU of the Customs Act that are relevant in determining whether goods are Trans-Pacific Partnership originating goods.

3.1.2 **Agreement** means the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago, Chile on 8 March 2018, as amended and in force for Australia from time to time.[2][3]

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

3.1.4 **certification of origin** means a certification that is in force and that complies with the requirements of Article 3.20 of Chapter 3 of the Agreement.

3.1.5 **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.[4]

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

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

3.1.8 **Harmonized System** means:

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

(b) if the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, 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.

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[2] Note 1: The Agreement could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

[3] Note 2: Under Article 1 of the Comprehensive and Progressive Agreement for Trans- Pacific Partnership (the Santiago Agreement), most of the provisions of the Trans- Pacific Partnership Agreement (the Auckland Agreement), done at Auckland on 4 February 2016, are incorporated, by reference, into and made Part of the Santiago Agreement. This means, for example, that Chapters 1 and 3 of the Auckland Agreement are, because of that Article, Chapters 1 and 3 of the Santiago Agreement.

[4] Note: The Convention is in Australian Treaty Series 1988 No. 30 ([1988] ATS 30) and could in 2018 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

3.1.9 **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;

3.1.10 including:

(c) fuel (within its ordinary meaning); and

(d) tools, dies and moulds; and

(e) spare parts and materials; and

(f) lubricants, greases, compounding materials and other similar goods; and

(g) gloves, glasses, footwear, clothing, safety equipment and supplies; and

(h) catalysts and solvents.

3.1.11 **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.

3.1.12 **non-originating materials** means goods that are not originating materials.

3.1.13 **non-party** has the same meaning as it has in Chapter 3 of the Agreement.

3.1.14 **originating materials** means:

(a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods;

(b) recovered goods derived in the territory of one or more of the Parties and used in the production of, and incorporated into, remanufactured goods; or

(c) indirect materials.

3.1.15 **Party** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.[5]

3.1.16 **person of a Party** has the same meaning as it has in Article 1.3 of Chapter 1 of the Agreement.

3.1.17 **production** has the meaning given by Article 3.1 of Chapter 3 of the Agreement.

3.1.18 **remanufactured goods** means goods that:

(a) are classified to any of Chapters 84 to 90 (other than heading 84.18, 85.09, 85.10, 85.16 or 87.03 or subheading 8414.51, 8450.11, 8450.12, 8508.11 or 8517.11), or to heading 94.02, of the Harmonized System; and

(b) are entirely or partially composed of recovered goods; and

(c) have a similar life expectancy to, and perform the same as or similar to, new goods:

(i) that are so classified; and

(ii) that are not composed of any recovered goods; and

(d) have a factory warranty similar to that applicable to such new goods.

[5] Note: See also subsection (6) - Subsection 153ZKU(6) of the Customs Act specifies that the Minister must announce, by notifiable instrument, the day on which the Agreement enters into force for a Party (other than Australia).

3.1.19 **territory**, for a Party, has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

3.1.20 **textile or apparel good** has the meaning given by Article 1.3 of Chapter 1 of the Agreement.

3.1.21 **Trans-Pacific Partnership originating goods** means goods that, under this Division, are Trans-Pacific Partnership originating goods.

3.1.22 **wholly formed**, in relation to elastomeric yarn, has the same meaning as it has in the Agreement.

4 Rules of origin principles under CPTPP

4.1 Goods covered by CPTPP

4.1.1 This Agreement covers all goods imported into Australia from a CPTPP Party that are Trans-Pacific Partnership originating goods.

4.1.2 Paragraph 16(1)(nb) of the Tariff Act provides that the preferential rate of customs duty for Trans-Pacific Partnership originating goods is 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 8B.

4.2 Geographical area covered by the Agreement

4.2.1 The Agreement covers the territories for which this Agreement has entered into force, as defined in Article 1.3, and more specifically Annex 1-A of Chapter 1 of the Agreement.

The definitions of 'territory' in Annex 1-A of Chapter 1 of the Agreement means:

(a) for Australia, the territory of Australia:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's air space, territorial sea, contiguous zone, exclusive economic zone and continental shelf over which Australia exercises sovereign rights or jurisdiction in accordance with international law;

(b) for Brunei Darussalam, the land territory, internal waters and territorial sea of Brunei Darussalam, extending to the air space above its territorial sea, as well as to its sea-bed and subsoil over which it exercises sovereignty, and the maritime area beyond its territorial sea, which has been or may hereafter be designated under the laws of Brunei Darussalam in accordance with international law as an area over which Brunei Darussalam exercises sovereign rights and jurisdiction with respect to the seabed, the subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;

(c) for Canada:

(i) the land territory, air space, internal waters and territorial seas of Canada;

(ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the United Nations Convention on the Law of the Sea done at Montego Bay on December 10, 1982 (UNCLOS); and

(iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;

(d) for Chile, the land, maritime, and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(e) for Japan, the territory of Japan, and all the area beyond its territorial sea, including the sea-bed and subsoil thereof, over which Japan exercises sovereign rights or jurisdiction in accordance with international law including the UNCLOS and the laws and regulations of Japan;

(f) for Malaysia, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea as designated or that might in the future be designated under its national law, in accordance with international law, as an area within which Malaysia exercises sovereign rights and jurisdiction with regards to the seabed, subsoil and superjacent waters to the seabed and subsoil as well as the natural resources;

The definitions of 'territory' in Annex 1-A of Chapter 1 of the Agreement means:

(g) for Mexico:

- (i) the states of the Federation and the Federal District;
- (ii) the islands, including the reefs and keys, in the adjacent seas;
- (iii) the islands of Guadalupe and Revillagigedo, situated in the Pacific Ocean;
- (iv) the continental shelf and the submarine shelf of such islands, keys and reefs;
- (v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters;
- (vi) the space located above the national territory, in accordance with international law; and
- (vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea done at Montego Bay on December 10, 1982, and its domestic law, Mexico may exercise sovereign rights or jurisdiction;

(h) for Peru, the mainland territory, the islands, the maritime areas and the air space above them, under sovereignty or sovereign rights and jurisdiction of Peru, in accordance with the provisions of the Political Constitution of Peru (Constitución Política del Perú) and other relevant domestic law and international law.

(i) for New Zealand, the territory of New Zealand and the exclusive economic zone, seabed and subsoil over which it exercises sovereign rights with respect to natural resources in accordance with international law, but does not include Tokelau;

(j) for Singapore, its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;

(l) for Viet Nam on 14 January 2019, the land territory, islands, internal waters, territorial sea, and air space above them, the maritime areas beyond territorial sea including seabed, subsoil and natural resources thereof over which Viet Nam exercises its sovereignty, sovereign rights or jurisdiction in accordance with its domestic laws and international law.

4.3 Rules of origin and Trans-Pacific Partnership originating goods

4.3.1 ROO are essential for determining whether imported goods are eligible for claiming the preferential rates of duty available under CPTPP. 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 CPTPP. ROO preclude goods made in other countries from obtaining a benefit by merely transiting through a Party.

4.3.2 Trans-Pacific Partnership originating goods are those that satisfy the requirements of Division 1GB of Part VIII of the Customs Act and CPTPP Regulations.

4.3.3 In summary, the following requirements must be met:

- The goods must be Trans-Pacific Partnership originating goods.
- The importer must make a claim for preferential treatment.
- The importer who is claiming preferential treatment must satisfy the documentary requirements to support the claim.
- The goods must meet the consignment provision.

4.3.4 Division 1GB of Part VIII of the Customs Act sets out the ROO for the following categories of goods originating under CPTPP:

- goods wholly obtained or produced in a Party – Customs Act Section 153ZKV
- goods produced entirely from originating materials – Customs Act Section 153ZKW
- goods produced from non-originating materials – Customs Act Section 153ZKX

4.3.5 Goods that fall within the third category under paragraph 4.3.4 must satisfy the applicable PSR as listed in Annex 3-D of Chapter 3, or 4-A of Chapter 4 where applicable, of the Agreement.

4.3.6 A PSR is a rule that must be met for the good to qualify for a preferential rate of customs duty. These are covered in detail in Section 7 of this Guide. The PSRs that apply in CPTPP PSR are:

- CTC
- RVC
- Specific processing rules

4.3.7 Non-originating goods are those that:

- originate from outside the Parties to the Agreement
- are produced in a Party but fail to meet the ROO
- are of undetermined origin.

4.4 Harmonized Commodity Description and Coding System

4.4.1 CPTPP PSR and tariff commitments are based on the HS. The HS is a structured nomenclature that organises goods according to the degree of production and assigns them numbers known as tariff classifications. CPTPP PSR and tariff commitments were finalised in the version of the HS as in force immediately before 1 January 2017 (HS 2012).

4.4.2 HS 2012 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 is identified by a six-digit number, and the tariff classifications for goods imported into Australia are eight digits in length. Most Parties to CPTPP also use eight digits for their tariff classifications, while Japan and Malaysia use nine digits and Peru uses ten digits.

4.4.3 Subheadings provide more specific descriptions than headings. Headings provide more specific descriptions than Chapters. The HS is internationally standardised at the six-digit 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

4.4.4 Under the HS, 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 digit are set by each country, and therefore vary between countries. In Australia, these final two digits of the eight-digit number are referred to as 'domestic splits' or 'domestic subheadings'.

4.4.5 Goods covered by Schedule 8B of the Tariff Act are in HS 2022 nomenclature, which is the nomenclature for Australia's working tariff as of 1 January 2022.

4.4.6 As the CPTPP PSR Schedule was negotiated in the 2012 version of the HS, as a first step, Australian Importers need to determine the HS classification of the imported good (up to the six-digit level) in HS 2012 and use that classification to find the specific PSR for the product in Annex 3-D or Annex 4-A 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 CPTPP. It is that HS Code that will appear on the Certification of Origin.

4.4.7 Importers also need to determine the HS classification of the imported good in HS 2022 (up to the eight digit level) nomenclature and use that classification to determine the preferential rate in Schedule 8B to the Tariff Act. It is the 2022 classification that will need to appear on the import declaration.

4.4.8 Information on HS 2022 and the application to PSRs can be found in ACN 2021/51.

4.5 Other concepts in ROO

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

- Accessories, spare parts, tools or 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 or materials (see paragraph 8.5)
- Indirect materials (see paragraph 8.6)
- Packaging materials and containers (see paragraph 8.7)
- Remanufactured Goods (see paragraph 8.8)
- Sets of Goods (see paragraph 8.9)

5 Goods wholly obtained or produced

5.1.1 Section 153ZKV of the Customs Act contains provisions relating to goods that are wholly obtained or produced entirely in the territory of one or more of the Parties.

