



Te Mana Arai o Aotearoa

NEW ZEALAND CUSTOMS SERVICE

Fact Sheet

8 Preferential Rules of Origin

What is Preference?

Preference relates to a Preferential Tariff—a lower rate of duty than the rate of duty under the Normal Tariff.

Preference is applicable to goods the 'produce' or 'manufacture' of specific countries and country groups and is provided for within New Zealand's external trade agreements where New Zealand extends Preferential Tariff access to the specified countries and country groups.

The following countries and country groups have access to the Preferential Tariff as long as the goods meet the preferential rules of origin (the preferential rules of origin provide the benchmark for entry at the Preferential Tariff), and provided of course that the tariff item in which the goods are classified has a Preferential Tariff for the country or country group:

- Australia (AU)—ANZCERTA
- Canada (CA)
- United Kingdom of Great Britain and Northern Ireland, the Isle of Man, and the Channel Islands (GB)—the preferential tariff only relates to a very limited range of motor vehicle parts
- Less and least developed countries (LDC/LLDC)—the Generalised System of Preferences Scheme for Developing Countries (GSP)
- Forum Island Countries (Pac)—SPARTECA Trade Agreement applicable to member island countries of the Pacific.

New Zealand's Preferential Rules of Origin

Part VI of the Customs and Excise Regulations 1996 sets out the preferential rules of origin for the above countries and country groups under the heading "Determination of Country of Produce or Manufacture".

As a **general guide**, for goods to meet the preferential rate of duty, the goods must meet one of the following criteria:

- (a) **Goods wholly the produce of the country/goods wholly obtained in the country/unmanufactured raw materials of the country**

Essentially, these goods are the natural products of the country, e.g., plant products (fruits, vegetables, flowers, trees), animals, minerals and other naturally occurring substances extracted from the country's soil, etc.

- (b) **Goods wholly manufactured in the country**

This category now has practical application to Australia only (refer to the specific notes under the country "Australia").

- (c) **Goods partly manufactured in the country—commonly known as the 50 Percent Rule**

The term 'partly' relates to goods not manufactured wholly in one country, i.e., where two or more countries have taken part in the manufacture of the goods. This occurs where materials are imported into the country and are used (usually along with other materials) in the manufacture of the tradable goods. Manufacture and the final process of manufacture must occur in the preference entitled country.

This rule is a value added concept where a minimum percentage of value of the good must be added within the country for which preferential origin is claimed. The percentage value added is 50 percent and is based on the cost of manufacture, viz., the cost of materials, factory labour and factory overhead expenses, and inner containers/inside packaging, **but** excludes costs incurred after manufacture, e.g., profit, general expenses, selling, advertising, etc.

The 50 percent rule consists of the requirements that:

- Manufacture and last process in the manufacture of the goods must be performed in the preference country; and
- At least one half (50 percent) of the factory cost (cost of manufacture) of the goods must consist of the following 'qualifying expenditure':
 - qualifying materials which originate in the country or group of countries (in some cases this includes New Zealand materials); and/or
 - qualifying labour and factory overheads incurred in the country or group of countries (in some cases this can be incurred in New Zealand); and/or
 - qualifying inner containers/inside packages originating in the country or group of countries (in some cases this includes New Zealand containers/packaging).

Manufacture and the Last Process of Manufacture

Manufacture involves making one thing out of another, the new being essentially different in character, identity, form, function, description, and commercial understanding from the other.

Manufacture must involve a significant change in the form or function of the thing said to be manufactured, compared with its unmanufactured or previously manufactured state.

The essence of making or of manufacture is that which is made shall be a different thing from that out of which it is made. Only where change has occurred as noted above can manufacture be said to have taken place.

On the other hand, repairing, re-conditioning, overhauling, or re-furbishing do not constitute manufacture as these are restoration processes.

Certain 'minimal operations or processes' will generally not, by themselves, be considered to constitute manufacture. Although not exhaustive, examples of such 'minimal operations or processes' includes:

- affixing of marks, labels or distinguishing signs on goods or their packages
- application of grease, anti-rust paint or protective coating
- chilling
- cleaning or washing
- crushing
- dilution with water or any other aqueous solution
- grouping of packages
- husking, shelling or stoning
- ionizing
- packing, unpacking, repacking or breaking bulk
- preparation for sale and quality control inspections
- pressing, labelling, ticketing
- removing of damaged parts
- salting
- testing or calibration
- sifting, screening or sorting
- spreading out
- ventilation or drying.