Section 153ZKV of the Customs Act: Goods wholly obtained or produced entirely in the territory of one or more of the Parties

(1) Goods are **Trans-Pacific Partnership originating goods** if:

(a) they are wholly obtained or produced entirely in the territory of one or more of the Parties; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

(2) Goods are **wholly obtained or produced entirely** in the territory of one or more of the Parties 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 one or more of the Parties; or

(b) live animals born and raised in the territory of one or more of the Parties; or

(c) goods obtained from live animals in the territory of one or more of the Parties; or

(d) animals obtained by hunting, trapping, fishing, gathering or capturing in the territory of one or more of the Parties; or

(e) goods obtained from aquaculture conducted in the territory of one or more of the Parties; or

(f) minerals, or other naturally occurring substances, extracted or taken from the territory of one or more of the Parties; or

(g) fish, shellfish or other marine life taken from the sea, seabed or subsoil beneath the seabed:

(i) outside the territories of the Parties; and

(ii) in accordance with international law, outside the territorial sea of non-Parties;

by vessels that are registered, listed or recorded with a Party and are entitled to fly the flag of that Party; or

(h) goods produced, from goods referred to in paragraph (g), on board a factory ship that is registered, listed or recorded with a Party and is entitled to fly the flag of that Party; or

(i) goods, other than fish, shellfish or other marine life, taken by a Party, or a person of a Party, from the seabed, or subsoil beneath the seabed, outside the territories of the Parties, and beyond areas over which non-Parties exercise jurisdiction, but only if that Party or person 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 one or more of the Parties; or

(ii) has been derived from used goods that are collected in the territory of one or more of the Parties and that are fit only for the recovery of raw materials; or

(k) goods produced in the territory of one or more of the Parties, exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives.

5.1.2 In order for a good to be considered a Trans-Pacific Partnership originating good, the importer must have a Certification of Origin or other supporting documentation at the time preferential treatment is sought.

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

5.1.4 Waste and scrap can qualify as Trans-Pacific Partnership originating goods under Paragraph 153ZKV(2)(j) of the Customs Act, if they are derived from either production or consumption in a

Party and are fit only for the recovery of raw materials or if they are used goods that are collected in a Party that are fit only for the recovery of raw materials.

Example 1: waste and scrap

Rubber is imported into Peru from Brazil and used in the production of automotive rubber tubes and seals. The unused scrap rubber from the production of the tubes and seals is exported to Australia.

As the unused scrap rubber is derived from production processes in Peru and fit only for the recovery of raw materials, it fits the definition of waste and scrap and is considered to be “wholly obtained or produced” under subparagraph 153ZKV(2)(j)(i) of the Customs Act. Therefore, the scrap rubber qualifies as Trans-Pacific Partnership originating goods and may claim preferential treatment, if all other requirements of the Agreement are met.

Example 2: waste and scrap

Used tyres of indeterminate origin are collected within the Australia to be turned into rubber crumb in Malaysia for use in athletic and playground surfaces.

As the unused tyres are collected in the Australia and fit only for the recovery of raw materials, it fits the second definition of waste and scrap and is considered to be “wholly obtained or produced” under subparagraph 153ZKV(2)(j)(ii) of the Customs Act. Therefore, the used tyres qualifies as a Trans-Pacific Partnership originating good and may claim preferential rates of customs duty, if all other requirements of the Agreement are met.

6 Goods produced from originating materials

6.1 Outline

6.1.1 Section 153ZKW of the Customs Act sets out the ROO that apply to goods produced in one or more of the Parties from originating materials.

Section 153ZKN of the Customs Act: Goods produced from originating materials

Goods are **Trans-Pacific Partnership originating** goods if:

(a) they are produced entirely in the territory of one or more of the Parties from originating materials only; and

(b) either:

(i) the importer of the goods has, at the time the goods are imported, a certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

6.1.2 In order for goods to be considered Trans-Pacific Partnership originating goods, the importer must have a Certification of Origin or other 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

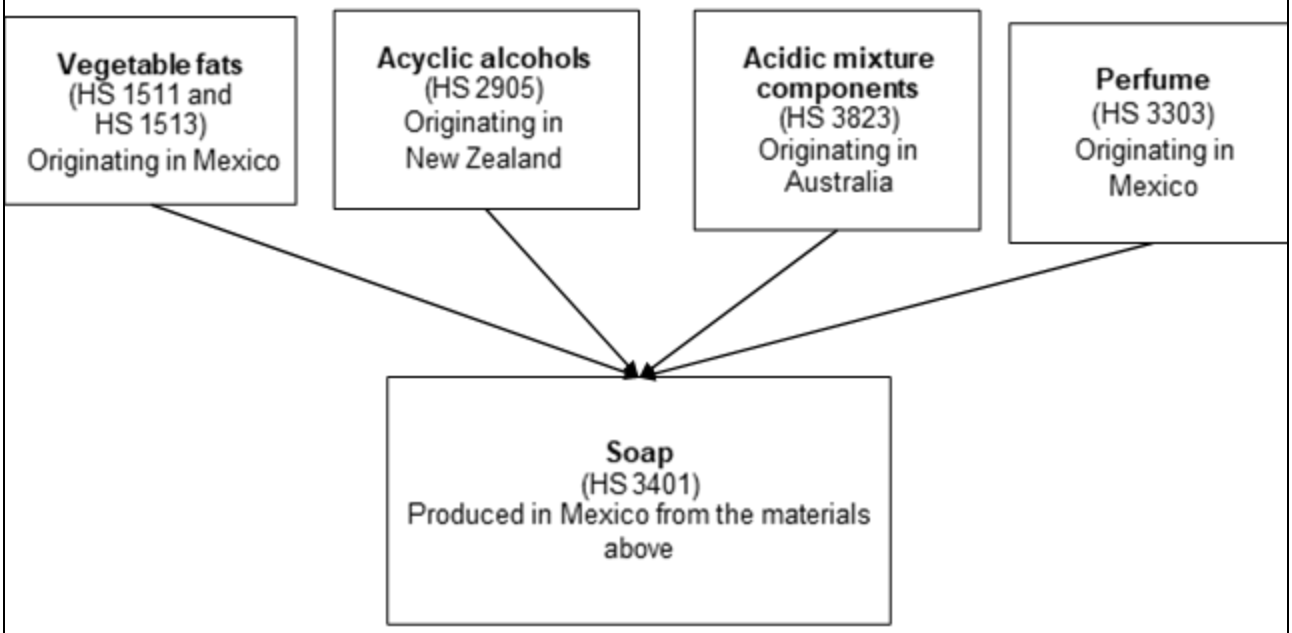
6.2.1 Section 153ZKW of the Customs Act sets out the rules for goods produced entirely from originating materials. Originating materials may include indirect materials and Trans-Pacific Partnership originating goods.

6.2.2 Originating materials that are recovered goods are covered in Section 8.8 of this Guide.

Example: Goods produced in a Party using originating materials from one or more Parties

In this example, soap is made from a number of materials that are Trans-Pacific Partnership originating goods.

Therefore, the soap is a Trans-Pacific Partnership originating good in accordance with section 153ZKW.



7 Goods produced from non-originating materials

7.1 Outline

7.1.1 Section 153ZKX of the Customs Act contains provisions that apply to goods, produced in a Party to CPTPP, that incorporate non-originating materials.

Section 153ZKX of the Customs Act: Goods produced from non-originating materials

(1) Goods are **Trans-Pacific Partnership 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-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement; and

(b) they are produced entirely in the territory of one or more of the Parties 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 certification of origin, or a copy of one, for the goods; or

(ii) Australia has waived the requirement for a certification of origin for the goods.

Note: Subsection (12) sets out a limitation for goods that are put up in a set for retail sale.

(2) Without limiting paragraph (1)(c), if the goods are a textile or apparel good, paragraphs 7 and 9 of Article 4.2 of Chapter 4, and Appendix 1 to Annex 4-A to Chapter 4, of the Agreement have effect for the purposes of determining whether paragraph (1)(c) is met.

Note: Most of the requirements applicable to goods are set out in the table in Annex 3-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement.

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.

Rules for goods that are not a textile or apparel good

(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) the goods are not a textile or apparel good; 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 value of the non-originating materials covered by paragraph (c) does not exceed 10% of the customs value of the goods.

Note: See subsections (6) and (7) for goods that are a textile or apparel good.

Section 153ZKX of the Customs Act: Goods produced from non-originating materials

(5) In applying subsection (4), disregard non-originating materials covered by paragraph (a), (b), (c), (d) or (e) of Annex 3-C to Chapter 3 of the Agreement.

Rules for goods that are a textile or apparel good

(6) 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 a textile or apparel good; and

(c) the goods are classified other than to Chapter 61, 62 or 63 of the Harmonized System; and

(d) if the goods contain elastomeric yarn—the yarn is wholly formed in the territory of one or more of the Parties; and

(e) 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 (e) does not exceed 10% of the total weight of the goods.

(7) 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 a textile or apparel good; and

(c) the goods are classified to Chapter 61, 62 or 63 of the Harmonized System; and

(d) if the component of the goods, that determines the tariff classification of the goods, contains elastomeric yarn—the yarn is wholly formed in the territory of one or more of the Parties; and

(e) the component of the goods, that determines the tariff classification of the goods, contains fibres or yarns that are non-originating materials and that do not satisfy the change in tariff classification;

then the requirement is taken to be satisfied if the total weight of the fibres or yarns covered by paragraph (e) does not exceed 10% of the total weight of that component.

Regional value content

(8) 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.

(9) Without limiting paragraph (8)(b), Appendix 1 to Annex 3-D to Chapter 3 of the Agreement has effect in working out if materials used in the production of goods are originating materials or non-originating materials.

Section 153ZKX of the Customs Act: Goods produced from non-originating materials

(10) 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;

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 153ZKU(2).

(11) For the purposes of subsection (10), disregard section 153ZKZ 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

(12) 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 Trans-Pacific Partnership originating goods under this section only if:

(c) all of the goods in the set, when considered separately, are Trans-Pacific Partnership originating goods; or

(d) the total customs value of the goods (if any) in the set that are not Trans-Pacific Partnership originating goods does not exceed 10% 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 Section 153ZKX of the Customs Act sets out the rules for determining whether a good is a Trans-Pacific Partnership originating good if the good incorporates non-originating materials in its production process in a Party.

7.1.3 In determining whether goods are produced in one or more of the Parties, the definitions in subsections 153ZKU (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.

7.1.4 The CPTPP Regulations prescribe the determination of value and the tariff change and regional value content requirements for the purposes of section 153ZKX and subsections 153ZKU (2) and (3) of the Customs Act.

7.1.5 Subsection 4(3A) of the Customs Act defines tariff classification with respect to the Tariff Act. Subsection 153ZKU(4), however, provides that subsection 4(3A) does not apply for the purposes of this Division. This means that the tariff classification for the purposes of Division 1GB of Part VIII of the Customs Act, is the PSR set out in Annex 3-D, or Annex 4-A, of the Agreement.

7.1.6 Therefore, when determining the PSR that applies to a good, the relevant nomenclature for the classification of the goods is HS 2012 as found in Annex 3-D, or Annex 4-A of the Agreement, while for the import declaration goods should be classified in the HS 2022 tariff nomenclature as found in Schedule 3 of the Customs Tariff Act.

7.1.7 Goods are Trans-Pacific Partnership originating goods if all the requirements of subsection 153ZKX(1) of the Customs Act 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-D to Chapter 3, or in Annex 4-A to Chapter 4, of the Agreement.
- The goods are produced entirely in the territory of one or more of the Parties 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.
- The importer of the goods has a Certification of Origin or other supporting documentation in relation to the goods at the time the goods are imported.

7.1.8 Annex 3-D and Annex 4-A of the Agreement list the PSR that must be met (i.e. CTC, RVC or process rules) in order to claim preferential rates of customs duty under CPTPP. Column 1 of the Table in Annex 3-D and Annex 4-A of the Agreement list the tariff classifications of goods at the Chapter, heading or subheading level based on HS 2012. Column 2 sets out the CTC, RVC and process rule PSR relevant to the tariff classifications in Column 1.

7.2 Examples of PSR that appear in Annex 3-D and Annex 4-A of CPTPP

PSR – CTC

A CTC rule will require all non-originating materials to have undergone a change in chapter, heading or subheading to make the final good. See *de minimis* provisions in Section 8.4 for exceptions to this requirement.

For example, wheat flour of subheading 1101.00 has a PSR of "A change to a good of heading 11.01 from any other chapter." This means non-originating material used to make the wheat flour of 1101.00 must come from any Chapter, other than Chapter 12.

Tariff classification	Product Specific Rule
11.01	A change to a good of heading 11.01 from any other chapter.

PSR – CTC except from certain tariff classifications

A CTC rule with exceptions will require non-originating materials to have undergone a change in Chapter, heading or subheading, except from certain tariff classifications, to make the final good.

For example, *cereal flours other than of wheat or meslin* of subheading 1102.90, has a PSR of a change to a good of subheading 1102.90 from any other chapter, except from heading 10.06 (*rice*).

This means that the non-originating materials used to make flour of 1102.90 cannot come from Heading 10.06 but can come from any other heading. Wheat that is a Trans-Pacific Partnership originating good would count as an originating material for the purposes of meeting this PSR.

Tariff classification	Product Specific Rule
1102.90	A change to a good of subheading 1102.90 from any other chapter, except from heading 10.06

PSR – RVC only

For some goods, the only PSR available is that the good meets an RVC.

For example, the PSR for certain motor vehicles of Headings 87.02-87.05 is:

> No change in tariff classification required for a good of heading 87.02 through 87.05, provided there is a regional value content of not less than:
>
> (a) 45 per cent under the net cost method; or
>
> (b) 55 per cent under the build-down method.

This means that the RVC of the good must be greater than or equal to 45 per cent under the net cost method or 55 per cent under the build-down method.

In a number of cases than can be up to three different methodologies to calculate the RVC.

Tariff classification	Product Specific Rule
87.02-87.05	No change in tariff classification required for a good of heading 87.02 through 87.05, provided there is a regional value content of not less than: (a) 45 per cent under the net cost method; or (b) 55 per cent under the build-down method.

PSR – CTC or RVC

Some PSR allow for the option of meeting either a CTC or a RVC rule.

The rule may require a CTC from non-originating materials to the final good at the Chapter, heading or subheading level or it may require that the good meets the RVC.

For example, *for other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions of 1509* of subheading 1510.00, the PSR is:

> A change to a good of heading 15.10 from any other chapter; or
>
> No CTC required for a good of heading 15.10, provided there is a regional value content of not less than 40 per cent under the build-down method.

This means that the non-originating material used to make the good of 1510.00 must come from any Chapter other than Chapter 15, or the RVC of the good must be greater than or equal to 40 per cent under the build-down method.

Tariff classification	Product Specific Rule
15.10	A change to a good of heading 15.10 from any other chapter; or No change in tariff classification required for a good of heading 15.10, provided there is a regional value content of not less than 40 per cent under the build-down method.

PSR – CTC and a specific process rule

Some PSR require meeting both a CTC and specific process requirement.

The rule may require a CTC from non-originating materials to the final good at the Chapter, heading or subheading level in addition to some minimum level of processing.

For example, *Trunks, suit-cases, vanity-cases, executive-cases, brief-cases, school satchels and similar containers with outer surface of plastics or of textile materials* of subheading 4202.12, the PSR is a change to a good of subheading 4202.12 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

This means that the non-originating material used to make products of 4202.12 must come from any Chapter other than Chapter 42 and that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties

Tariff classification	Product Specific Rule
4202.12	A change to a good of subheading 4202.12 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the Parties.

7.3 Change in tariff classification

7.3.1 Subsection 153ZKX(3) of the Customs Act states that the regulations may prescribe that all non-originating material used in the production of a good must have undergone a particular CTC. This is set out in Part 2, Section 5 of CPTPP Regulations.

7.3.2 The CTC concept applies only to non-originating materials. This means that non-originating materials must come from a different subheading, heading or Chapter than the final good, depending on the CTC rule.

7.3.3 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 a good is a Trans-Pacific Partnership originating good.

7.3.4 It may be possible for goods to be Trans-Pacific Partnership originating goods 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 is in paragraph 8.4 of this Guide.

Example : CTC rule

Tropical fruit juice (subheading 2009.90) is made in Viet Nam from oranges (subheading 0805.10) and limes (subheading 0805.50) imported from the United States of America, combined with bananas (heading 0803) and mangoes (heading 0804) grown in Australia.

The PSR for a good of subheading 2009.90 is either:

A change to a good of subheading 2009.90 from any other chapter; or

No change in tariff classification required for a good of subheading 2009.90, provided there is a regional value content of not less than 45 per cent under the build-down method.

In the case that the trader chooses to use the CTC rule for determining whether the tropical fruit juice is a Trans-Pacific Partnership originating good, the CTC rule requires that all the non-originating materials that go into the making of the tropical fruit juice must be classified outside of Chapter 20.

As the oranges and limes are classified to Chapter 8, these non-originating materials meet the CTC requirement. Since Australia produces the bananas and mangoes, these are originating materials, which are not required to undergo the CTC test.

The tropical fruit juice is therefore a Trans-Pacific Partnership originating good.

7.4 Regional Value Content (RVC)

7.4.1 Subsection 153ZKX(8) of the Customs Act states that the RVC of goods is to be worked out in accordance with the regulations.

7.4.2 Part 3 of CPTPP Regulations sets out four methods for calculating RVC. If a PSR specifies a particular method of calculation be used, then the goods must meet or exceed the RVC percentage using that calculation method.

7.4.3 Where multiple methods are provided in a PSR, there is no requirement to use one method in favour of another; that is, it is at the discretion of the person providing the Certification of Origin to decide which method to use.

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

7.4.5 Materials of an undetermined origin are treated as non-originating materials.

7.4.6 Article 3.6 of Chapter 3 of the Agreement sets out that for work done on non-originating materials in one or more Parties to the Agreement is to be included as originating content for the purpose of calculating the RVC.

7.4.7 In the CPTPP there are four different calculations available to importers to determine the RVC. The most common are the build-up method that is based on the value of originating materials and the build-down method is based on the value of non-originating materials.

7.4.8 The difference between the results under each calculation is the value of originating content incorporated in the build-down calculation. That is labour costs, other costs and profit which are not captured in the build-up method because the latter focuses on originating materials only. In short, this originating content may not be included in the value of originating material but it can be used to reduce the value of non-originating materials under the build-down method.

7.4.9 The use of the build-down calculation is therefore particularly useful where labour costs, overhead and other costs and profit form a substantial proportion of the value of the good.

7.4.10 The build-up method may be simpler from a record keeping perspective as it is only necessary to demonstrate that the value of some or all of the originating materials is sufficient to meet the required RVC.

7.4.11 In the case of the build-down method, materials that are of an undetermined origin are treated as non-originating materials. The importer will therefore need to determine whether a material is non-originating and add the value of any material of undetermined origin, plus calculate the originating content that forms up the remaining expenses in the production of the good when using this method.

Article 3.6 of Chapter 3 of the Agreement: Materials Used in Production

(1) Each Party shall provide that if a non-originating material undergoes further production such that it satisfies the requirements of this Chapter, the material is treated as originating when determining the originating status of the subsequently produced good, regardless of whether that material was produced by the producer of the good.

(2) Each Party shall provide that if a non-originating material is used in the production of a good, the following may be counted as originating content for the purpose of determining whether the good meets a regional value content requirement:

(a) the value of processing of the non-originating materials undertaken in the territory of one or more of the Parties; and

(b) the value of any originating material used in the production of the non-originating material undertaken in the territory of one or more of the Parties.

7.4.12 Section 10 of CPTPP Regulations sets out that the costs that may be deducted from the value of non-originating materials or including in the value of originating materials for the purpose of determining the RVC.

7.4.13 The CPTPP has provisions on cumulation that are covered in Section 8.2 of this Guide.

Section 10 of CPTPP Regulations: Value of goods that are originating materials or non-originating materials

(1) For the purposes of subsection 153ZKU(2) of the Act, this section explains how to work out the value of originating materials or non-originating materials used in the production of goods.

(2) The value of the materials is as follows:

- (a) for materials imported into the territory of a Party by the producer of the goods—the value of the materials worked out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994;
- (b) for materials acquired in the territory of a Party where the goods are produced:
  - (i) the price paid or payable for the materials by the producer of the goods; or
  - (ii) the value of those materials worked out under paragraph (a) on the assumption that those materials had been imported into the territory of the Party by the producer of the goods; or
  - (iii) the earliest ascertainable price paid or payable for the materials in the territory of the Party;
- (c) for materials that are produced by the producer of the goods—the sum of:
  - (i) all the costs incurred in the production of the materials, including general expenses; and
  - (ii) an amount that is the equivalent of the amount of profit that the producer would make for the materials in the normal course of trade or of the amount of profit that is usually reflected in the sale of goods of the same class or kind as the materials.