Where manufacture has occurred it is necessary that the **last process in the manufacture of the goods must be performed in the preference country.**

This **last process** (being of a substantial nature) is the last activity undertaken in respect to an article that finally transforms it into an article different from its component parts or materials and a new article is therefore manufactured. The emphasis here, therefore, is both on the process and the end result.

Note that when the 'last process of manufacture' criteria has been met, the cost of 'minimal operations or processes' not normally regarded as being one of 'manufacture' in their own right may, in some cases, be considered as qualifying expenditure.

Value Added Formula

The 50 percent Rule is a value added test expressed in monetary terms and is based on the following formula:

$$\frac{\text{Qualifying Expenditure}}{\text{Factory Cost}} \quad (\text{expressed as a \%})$$

Qualifying Expenditure = Qualifying expenditure on materials + qualifying labour + qualifying overhead (includes inner containers/packaging);

Factory Cost = Total expenditure on materials + qualifying labour + qualifying overhead (includes inner containers/packaging).

The main difference between the qualifying expenditure and factory cost can normally be traced to the fact that the qualifying expenditure **excludes** the cost of non-originating imported materials that are used in the manufacture of the goods.

For further information, readers should refer to the specific regulation relating to the country or country group to identify what costs are excluded from the factory cost, as well as what is included in the factory labour and factory overheads.

(d) Direct Shipment Rule

In the case of Canada, the United Kingdom, and less and least developed countries, the goods must be shipped from the preference country to New Zealand and not enter the commerce of another country. Note that goods in transit through a country as part of their voyage to New Zealand are not regarded as entering the commerce of a country. Refer to the specific notes under each country or country group.

Summary Notes on each Country and Country Group

Australia (ANZCERTA)

A Fact Sheet (No. 20) for exports from Australia to New Zealand (a joint New Zealand and Australian Customs Services' publication on the ANZCERTA Rules of Origin—entitled *ANZCERTA—Rules of Origin—Rules Governing Entitlement to Preferential Rates of Duty for trans-Tasman Trade*) is freely available from any New Zealand Customs Service office.

This Fact Sheet sets out in detail the requirements of the ANZCERTA Rules of Origin; readers should obtain a copy if detailed information is required.

Other available joint Australian and New Zealand Customs Services' Fact Sheets are:

- *ANZCERTA—Trans-Tasman Textile, Clothing and Footwear Rules of Origin Enquiries* (No. 21). It's a publication on the Protocol on Customs' Procedures relating to rules of origin enquiries under ANZCERTA
- *ANZCERTA—Rules of Origin for Determined Manufactured Raw Materials (DMRM)* (No. 22).

A summary of the three origin categories of the preferential rules of origin for Australia is as follows:

- Goods wholly the unmanufactured raw products (produce) of Australia. The expression "unmanufactured raw products" is defined in the regulations and is set out in Appendix 2 under the heading 'New Zealand' in the ANZCERTA Rules of Origin publication; essentially these are the natural products of Australia.
- Goods wholly manufactured in Australia from one or more of the following:
 - unmanufactured raw products (can be the origin of any country)
 - materials wholly manufactured in Australia or New Zealand or both
 - imported materials determined to be raw materials of Australia.

The third class of material in this origin category is a special provision that allows determination of imported materials as manufactured raw materials of Australia. This mechanism is known as DMRMs (Determined Manufactured Raw Materials).

DMRMs are administered by Goods (Legal), Auckland and further enquiries should be directed to that source—see 'Further Enquiries'.

A 3 percent tolerance from the wholly (100 percent) requirement is applied to allow for very minor constituents which are the manufacture of countries other than Australia and New Zealand. Note that this 3 percent tolerance only applies to the 'goods wholly manufactured in Australia' category.