(3) For the purposes of paragraph (2)(a), in working out the value of particular materials, the costs incurred in the international shipment of the materials must be included.

(4) If the materials are originating materials, in working out the value of the originating materials under subsection (2), the following may be included, to the extent that they have not been taken into account under that subsection:

- (a) the costs of freight, insurance, packing and all other costs incurred to transport the materials to the producer of the goods;
- (b) duties, taxes and customs brokerage fees on the materials that:
  - (i) have been paid in the territory of one or more of the Parties; and
  - (ii) have not been waived or refunded; and

  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 the goods, reduced by the value of reusable scrap or by-products.

(5) If the materials are non-originating materials, in working out the value of the non-originating materials under subsection (2), the following may be deducted:

- (a) the costs of freight, insurance, packing and all other costs incurred in transporting the materials to the producer of the goods;
- (b) duties, taxes and customs brokerage fees on the materials that:
  - (i) have been paid in the territory of one or more of the Parties; 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.

7.4.14 **Focused value method** (section 6 of CPTPP ROO Regulations):

$$\text{RVC} = \frac{\text{Customs value} - \text{Value of specified non-originating materials}}{\text{Customs value}} \times 100$$

where:

'customs value' means the customs value of the goods worked out under Division 2 of Part VIII of the Customs Act; and

'value of specified non-originating materials' means the value, worked out under Part 4 of CPTPP ROO Regulations, of the non-originating materials that:

a. are specified in the second column of the table in Annex 3-D to Chapter 3 of CPTPP that applies to the goods, to the extent that column refers to the focused value method; and

b. are used in the production of the goods.

Example: Focused value method

A manufacturer in a Party to CPTPP makes wired glass sheets classified to 7005.30, from cast glass of 7003.10 and steel wire of 7217 that are imported from Brazil (a non-party). The wired glass sheets are sold to an Australian importer for $200 each. The imported cast glass costs the manufacturer $18/kg, with each sheet of wired glass using five kilos of cast glass. That is, $90 of cast glass is used in the production of the good.

Annex 3-D to Chapter 3 of CPTPP identifies that the 'focused value' PSR for cast glass of 7003.10 is:

> *50 per cent under the focused value method taking into account only the non-originating materials of heading 70.03 through 70.05*

Using the focused value method:

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

$$\frac{200 - 90}{200} \times 100$$

$$= 55 \; per \; cent$$

Regardless of whether the wire was also a non-originating material, only the non-originating cast glass is taken into account under the focused value method.

Therefore, the RVC for the wired glass sheets is 55 per cent and they are therefore Trans-Pacific Partnership originating goods.

7.4.15 **Build-Down Method** (section 7 of CPTPP ROO Regulations):

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

where:

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

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

Example: Build-Down Method calculation

A Mexican producer sells a good to an Australian importer for $100. The value of non-originating materials used in the good is $30.

The producer calculates the RVC using the Build-Down Method as follows:

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

$$= \frac{\$\mathbf{100} - \$\mathbf{30}}{\$\mathbf{100}} \times \mathbf{100}$$

$$= \mathbf{70}\ \boldsymbol{per\ cent}$$

Therefore, the RVC of the good is 70 per cent.

7.4.16 **Build-Up Method** (section 8, of CPTPP ROO Regulations):

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

where:

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

Value of originating material means the value, worked out under Part 4 of CPTPP Regulations, of the originating materials used in the production of the goods.

Example: Build-Up Method calculation

A Canadian producer sells a good to an Australian importer for $300. The value of originating materials used in the good is $135.

The producer calculates the RVC using the Build-Up Method as follows:

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

$$= \frac{\$\mathbf{135}}{\$\mathbf{300}} \times \mathbf{100}$$

$$= \mathbf{45}\ \boldsymbol{per\ cent}$$

Therefore, the RVC of the good is 45 per cent.

7.4.17 **Net cost method** (section 9 of CPTPP ROO Regulations):

$$\text{RVC} = \frac{\text{Net cost} \ - \text{Value of non-originating materials}}{\text{Net cost}} \times 100$$

where:

'net cost' means the net cost of the goods worked out in accordance with Article 3.9 of Chapter 3 of CPTPP. This article specifies net cost to mean:

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

Value of non-originating material means the value, worked out under Part 4, of the non-originating materials used in the production of the goods.

7.4.18 As the net cost method is a highly technical and quite specialised method applicable only to certain automotive goods, it is not covered in any detail in this Guide. Importers wanting to make use of the net cost method should refer to Article 3.9 of Chapter 3 of the Agreement.

7.4.19 In addition Appendix 1 to Annex 3-A of the Agreement provides an optional methodology for satisfying the regional value content requirement for certain automotive goods.

7.5 Specific processing rules

7.5.1 Annex 3-D or Annex 4-A of the Agreement contain specific processing rules as the PSR to be met in order for a good to qualify as a Trans-Pacific Partnership originating good. These can be listed against specific subheadings or headings as well as at the Chapter or Section level.

Example: Specific processing rule

A manufacturer in Australia makes the chemical compound diethylamine hydrochloride ($C_4H_{12}ClN$ classified as HS 2921.11) for use as a corrosion inhibitor from non-originating materials and exports the product to Japan.

The diethylamine hydrochloride ($C_4H_{12}ClN$) 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 materials into a new molecule with a new structure by breaking intramolecular bonds and forming new bonds.

$$C_4H_{11}N + HCl \rightarrow C_4H_{12}ClN$$

This process meets the Chemical Reaction Rule specified in the Section note for Section VI of the Annex 3-D of the Agreement.

Section note 1: Chemical Reaction Rule:

Notwithstanding the applicable product-specific rules of origin, a good of chapter 28 through 38 that is the product of a chemical reaction is an originating good if the chemical reaction occurred in the territory of one or more of the 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 by forming 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 elimination of water of crystallisation

8 Other originating goods provisions

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

8.1.1 Section 153ZKZ of the Customs Act sets out the treatment that applies to accessories, spare parts, tools or instructional or other information materials in respect of goods imported into Australia.

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

Goods are Trans-Pacific Partnership 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 Trans-Pacific Partnership 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.

8.1.2 For goods that must meet an RVC rule, as prescribed in subsections 153ZKX(10) and (11) of the Customs Act and section 11 of the CPTPP Regulations, the value of the accessories, spare parts, tools or instructional or other information materials must be taken into account as non-originating or originating materials, as the case may be, in working out the RVC for the good.

Subsections 153ZKX(10) and (11) of the Customs Act

(10) 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;

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 153ZKU(2).

(11) For the purposes of subsection (10), disregard section 153ZKZ in working out whether the accessories, spare parts, tools or instructional or other information materials are originating materials or non-originating materials.

Section 11 of CPTPP Regulations – Value of accessories, spare parts or tools

If paragraphs 153ZKX(10)(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; and

(b) if the accessories, spare parts, tools or instructional or other information materials are non-originating materials—for the purposes of Part 3 and section 10, 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 Part 3 and section 10, those accessories, spare parts, tools or instructional or other information materials are taken to be originating materials used in the production of the goods.

8.2 Accumulation

8.2.1 Accumulation permits the inclusion of either originating materials or the proportion of 'originating' production in non-originating materials, into the process of determining whether a final good is originating.

8.2.2 Under CPTPP, Trans-Pacific Partnership originating goods that are used in the production of a good in another Party shall qualify as originating materials for the purposes of determining if the goods are Trans-Pacific Partnership originating goods.

8.2.3 Article 3.10 of CPTPP sets out the principles that apply to goods manufactured in one or more Parties by one or more producers.

Article 3.10 of Chapter 3 of the Agreement: Accumulation

(1) Each Party shall provide that a good is originating if the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 3.2 (Originating Goods) and all other applicable requirements in this Chapter.

(2) Each Party shall provide that an originating good or material of one or more of the Parties that is used in the production of another good in the territory of another Party is considered as originating in the territory of the other Party.

(3) Each Party shall provide that production undertaken on a non-originating material in the territory of one or more of the Parties by one or more producers may contribute toward the originating content of a good for the purpose of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

8.2.4 Article 3.10 outlines two types of accumulation. The first, in Article 3.10.2, states that if a good that is a Trans-Pacific Partnership originating good is used as a material in the production of a final good, that material shall be considered fully originating once incorporated into the final good. This would include materials that qualified as originating under a PSR rule and that therefore contained non-originating materials in their manufacture.

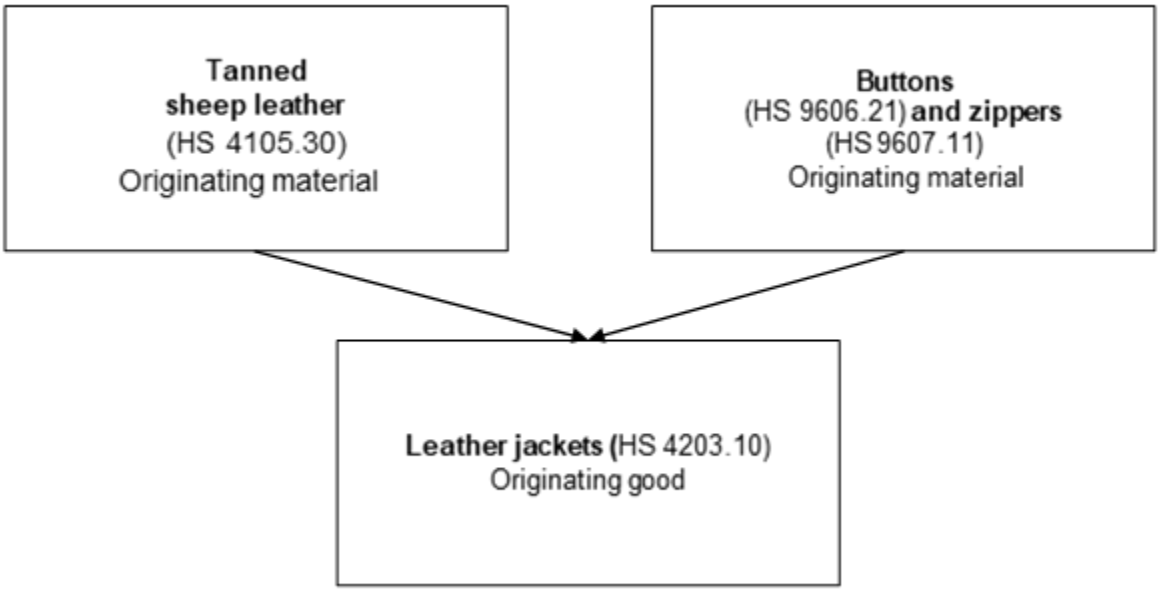
8.2.5 For example, if 'Good A' satisfies the PSR for its classification and is then exported from Party A to Party B to be used in the manufacture of Final Good B, the non-originating materials that went into the manufacture of Good A shall no longer be considered as non-originating. In this situation, Good A is considered fully originating in determining the origin of Good B.