- Goods partly manufactured in Australia—the 50 percent Rule:
 - The 50 percent rule (for goods manufactured in Australia from both Australian and imported materials or from wholly imported materials) requires 50 percent or more Australian qualifying expenditure (includes any New Zealand qualifying expenditure)—remember that manufacture and the last process of manufacture must be performed in Australia;
 - Both Australian and New Zealand qualifying materials can be treated wholly or partly as qualifying expenditure depending on the circumstances;
 - A 2 percent tolerance may, in certain unforeseen circumstances, be applied to the 50 percent rule resulting in a 48 percent requirement, but this provision is not automatic and requires specific approval. From New Zealand’s perspective, the tolerance relates to goods exported from Australia to New Zealand. For further information, contact Goods Policy in Wellington—see ‘Further Enquiries’;
 - The 50 percent minimum threshold can be varied, but in practice no recent variations have been made. From New Zealand’s perspective, the 50 percent variation relates to goods exported from Australia to New Zealand. For further information, contact Goods Policy in Wellington—see ‘Further Enquiries’.

Direct Shipment—There is **no** direct shipment requirement, but goods which are not shipped direct to New Zealand must not be further manufactured in another country (a country other than Australia) otherwise preference would be lost.

Canada

There are two origin categories in the preferential rules of origin for Canada:

- Goods wholly the produce of Canada are goods being the natural products of Canada.
- Goods manufactured in Canada—the 50 percent Rule:
 - The 50 percent rule applies to goods manufactured in Canada (as opposed to goods which are ‘Goods wholly the produce of Canada’—see the first origin category above) requires 50 percent or more Canadian qualifying expenditure (includes any New Zealand qualifying expenditure)—remember that manufacture and the last process of manufacture must be performed in Canada;
 - The 50 percent minimum threshold can be varied, but in practice no recent variations have been made. From New Zealand’s perspective, the 50 percent variation relates to goods exported from Canada to New Zealand. For further information, contact Goods Policy in Wellington—see ‘Further Enquiries’.

Direct Shipment—the direct shipment rule is applicable. Canadian goods which meet the above rules of origin must be shipped direct from Canada to New Zealand and not enter the commerce of another country. Note that goods in transit through a country as part of their voyage to New Zealand are not regarded as entering the commerce of a country.

United Kingdom of Great Britain and Northern Ireland, the Isle of Man, and the Channel Islands

The Preferential Tariff now only relates to a very limited range of motor vehicle parts. The GB rates are identified in the Preferential Tariff column under the Rate of Duty heading with the reference to the GB country code.

Less and Least Developed Countries (LDC/LLDC)

The preferential arrangements which New Zealand extends to goods from LDCs and LLDCs is based on an international arrangement known as the Generalised System of Preferences.

To identify the less or least developed countries, please refer to the introductory “General notes of *The Working Tariff Document of New Zealand* under the title “New Zealand Alphabetical Country List and Codes”. LDCs are denoted by the asterisk and LLDCs by the single dagger.

In some cases, LDCs may be excluded from a preferential rate of duty for specific goods, e.g., a wide range of clothing and footwear.

A summary of the two origin categories of the preferential rules of origin for LDC and LLDC are:

- Goods wholly obtained. These are effectively the natural products of the specific country or goods made entirely from those products in that country. Goods wholly obtained are specifically described in the regulations relating to LDC group or LLDC group countries and readers should refer to the respective lists for each country grouping for further explanation.
- Goods partly manufactured in either a LDC group or LLDC group country—the 50 percent rule. LDC Group Countries, the requirements are:
 - (a) That the last process in the manufacture of the goods was performed in an LDC group country.
 - (b) That, in respect of the goods, the expenditure:
 - (i) In material that is the origin of one or more LDC group countries or of New Zealand; or
 - (ii) In other items of factory or works cost (as defined in the regulations), incurred in one or more LDC group countries or in New Zealand; or
 - (iii) Partly in such material and partly in such other items as aforesaid,

Is not less than half of the factory or works cost of the goods in their finished state.

LLDC Group Countries, the requirements are:

- (a) That the process last performed in the manufacture of the goods was performed in an LLDC group country; and
- (b) That, in respect of the goods, the expenditure for the following is not less than half of the factory or works cost (as defined in the regulations), of the goods in their finished state:
 - (i) Expenditure in material that is the origin of one or more LLDC group countries or of New Zealand; or
 - (ii) Expenditure in other items of factory or works cost incurred in one or more LLDC group countries or in New Zealand; or

- (iii) Expenditure partly in any material referred to in paragraph (i) above and partly in any other items referred to in paragraph (ii) above.

Cumulative Rule—Where an LDC group country, or an LLDC group country claims materials from other countries within their respective country group as “qualifying materials”, those materials must also qualify for the origin of that LDC group or LLDC group country under the relevant set of rules. It should also be noted that a qualifying material of an LDC imported into an LLDC, would be non qualifying material for LLDC purposes and vice versa.

Donor Country Content Rule—New Zealand (as the donor country) allows “qualifying” New Zealand materials as qualifying expenditure.

Direct Shipment Rule—LDC group country goods or LLDC group country goods, which meet the rules of origin, must be shipped direct to New Zealand. The exception is that goods from one LDC group country may pass through another LDC group country, and goods from one LLDC group country may pass through another LLDC group country and not lose their entitlement to the preferential rate of duty. Goods which enter the Commerce of another country, outside their particular country group, and before importation into New Zealand will lose their preference entitlement unless the Chief Executive otherwise permits and subject to such conditions as the Chief Executive in any case approves.

Forum Island Countries (FICs)

To identify the FICs entitled to the ‘Pac’ Preferential Tariff, refer to the introductory ‘General’ notes of the *The Working Tariff Document of New Zealand* under the title “New Zealand Alphabetical Country List and Codes”; the countries are identified by the double dagger.

A publication on the South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) Rules of Origin is able to be viewed on the Pacific Islands Forum Secretariat website: <http://www.forumsec.org.fj/docs/SPARTECA/SPARTECA.htm>. Titled *A Reference Handbook for Forum Island Country Exporters*, and published in 1997, the reference handbook provides Forum Island Country exporters with detailed information to help them trade under SPARTECA with Australia and New Zealand.

There are two origin categories in the preferential rules of origin for FICs:

- Goods wholly obtained. These are effectively the natural products of a FIC, and goods made entirely in the FIC from the natural products of the country. Goods ‘wholly obtained’ is specifically described in the regulations relating to the FIC and readers should refer to that list for further explanation.
- Goods partly manufactured in a FIC—the 50 percent rule:
 - The 50 percent rule (for goods manufactured from both FIC and imported materials or from wholly imported materials) requires 50 percent or more FIC qualifying expenditure (includes any New Zealand qualifying expenditure). In specific situations, Australian qualifying materials can also be used (see next point)—remember that manufacture and the last process of manufacture must be performed in a FIC;

- Where qualifying Australian materials are used in manufacture there is a requirement that there must be at least 25 percent sole FIC expenditure content in the manufactured goods—refer to the SPARTECA publication on the Pacific Islands Forum Secretariat website;
- There is a 45 percent rule for specified items of clothing; the clothing subject to a 45 percent requirement is identified by a tariff reference (tariff heading, tariff sub-heading, or tariff item)—refer to the SPARTECA publication on the Pacific Islands Forum Secretariat website;
- A 2 percent tolerance may, in certain unforeseen circumstances, be applied to the 50 percent rule resulting in a 48 percent requirement, but this provision is not automatic and requires specific approval. From New Zealand’s perspective, the tolerance relates to goods exported from a FIC to New Zealand. For further information, contact Goods Policy in Wellington—see ‘Further Enquiries’;
- The 50 percent minimum threshold can be varied, but in practice no recent variations have been made. From New Zealand’s perspective, the variation relates to goods exported from Australia to New Zealand. For further information, contact Goods Policy in Wellington—see ‘Further Enquiries’;
- **Cumulative Rule**—A FIC may treat qualifying materials of any other FIC as qualifying expenditure. The expenditure can be treated as wholly or partly as qualifying expenditure depending on the circumstances;
- **Donor Country Content Rule**—New Zealand (as the donor country) allows qualifying New Zealand materials as qualifying expenditure. The expenditure can be treated as wholly or partly as qualifying expenditure depending on the circumstances.

Direct Shipment—there is **no** direct shipment requirement, but goods which are not shipped direct to New Zealand must not be further manufactured in another country (other than a FIC) otherwise preference would be lost.

Conditions for Entry at the Preferential Tariff

New Zealand no longer has a legal requirement for the production of prescribed certificates of origin. However, the New Zealand importer must, on entering the goods for Customs purposes, have sufficient information on which to base a claim for the preferential rate of duty. Effectively, this requires the overseas manufacturer or exporter to provide the importer with clear information as to those goods which meet the particular rules of origin.