8.2.6 The second form of accumulation, covered by 3.10.3, allows for the accumulation of the share of production carried out in one of the parties on a material, for example Good A above, but which was not sufficient to make that good originating under the CPTPP. If that Good A is used as a material in the manufacture of a final good, then the production carried out in either Party can be used to assist towards the fulfilling of the PSR for the final Good B.

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

Example: Goods produced in Viet Nam using a combination of Trans-Pacific Partnership originating materials

A Vietnamese producer imports tanned sheep leather from New Zealand and uses buttons and zippers from Australia to make a leather jacket.



The finished jackets are Trans-Pacific Partnership originating goods because they are produced entirely from originating materials. This is a form of accumulation as described in Article 3.10.2.

CTC rule – how it works in an accumulation context

8.2.8 Subsections 5(a) and (5(b) of the CPTPP Regulations provide that a final good satisfies its CTC rule if all of the non-originating materials used in its production have undergone the necessary CTC rule. The only exception to this rule is available in the *de minimis* provisions that permits some of the non-originating materials to remain so and for the good to be originating.

8.2.9 Subsections 5(a) and (b) of the CPTPP Regulations provide that a final good satisfies the CTC rule if each of the non-originating materials used in its production, which do not satisfy the CTC rule, are produced from non-originating materials that satisfy the CTC rule for the final good.

8.2.10 The necessary change in tariff classification can occur in the territory of one or both of the Parties. Article 3.10.3 of the Agreement allows for production undertaken on a non-originating material in the territory of one or more Parties, by one or more producers who may contribute toward the originating content of a good when determining origin, regardless of whether that production was sufficient to confer originating status to the material itself.

8.2.11 Materials that are Trans-Pacific Party originating goods do not need to meet the CTC requirement as this applies exclusively to non-originating materials.

Section 5 of CPTPP Regulations: Change in tariff classification requirement for non-originating materials

For the purposes of subsection 153ZKX(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 one or more of the Parties 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 rule – each non-originating material meeting the CTC rule

This example considers a good manufactured entirely in Canada. The diagram relates to the repeated application of Section 5 of CPTPP Regulations to determine whether a good (the final good) imported into Australia satisfies the relevant CTC rule. The final good is made in the exporter's factory from a range of originating and non-originating materials, including Non-originating Material 1 and Non-originating Material 2. Non-originating Material 1 satisfies the CTC rule for the final good but Non-originating Material 2 does not.

Originating materials used in the production of this good are not included in the diagram as originating materials do not need to meet the CTC requirement or any other PSR which only applies to non-originating materials.

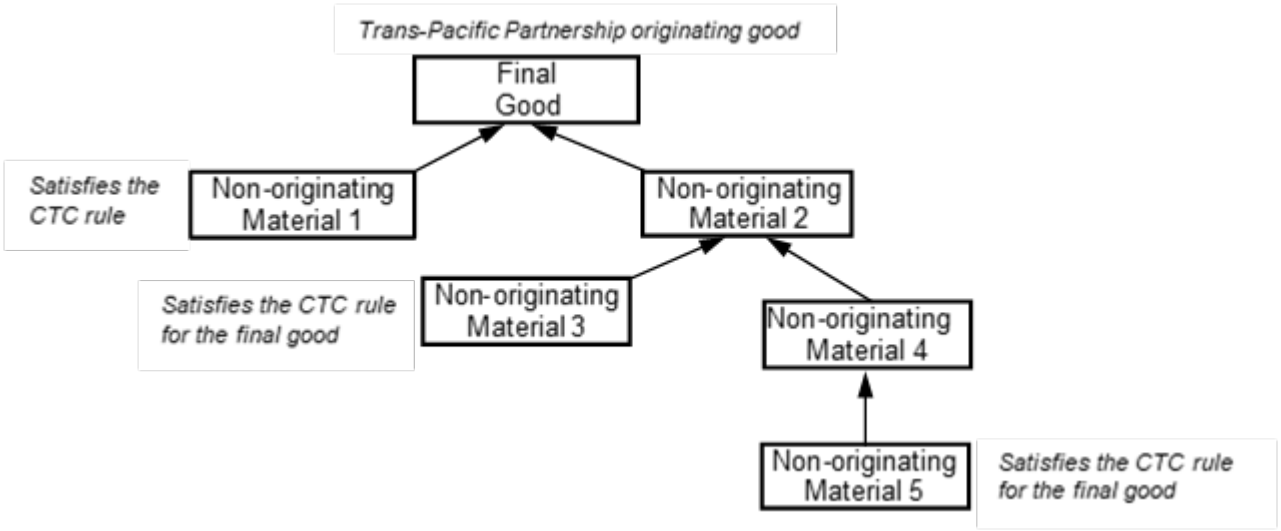
All non-originating materials must meet the CTC rule (see the *de minimis* provisions below) for the final good to be a Trans-Pacific Partnership originating good. Therefore, in this example, without the ability to accumulate, the final good would be non-originating because it was made using a non-originating material (Non-originating Material 2) that failed to meet the CTC rule.

Subsection 5(b) of the TPP Regulations provides that the materials that went into making Non-originating Material 2 can also be used to determine whether the final good meets the CTC rule. In this case, the exporter purchased Non-originating Material 2 from a Canadian 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 CPTPP Regulations allows for the repeated application of Section 5. If Non-originating Material 3 and Non-originating Material 4 met the CTC rule, i.e. they meet the CTC rule for the final good, then the good would be originating. However, if non-originating Material 3 satisfies the CTC in relation to the final good but Non-originating Material 4 does not meet the CTC then, 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. In this example, the only non-originating material used in the production of Non-originating Material 4 is Non-originating Material 5 which happens to satisfy the CTC rule for the final good.

As a result of the repeated application of Section 5, all the non-originating materials, including non-originating materials 2 and 4 are now originating, i.e. they meet the CTC rule for the Final Good and therefore the final good is a Trans-Pacific Partnership originating good for the purposes of CPTPP.

Origin determination using Section 5 of CPTPP 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.

RVC rule – how it works in an accumulation context

8.2.12 Under CPTPP, production undertaken or value added in one party to a non-originating material is treated as if it occurs in the party producing the final good.

8.2.13 Article 3.10 of the Agreement allows for this production to contribute towards the originating content of a good for the purpose of determining its origin, regardless of whether that production was sufficient to confer originating status to the material itself.

8.2.14 Section 10 of CPTPP Regulations (see page 32) sets out that certain costs may be included for originating materials and excluded from the value of non-originating materials that further assist in meeting the RVC requirements of CPTPP.

Example: RVC rule – Calculating RVC using Full Accumulation
A Canadian Manufacturer imports inner and outer bearing rings (HS 8482.99) from India and further processes them into finished ring bearings (HS 8482.30). As the finished bearings contain non-originating materials, they must satisfy the PSR for CPTPP to be considered Trans-Pacific Partnership originating goods.

The PSR for HS 8482.99 is:

> A change to a good of subheading 8482.20 through 8482.80 from any other subheading, except from inner or outer rings or races of subheading 8482.99; or
>
> No change in tariff classification required for a good of subheading 8482.20 through 8482.80, provided there is a regional value content of not less than:
>
> > (a) 30 per cent under the build-up method; or
> >
> > (b) 40 per cent under the build-down method

As the unfinished bearing rings are classified to a subheading that is excluded by the PSR, the CTC rule cannot be used.

Canadian manufacturer's per unit cost

	Total	**VOM**	**VNM**
Non-originating Materials (8482.99)	$1.35		$1.35
Originating materials	$0.15	$0.15	
Labour	$0.35		
Other costs	$0.05		
Profit	$0.15		
VALUE	**$2.05**	**$0.15**	**$1.35**

Example: RVC rule – Calculating RVC using Full Accumulation - continued
The RVC can be calculated in two ways as per the PSR.

Build-down Method:

$$\frac{CV\ (\$2.05) - VNM\ (\$1.35)}{\text{CV}\ (\$2.05)} \times 100 = 34.1\ per\ cent$$

Build-up method:

$$\frac{VOM\ (\$0.15)}{\text{CV}\ (\$2.05)} \times 100 = 7.3\ per\ cent$$

Example: RVC rule – Calculating RVC using Full Accumulation - continued

Using the **build-down method**, the RVC is 34.1 per cent and therefore does not meet the build-down method PSR for the good. Using the **build-up method**, the RVC is 7.3 per cent and also does not meet the build-up method PSR for the good.

Accordingly, the finished bearings are not considered Trans-Pacific Partnership originating, even though they contain some regional value content by virtue of the labour, other costs and profit associated with the finishing operations in Canada.

Nevertheless, the finished bearings are exported to a Mexican manufacturer for $2.05 each, where they are included in a wheel assembly for a non-motorised (toy) scooter (8714.93) that is constructed with non-originating wheel rims and spokes of 8714.92.

The Mexican manufacturer exports the wheel assembly to an Australian toy scooter manufacturer which wants to claim the preferential rates of customs duty under CPTPP.

The PSR for 8714.93 is:

> A change to a good of subheading 8714.91 through 8714.99 from any other heading; or
>
> No change in tariff classification required for a good of subheading 8714.91 through 8714.99, provided there is a regional value content of not less than:
>
> (a) 35 per cent under the build-up method; or
>
> (b) 45 per cent under the build-down method; or
>
> (c) 55 per cent under the focused value method taking into account only the non-originating materials of heading 87.14.

The Mexican manufacturer used excluded content in creating the wheel assemblies and the CTC PSR cannot be used.

Mexican manufacturer's per unit cost

	Total	**VOM**	**VNM**	**Focused Value**
Non-Originating materials Company B (8714.92)	$10.76		$10.76	$10.76
Originating materials	$7.29	$7.29		
Overheads	$0.15			
Labour	$0.50			
Profit	$0.50			
Non-originating Materials from Canada (8482.30)	$1.35		$1.35	
Originating materials from Canada (8482.30)	$0.15	$0.15		
Labour, other costs and profit from Canada	$0.55			
VALUE	**$21.25**	**$7.44**	**$12.11**	**$10.76**

Example: RVC rule – Calculating RVC using Full Accumulation - continued

The RVC can be calculated in three ways as per the PSR.

Build-down method:

$$\text{RVC} = \frac{CV\ (\$21.25) - VNM\ (\$12.11)}{\text{CV}\ (\$21.25)} \times 100 = 43.0\ per\ cent$$

Build-up method:

$$\text{RVC} = \frac{VOM\ (\$7.44)}{\text{CV}\ (\$21.25)} \times 100 = 35.0\ per\ cent$$

Focused value method:

$$\text{RVC} = \frac{Value\ of\ Specified\ non\text{-}originating\ material\ (\$10.76)}{\text{CV}\ (\$21.25)} \times 100 = 50.6\ per\ cent$$

Using the **build-down method**, the RVC for the wheel assembly is 43.0 per cent deducting the value-add undertaken in CPTPP regions. Because the value of the non-originating materials and other costs are relatively high in this example, the wheel assembly does not qualify under the build-down method PSR for the good. The value of originating materials and content for the bearings manufactured in Canada is not included in the Value of Non-Originating Materials even though the bearings themselves are not Trans-Pacific Partnership originating goods. See 7.4.6 for more details.

Under the **focused value method**, the RVC is 50.6 per cent and therefore does not meet the Focused Value PSR for the good.

Under the **build-up method**, the Mexican manufacturer can add the costs of any originating materials used in another Party in the production of the final good (provided they have documentary evidence of these values). This provides an RVC of 35 per cent.

While only $0.15 of originating material was used in Canada, without the ability to accumulate, the RVC using the build-up method would only be 34.3 per cent, which is not sufficient to meet the requirements of the PSR. This would not have occurred without CPTPPs accumulation provisions as the value of originating materials used in Canada on the unfinished bearings would have been 'lost'.

The Australian Company can claim the wheel assemblies as Trans-Pacific Partnership originating goods by aggregating the originating material of both the Mexican and Canadian manufacturers.

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

8.3 Consignment provision

Section 153ZKZA of the Customs Act sets out the consignment provisions that apply to Trans-Pacific Partnership originating goods imported into Australia.

Section 153ZKZA of the Customs Act: Consignment

(1) Goods are not Trans-Pacific Partnership 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 any operation in the territory of a non-Party (other than unloading, reloading, separation from a bulk shipment, 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 territory of Australia);

(b) while the goods are in the territory of a non-Party, the goods do not remain under the control of the customs administration of the non-Party at all times.

(2) This section applies despite any other provision of this Division.

8.3.1 The consignment provision aims to ensure that only goods that are Trans-Pacific Partnership originating goods are entitled to the benefits granted under CPTPP.

8.3.2 A good will lose its status as a Trans-Pacific Partnership originating good if it undergoes any process of production or other operation in a non-Party while en route from a Party to Australia, other than those listed in subparagraph 153ZKZA(1)(a).

8.3.3 The ABF is aware that some importers may face issues when their nominally Trans-Pacific Partnership originating goods transit through the USA. This is due to the USA not being a Party to CPTPP. If goods transit or tranship through the USA (or other non-parties) without sufficient proof that this transit or transhipment occurred under customs control, the goods will lose their originating status.

8.3.4 As general advice, Australian importers should work with their customs broker or their exporter to ensure that they meet the requirements of CPTPP if they intend to claim preferential rates of customs duty. This *may* include obtaining and retaining official documentation from the non-party transit country that demonstrates that the goods were under customs control at all times.

8.3.5 Importers may also need to inquire directly with the customs agency of the proposed transit country to ensure they can demonstrate, should it be required, that their goods have remained under customs control, and to retain evidence of this in accordance with CPTPP's record keeping requirements (see Section 10).

8.3.6 Importers may have to consider adjusting their supply chain to exclude certain countries where official and reliable documentation is not available.

Example 1: Consignment provision

Surgical instruments, cotton gowns and bandages, made in a Party to CPTPP from Trans-Pacific Partnership originating materials, are sent to Indonesia where they are packaged together in a set and then sterilized for use in operating rooms. They are then sent to Australia with a Certification of Origin that they are a Trans-Pacific Partnership originating good.

Despite the Certification of Origin purporting to demonstrate the goods are Trans-Pacific Partnership originating goods, the medical sets are not eligible for preferential treatment as they underwent an operation, not covered by the exceptions in section 153ZKZA, in a non-Party to CPTPP.

Example 2: Minimal Operations

Boats manufactured in a Party to CPTPP are sent by ship to Australia. Before departure, they are coated with a protective veneer to inhibit damage to the painted surfaces during the voyage.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Indonesia so that the protective veneer can be reapplied to ensure that the vessels are preserved in good condition for the remainder of the voyage to Australia. During their time in Indonesia the boats remain under customs control.

This process would not affect the origin status of the vessels as it fits within the exceptions to section 153ZKZA.

Example 3: Consignment and Minimal Operations

Maple syrup, a wholly originating product of Canada, is scheduled to be exported to Australia via a ship that travels via Mexico. The goods are shipped to Los Angeles by road, where labels are applied and the shipment is split up for further consignment. The goods destined for Australia continue to the Mexican port.

When the goods arrive in Australia, despite having a CPTPP certification of origin and despite the minimal operations that were carried out, the maple syrup has lost its originating status as the goods were not under customs control during the road transport via the USA (a non-party).

8.4 *De minimis* provision

8.4.1 All non-originating materials in a good that has CTC PSR must undergo the required CTC.

8.4.2 The *de minimis* provision provides exceptions to the above requirement. Subsection 153ZKX(3) of the Customs Act stipulates that the CTC PSR is also satisfied if the good meets the requirement of subsections 153ZKX(4), (5), (6) and (7) of the Customs Act – the *de minimis* provisions. The text of these provisions can be found in Section 7.

8.4.3 Where a requirement is that the CTC requirement must be satisfied and one or more non-originating materials do not satisfy that requirement but the relevant *de minimis* provision in subsections 153ZKX(4), (5), (6) and (7) is met, the CTC requirement is taken to be satisfied.

8.4.4 The *de minimis* provision allows for a low percentage of non-originating materials, which do not meet the relevant CTC rule, to be used in a good and for that good to still meet the CTC rule. There are three separate *de minimis* provisions in CPTPP.

Goods that are not textile or apparel goods

8.4.5 The CTC requirement is taken to be satisfied if the total value of the non-originating materials (used in the production of the goods) that do not satisfy the change in tariff classification does not exceed 10 per cent of the customs value of the goods (see subsection 153ZKX(4) on page 23).

8.4.6 Subsection 153ZKX(5) of the Customs Act, however, excludes goods identified in Annex 3-C of Chapter 3 of CPTPP Agreement from the *de minimis* rule.

Goods that are textile or apparel goods and are not classified to Chapter 61, 62 or 63 of the HS

8.4.7 The CTC requirement is taken to be satisfied if the total weight of the non-originating materials (used in the production of the goods) does not exceed 10 per cent of the total weight of the goods (see subsection 153ZKX(6) on page 24).

8.4.8 For this exception, if the goods contain elastomeric yarn, the yarn is required to be wholly formed in the territory of one of more of the Parties to CPTPP.

Goods that are textile or apparel goods and are classified to Chapter 61, 62 or 63 of the HS

8.4.9 Where the component of the goods, that determines the tariff classification of the goods, contains fibres or yarns that are non-originating materials that do not satisfy the CTC requirement, the CTC requirement is taken to be satisfied if the total weight of the fibres or yarn (used in the production of the goods) does not exceed 10 per cent of the total weight of that component (see subsection 153ZKX(7) on page 24).

For this exception, if the component of the goods, that determines the tariff classification of the goods, contains elastomeric yarn, the yarn is required to be wholly formed in the territory of one or more of the Parties to CPTPP.

Example: CTC – *de minimis* by value for a non-textile and apparel good

A non-textile or apparel good uses two non-originating materials, A and B. As a result of its transformation into the finished good, material A meets the required CTC rule, but material B does not.

Because material B does not make the required change, the finished good will not be considered an originating good. If the value of material B is less than 10 per cent of the value of the good, the good will still qualify as a Trans-Pacific Partnership originating good.

The good is valued at $100 and the value of material B is $5. The value of material B is 5 per cent of the good's value, therefore the good is considered to be a Trans-Pacific Partnership originating good, using the *de minimis* rule.

Example: CTC – *de minimis* by weight

A textile good classified within Chapters 55 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 rule, but material Z does not.

Because material Z does not meet the required change, the finished good will not qualify as originating. If, however, the weight of material Z is less than 10 per cent of the good's total weight, the good will still qualify as a Trans-Pacific Partnership originating good.

The finished good weighs 50 grams and the weight of material Z is 2 grams, which is 4 per cent of the good's total weight. Therefore, the finished good is considered to be a Trans-Pacific Partnership originating good using the *de minimis* rule.

8.5 Fungible goods or materials

8.5.1 Article 3.12 of Chapter 3 of the Agreement covers the treatment of fungible goods of materials.

8.5.2 Article 3.1 of Chapter 3 of the Agreement defines fungible goods or materials as goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical, irrespective of minor differences in appearance that are not relevant to a determination of origin.

Article 3.12 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:

(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, 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 used in production are interchangeable for commercial purposes, in that they are of the same kind and commercial quality (e.g. ball bearings, nuts, bolts, screws, etc).

8.5.4 A producer may choose to separate physically, the originating and non-originating materials. If, this is not practical the producer may store materials obtained from different countries in one container.

8.5.5 When mixing originating and non-originating fungible materials, the producer may determine the origin of the materials based on one of the standard inventory management methods (e.g. last-in first-out, or first-in first-out) allowed under the generally accepted accounting principles of the exporting Party.

8.5.6 It is important to note that once a producer has decided on an inventory management method for a particular material, they must continue to use that method throughout the whole of the financial (fiscal) year.

Example 1: fungible materials

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

On 1 January, the producer buys 1 tonne of ball bearings from Australia that are Trans-Pacific Partnership originating goods, and on 3 January buys 1 tonne of ball bearings from Europe.

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 made in Australia indistinguishable from those sourced from Europe.

A Singaporean company places an order with the New Zealand 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 order are considered to be Trans-Pacific Partnership originating goods, regardless of their actual origin.