There is now the opportunity to detail on the export documentation, e.g., the commercial documents (invoice) by way of a statement, declaration, or certification that identifies goods which meet the rules of origin.

Appendix 4 to the ANZCERTA Rules of Origin Fact Sheet (No. 20) contains an example of a declaration for Australian goods under ANZCERTA; the declaration can be modified or adapted to the other preferential rules of origin.

Customs Appeal Authority

Where a person is dissatisfied with a Customs decision relating to preferential rules of origin which imposes a new duty liability, e.g., a decision to amend an assessment of duty which results from a decision on the rules of origin imposing a non-qualification to the preference claim, an appeal can be lodged with a Customs Appeal Authority.

To lodge an appeal, a specific form (Form 14) must be completed and be filed in an office of the Tribunals Division of the Department for Courts. A fee of NZ\$400 (inclusive of GST) is required to be paid. For more information, see 'Further Enquiries'.

Preferential Origin Rulings

The New Zealand Customs Service provides for Customs Rulings on origin matters specifically relating to New Zealand's preferential rules of origin.

There are two types of origin rulings:

1. Country of 'produce or manufacture'—origin for preferential tariff purposes

This ruling provision will determine whether or not the specified goods meet the rules of origin for Preferential Tariff entry into New Zealand. For example, under the origin provisions relating to goods exported from Australia to New Zealand, a ruling could be given on whether or not the goods met the 50 percent origin rule thereby clarifying the entitlement of the goods to be entered under the Australian Tariff Preference.

2. Correct application of regulations—interpretation of any matter of the preferential rules of origin

This ruling allows for the correct application (interpretation) of any provision of the preferential rules of origin. For example, whether or not the factory manager's motor vehicle under the manager's employment contract is an allowable labour cost for the purposes of the 50 percent origin rule calculation.

Applications must be made on either Form C7A *Country of Produce or Manufacture* or Form C7B *Correct Application of Regulations* prescribed for that purpose. The two forms contain 'General notes' about each particular ruling. There is a fee of NZ \$40.00 (inclusive of GST) levied for each ruling at the time of application.

Applications are processed by Goods Policy in Wellington.

Details on the supply of the prescribed forms together with information about the origin rulings can be obtained from your nearest New Zealand Customs Service office, or contact Goods Policy in Wellington—see 'Further Enquiries'.

Other Notes

- GST is still payable at the time of importation even though the goods may qualify for the Preferential Tariff
- Where goods are imported from a particular country and the goods are not entitled to preference as the rules of origin are not met, e.g., 50 percent requirement is not achieved, the goods pay the Normal Tariff.

Available Publications

Summarising, the following publications are available from your nearest office of the New Zealand Customs Service:

- Joint Australian and New Zealand Customs Services Fact Sheets:
 - ANZCERTA—*Rules of Origin—Rules Governing Entitlement to Preferential Rates of Duty for Trans-Tasman Trade* (No. 20)
 - ANZCERTA—*Trans-Tasman Textile, Clothing and Footwear Rules of Origin Enquiries* (No. 21). It's a publication on the Protocol on Customs Procedures relating to rules of origin enquiries under ANZCERTA
 - ANZCERTA—*Rules of Origin for Determined Manufactured Raw Materials (DMRM)* (No. 22)

Further Enquiries

For further assistance or information, contact the following New Zealand Customs Service offices:

Auckland

Goods (Legal)
New Zealand Customs Service
Box 29
Auckland
Phone: 0-9-359 6655
Facsimile: 0-9-359 6733

Wellington

Valuation and Origin Section
New Zealand Customs Service
Box 2218
Wellington
Phone: 0-4-473 6099
Facsimile: 0-4-473 0017

Christchurch

Valuation and Origin Section
New Zealand Customs Service
Box 14-086
Christchurch Airport
Phone: 0-3-358 0600
Facsimile: 0-3-358 0604

For specific enquiries on: DMRMs, 2 percent tolerances (Australia and FICs only), variations to the 50 percent threshold (Australia, Canada, and FICs only) and Preferential Origin Rulings, contact:

Goods Policy

New Zealand Customs Service
Box 2218
Wellington
New Zealand
Phone: 0-4-473 6099
Facsimile: 0-4-472 3886.