Example 2: fungible materials

Continuing with the above scenario, a Canadian company places an order with the same New Zealand 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 for the Canadian order are considered to be Trans-Pacific Partnership 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 fungible goods or materials are Trans-Pacific Partnership originating goods and materials under Article 3.12 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 The treatment of fungible goods or materials used in a production process that do not satisfy the fungible rules under Article 3.12 of Chapter 3 of the Agreement is different. Those fungible goods or materials are non-originating and must meet the PSR that is applicable to the good (that is the machinery parts) being produced if they are to be imported into one of the Parties and subsequently successfully claim preferential rates of customs duty.

8.6 Indirect materials

8.6.1 All indirect materials used in the production of Trans-Pacific Partnership originating goods are treated as originating materials, regardless of where they were produced.

8.6.2 Indirect materials are defined in paragraph 3.1.9 of this Guide and are considered originating materials in paragraph 3.1.14 of this Guide.

Example: Indirect materials

Workers in Singapore use tools and safety equipment produced in Thailand during the production of soap. Such tools and safety equipment are considered to be originating materials and meet the definition of "indirect materials" in paragraph 3.1.9 of this Guide.

8.7 Packaging materials and containers

8.7.1 Section 153ZKY 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 153ZKY 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 of not less than a particular percentage 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 153ZKU(2).

Regional value content of packaging materials and containers

8.7.2 Subsection 153ZKY(2) of the Customs Act adds that if the goods are required to meet a RVC rule, 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 when determining the RVC of the goods.

Example: Value of packaging material and container

Dolls (9503) are made in a Party to CPTPP. 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 produced in China.

The PSR for 9503 is

A change to a good of heading 95.03 from any other heading; or

No change in tariff classification required for a good of heading 95.03, provided there is a regional value content of not less than:

(a) 30 per cent under the build-up method; or

(b) 40 per cent under the build-down method; or

(c) 50 per cent under the focused value method taking into account only the non-originating materials of heading 95.03

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

8.7.3 Section 12 of CPTPP Regulations prescribes how to determine the value of the packaging materials or containers.

Section 12 of CPTPP Regulations: Value of packaging material and container

If paragraphs 153ZKY(1)(a) and (b) of the Act are satisfied in relation to goods and the goods must have a regional value content of not less than a particular percentage 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; and

(b) if that packaging material or container is a non-originating material—for the purposes of Part 3 and section 10, 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 Part 3 and section 10, that packaging material or container is taken to be an originating material used in the production of the goods.

8.8 Remanufactured Goods

8.8.1 The definitions of originating materials, recovered materials and remanufactured goods in Section 153ZKU of the Customs Act provide that recovered materials used in the production and incorporated into a remanufactured good are counted as originating materials.

8.8.2 A remanufactured good will be treated as Trans-Pacific Partnership originating good if it is classified to any of Chapters 84 to 90 (other than heading 84.18, 85.09, 85.10, 85.16 or 87.03 or subheading 8414.51, 8450.11, 8450.12, 8508.11 or 8517.11), or to heading 94.02, of the Harmonized System and meets the requirements that the goods:

- are entirely or partially comprised of recovered materials; and
- have a similar life expectancy and perform the same as or similar to new goods that are so classified and are not composed of any recovered materials; and
- have a factory warranty similar to that applicable to such new goods

Relevant definitions in Section 153ZKU of the Customs Act: Remanufactured goods

originating materials means:

(a) goods that are originating goods, in accordance with Chapter 3 of the Agreement, and that are used in the production of other goods; or

(b) recovered goods derived in the territory of one or more of the Parties and used in the production of, and incorporated into, remanufactured goods; or

(c) indirect materials.

recovered goods means goods in the form of one or more individual parts that:

(a) have resulted from the disassembly of used goods; and

(b) have been cleaned, inspected, tested or processed as necessary for improvement to sound working condition.

remanufactured goods means goods that:

(a) are classified to any of Chapters 84 to 90 (other than heading 84.18, 85.09, 85.10, 85.16 or 87.03 or subheading 8414.51, 8450.11, 8450.12, 8508.11 or 8517.11), or to heading 94.02, of the Harmonized System; and

(b) are entirely or partially composed of recovered goods; and

(c) have a similar life expectancy to, and perform the same as or similar to, new goods:

(i) that are so classified; and

(ii) that are not composed of any recovered goods; and

(d) have a factory warranty similar to that applicable to such new goods.

Example: Remanufactured goods

Used smartphones are collected by an organisation in New Zealand (HS 8513.12). These smartphones are disassembled, working parts cleaned and tested, and faulty parts replaced by imported new parts before being reassembled and packaged with a warranty equivalent to a new smart phone.

The PSR for 8517.11 through 8517.69 is a change to a good of subheading 8517.11 through 8517.69 from any other subheading.

As the recovered goods are considered originating materials, they are not required to undergo the change in tariff classification. As long as new non-originating parts either undergo a change in tariff subheading or make up less than 10 per cent of the customs value of the final good using the *de minimis* provisions these remanufactured smartphones would be Trans-Pacific Partnership originating goods.

8.9 Sets of Goods

8.9.1 Subsection 153ZKX(12) of the Customs Act provides sets out the rules for goods claiming to be Trans-Pacific Partnership origin goods which are classified as a set in accordance with paragraph 3(c) of the General rules for the interpretation of Schedule 3 found in Schedule 2 of the Tariff Act. For the set to be originating, all the goods in the set must be a Trans-Pacific Partnership originating goods or the total customs value of any non-originating goods in the set must not exceed 10 per cent of the customs value of the set of goods.

8.9.2 The effect of this provision means that although a set may otherwise be originating because it meets the CTC or RVC requirements of the PSR, non-originating materials must be further constrained to those less than 10 per cent of the customs value. This avoids misuse of the sets classification as this can result in goods arbitrarily changing HS Classifications and meeting a CTC rule as well as having products included in the set to merely meet the RVC requirement.

Subsection 153ZKX(8) of the Customs Act: 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 Trans-Pacific Partnership originating goods under this section only if:

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

(d) the total customs value of the goods (if any) in the set that are not Trans Pacific Partnership originating goods does not exceed 10% of the customs value of the set of goods; or

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.

Example: Sets of goods

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 PSR for combs of 9615 is a change to a good of heading 96.15 from any

other heading; or

No change in tariff classification required for a good of heading 96.15, provided there is a regional value content of not less than:

(a) 35 per cent under the build-up method; or

(b) 45 per cent under the build-down method; or

(c) 55 per cent under the focused value method taking into account only the non-originating materials of heading 96.15.

The comb and the brush are manufactured in Columbia and meet the relevant PSRs to be considered a Trans-Pacific Partnership originating good. However, in this example the mirror is imported and as such paragraph 153ZKX(12)(c) does not apply to these goods.

If the comb and the brush make up 75 per cent of the customs value of the final set, while the non-originating mirror makes up the remaining 25 per cent, then the goods are not Trans-Pacific Partnership originating goods as the 10 per cent threshold is exceeded. This is the case even though the mirror would otherwise have met the CTC requirement or the RVC requirement for the set.

9 Procedures and evidence required to claim preferential rates of customs duty

9.1 Claiming Trans-Pacific Partnership rates of customs duty

9.1.1 To claim preferential rates of customs duty under CPTPP, the provisions in Division 1GB of Part VIII of the Customs Act require the importer to have, at the time of import, a Certification of Origin (COO) or a copy of one, for the goods.

9.1.2 Article 3.20 of Chapter 3 of the Agreement provides that a COO is required to support the claim for preferential rates of customs duty under CPTPP.

9.1.3 A producer, exporter or importer of the goods can complete a COO.

9.1.4 Where a Party nominates Annex 3-A of the Agreement as applying to its producers and exporters, an exporting Party may require that a certification of origin for a good exported from its territory be issued by a competent authority or completed by an approved exporter.

9.1.5 Vietnam is the only CPTPP Party for which Annex 3-A of the Agreement applies. Australian importers are still able to claim preferential rates of customs duty under CPTPP based on a COO completed by the importer.

9.2 Certification of Origin

9.2.1 A COO must comply with Article 3.20 of Chapter 3 and Annex 3-B, Minimum Data Requirements of the Agreement (see section 9.3 below).

9.2.2 There is no need for a COO to be completed by an Issuing Body – except in the case of COO from producers and exporters of goods in Vietnam.

9.2.3 A COO is valid for one year after the date it was issued and it can apply to a single shipment of a good; or multiple shipments of identical goods within any period specified in the certification of origin, but not exceeding 12 months. This is referred to as the 'blanket period' in item 8 of the Annex 3-B Minimum Data Requirements.

9.2.4 There is no fixed format for the CPTPP COO and the document can be completed electronically, including electronically signed. Attachment B and C of the DFAT Guide to obtaining preferential tariff treatment when exporting and importing goods using CPTPP includes examples of declarations that can be included on an invoice or company letterhead, as well as a template for a standalone COO. It is important to ensure that the minimum data requirements Annex 3-B of the Agreement are included, and these can be found in 9.3 of this guide.

Article 3.20 of Chapter 3 of the Agreement: Claims for Preferential Treatment

(1) Except as otherwise provided in Annex 3-A (Other Arrangements), each Party shall provide that an importer may make a claim for preferential tariff treatment, based on a certification of origin completed by the exporter, producer or importer.[2, 3]

(2) An importing Party may:

(a) require that an importer who completes a certification of origin provide documents or other information to support the certification;

(b) establish in its law conditions that an importer shall meet to complete a certification of origin;

(c) if an importer fails to meet or no longer meets the conditions established under subparagraph (b), prohibit that importer from providing its own certification as the basis of a claim for preferential tariff treatment; or

(d) if a claim for preferential tariff treatment is based on a certification of origin completed by an importer, prohibit that importer from making a subsequent claim for preferential tariff treatment for the same importation based on a certification of origin completed by the exporter or producer.

(3) Each Party shall provide that a certification of origin:

(a) need not follow a prescribed format;

(b) be in writing, including electronic format;

(c) specifies that the good is both originating and meets the requirements of this Chapter; and

(d) contains a set of minimum data requirements as set out in Annex 3-B (Minimum Data Requirements).

(4) Each Party shall provide that a certification 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 certification of origin, but not exceeding 12 months.

(5) Each Party shall provide that a certification 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.

(6) Each Party shall allow an importer to submit a certification of origin in English. If the certification of origin is not in English, the importing Party may require the importer to submit a translation in the language of the importing Party.

[2] Nothing in this Chapter shall prevent a Party from requiring an importer, exporter or producer in its territory that completes a certification of origin to demonstrate that it is able to support that certification.

[3] For Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam, implementation of paragraph 1 with respect to a certification of origin by the importer shall be no later than five years after their respective dates of entry into force of this Agreement.

9.3 Annex 3-B: Minimum Data Requirements

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

1. **Importer, Exporter or Producer Certification of Origin**

   Indicate whether the certifier is the exporter, producer or importer in accordance with Article 3.20 (Claims for Preferential Treatment).

2. **Certifier**

   Provide the certifier's name, address (including country), telephone number and e-mail address.

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 certification of origin and does not know the identity of the exporter. The address of the exporter shall be the place of export of the good in a TPP country.

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 the place of production of the good in a TPP country.

5. **Importer**

   Provide, if known, the importer's name, address, e-mail address and telephone number. The address of the importer shall be in a TPP country.

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 certification; and

   b. If the certification 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. See 1.3 of this Guide.

8. **Blanket Period**

   Include the period if the certification covers multiple shipments of identical goods for a specified period of up to 12 months as set out in Article 3.20.4 (Claims for Preferential Treatment).

9. **Authorised Signature and Date**

   The certification must be signed and dated by the certifier and accompanied by the following statement:

I certify that the goods described in this document qualify as originating 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 certification.

9.4 Waiver of Documentary Evidence of Origin

9.4.1 Division 1GB of Part VIII of the Customs Act provides for the waiver of COOs under certain conditions.

9.4.2 The ABF has waived the requirement to obtain or present a COO in accordance with ACN No 2020/43 for Australian Trusted Traders importing goods under CPTPP.

9.4.3 This waiver applies to goods entered for home consumption, after the latter of:

(a) The date the importer became an Australian Trusted Trader;

(b) The date CPTPP entered into force for a Party

9.4.4 That is, the waiver does not apply retrospectively.

9.4.5 Even where the requirement to obtain or present a COO is waived for Australian Trusted Traders importing goods, 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.

9.4.6 A COO is not required for imports when the total customs value of the originating goods does not exceed AUD1000[6], provided 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.

[6] For custom clearance purposes the importer will still be required to complete a self assessed clearance declaration when the customs value does not exceed AUD1000. In these circumstances a COO is not required

9.5 Refunds

9.5.1 In order to claim a refund, the importer must have a valid COO for the goods, or a copy of one, that the goods are originating in order to claim a refund under section 23 of the Customs International Obligations Regulation.

9.5.2 A refund can only be sought for Trans-Pacific Partnership originating goods that have been entered for home consumption on or after the date of entry into force of CPTPP for a particular CPTPP Party. These are:

CPTPP Party	Date on or after which a refund may be sought
Canada Japan New Zealand Mexico Singapore	30 December 2018
Vietnam	14 January 2019
Peru	19 September 2021
Malaysia	29 November 2022
Chile	21 February 2023
Brunei Darussalam	12 July 2023

9.5.3 Goods entered prior to these dates are not eligible for preferential rates of customs duty under the CPTPP.

9.5.4 Section 23 of the Customs International Obligations Regulation sets out refund reasons for the CPTPP under item 8C and 8D. The ICS refund reason code for both items is **23A8C**.

Item	Class of Goods	Circumstances
8C	Trans-Pacific Partnership originating goods	Duty has been paid on the goods.
8D	Goods that would have been Trans-Pacific Partnership originating goods if, at the time the goods were imported, the importer held: (a) a certification of origin (within the meaning of section 153ZKU of the Act) for the goods; or (b) a copy of a document mentioned in paragraph (a)	Both of the following apply: (a) duty has been paid on the goods; (b) the importer holds a certification of origin (within the meaning of section 153ZKU of the Customs Act) for the goods, or a copy of one, at the time of making the application for the refund.

Item 8C of Section 23 of the Customs International Obligations Regulation

9.5.5 Where an importer pays customs duty on Trans-Pacific Partnership originating goods while holding a valid COO for the goods, or a copy of one, when the goods were entered for home consumption, the importer may claim a refund of the customs duty paid on those goods

9.5.6 Item 8C applies to goods that are Trans-Pacific Partnership originating when entered for home consumption, and the importer did not claim preferential rates of customs duty at the time the goods were entered for home consumption. Item 8C requires the importer to hold a valid COO for the goods, or a copy of it, when the goods were entered for home consumption and that all legislative requirements are met to allow for CPTPP preferential rates of customs duty to be claimed.

9.5.7 Item 8C can be used for refunds for up to four years from the date the duty for the goods was paid. There is no requirement that the COO be valid when a refund is sought.

9.5.8 Item 8C cannot be used where the importer was not in possession of a COO for the goods, or a copy of one, when the goods were entered for home consumption.

Item 8D of Section 23 of the Customs International Obligations Regulation

9.5.9 Where an importer pays customs duty on Trans-Pacific Partnership originating goods and a valid COO for the goods, or a copy of one, was not available when the goods were entered for home consumption, the importer may claim a refund of the customs duty paid on those goods.

9.5.10 Item 8D applies to goods that would have been Trans-Pacific Partnership originating goods, if when the goods were entered for home consumption, the importer held a valid COO or a copy of one. This item is used when the duty has been paid on the goods and the importer obtains a valid CPTPP COO after the goods were entered for home consumption.

9.5.11 While Item 8D can be used for refunds up to four years from the date the duty for the goods was paid, this item can only be used while the COO remains valid.

9.5.12 Under Chapter 3 of the Agreement, a COO shall remain valid for a period of up to one year after the COO was completed and any refund is limited to this timeframe.

9.5.13 There is no time limit on when a COO can be completed.

9.5.14 Where an Australian Trusted Trader has paid duty on goods that were later understood to be Trans-Pacific Partnership originating goods, they may be able to apply for a refund of customs duty paid without the need for a COO. The Australian Trusted Trader may still be required to provide evidence on the origin of the goods to support a refund, such as commercial documentation, statements of manufacture or a valid COO if requested by the ABF.

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 additional to a COO 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 a Party 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 rates of customs duty if:

(a) it determines that the good does not meet the requirements of Division 1GB of Part VIII of the Customs Act to qualify for preferential rates of customs duty

(b) the importer, exporter, producer or authorised agent fails to comply with the relevant requirements of the Customs Act

(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

(ii) receive written consent to conduct a verification visit from the exporter or producer, after receipt of written notification for a verification visit

(iii) receive a response to the requests outlined in paragraph 9.6.1 of this Guide.

9.6.3 If, after making a claim for preferential rates of customs duty, the importer becomes aware that the goods were ineligible for a preferential rate of customs 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 ACN 2004/05 and DIBPN 2016-35.

9.6.4 Where a short payment results from an incorrectly claimed preferential rate of customs 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, they hold a COO that states that a particular preference criterion of Division 1GB 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

(b) the COO could not be clearly related to the goods in question.

9.6.6 Similarly, the protection will not apply once the ABF has given the owner of the goods or their agent an audit notice under section 214AD of the Customs Act; or the ABF exercises a power under a Customs-related law to verify the accuracy of the information included in the statement; or where the ABF has issued an infringement notice in relation to the statement; or where the ABF has commenced legal proceedings in relation to the statement.

9.6.7 Where an import declaration states that a preferential rate of customs 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 customs duty under CPTPP are set out in Division 1GB of Part VIII of the Customs Act.

9.6.8 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 when entering the goods or a later date to demonstrate any claims made.

9.6.9 If the ABF finds that preferential rate of customs duty is inapplicable or that there is insufficient evidence to justify the claim for a preferential rate of customs duty, the general rate of customs 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* 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 Chapter 3 of the Agreement, the COO shall remain valid for a period of up to one year from the date on which it was completed.

10 Record keeping obligations

10.1 Importers

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

10.1.2 Importers must still comply with all record provisions in the Customs Act.

10.2 Exporters and producers

10.2.1 Part 5 of CPTPP Regulations sets out that Australian exporters or producers of goods that make a COO for goods that are claimed to be Trans-Pacific Partnership originating goods must keep all records necessary to demonstrate that the goods are Trans-Pacific Partnership originating goods for five years after the COO is issued,.

10.2.2 The exporter or producer must also ensure all of the following:

(i) that the record is kept in a form that would enable a determination of whether the goods are originating goods in accordance with the Agreement

(ii) if the record is not in English, that the record is kept in a place and form that would enable an English translation to be readily made

(iii) if the record is kept by mechanical or electronic means, that the record is 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 claiming to be Australian originating under CPTPP

Item	Records	Producer	Exporter
1.	Records of the purchase of the goods	✓	✓*iii*
2.	Records of the purchase of the goods by the person to whom the goods are exported		✓
3.	Evidence of the classification of the goods under the Harmonized System	✓*v*	✓
4.	Evidence that payment has been made for the goods	✓	✓
5.	Evidence of the value of the goods	✓	✓
6.	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	✓	
7.	Evidence of the value of those materials	✓	
8.	Records of the production of the goods	✓	
9.	If the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased: 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	✓*i*	✓*iii*
10.	If the goods include any accessories, spare parts, tools or instructional or other information materials that were produced: 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	✓*ii*	✓*iv*
11.	If the goods are packaged for retail sale in packaging material or a container that was purchased: a. records of the purchase of the packaging material or container; and b. evidence of the value of the packaging material or container	✓*i*	✓*iii*
12.	If the goods are packaged for retail sale in packaging material or a container that was produced: 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	✓*ii*	✓*iv*
13.	A copy of the certification of origin (within the meaning of section 153ZKX 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*		

11 Origin advice rulings

11.1 Provision of origin advice rulings

11.1.1 CPTPP allows for Australian importers, exporters and producers of goods in CPTPP Parties to obtain advance rulings (see Article 5.3 of Chapter 5 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 Associated documents

- Origin Advice Rulings Guide
- Integrated Cargo System – Claiming Preferential Tariff Rates

13 Document details

13.1 Document change control

Version number	Date of issue	Author(s)	Brief description of change
1.0	21 December 2018	Trade Policy Section	Initial Version
2.0	10 August 2021	Tariff and Trade Policy Section	Revised template, updated information and layout.
2.1	9 November 2022	Tariff and Trade Policy Section	Entry into force for Malaysia from 29 November 2022 Updated information on Remanufactured goods and Sets of Goods
2.2	6 February 2023	Tariff and Trade Policy Section	Entry into force for Chile from 21 February 2023
2.3	8 June 2023	Tariff and Trade Policy Section	Entry into force for Brunei Darussalam from 12 July 2023