

ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AGREEMENT (AANZFTA)

AANZFTA was signed on February 27, 2009 and entered into force on January 1, 2010 for Australia, New Zealand, Brunei, Myanmar, Malaysia, Philippines, Singapore, and Vietnam. These Parties have completed their ratification procedures and notified other Parties of their ratification in writing per the requirements of Article 7 of the Agreement. The remaining ASEAN countries namely Cambodia, Indonesia, Laos, and Thailand are working to ratify AANZFTA at their earliest opportunity. The Agreement will enter into force for these Parties 60 days after the dates of their respective notifications.

A. Tariff Reduction and Elimination Modality

AANZFTA provides for progressive tariff reduction and/or elimination on most products over a transition period. In general, the Parties will eliminate tariffs on a high percentage of tariff lines, using the 2005 MFN rates as the base period. While the AANZFTA allows for some tariff reduction exclusions, such products cannot exceed 1% of a Party's national tariff lines. For tariff lines not subject to elimination and included in the exclusion list, such tariffs will either be bound at the base rate (MFN 2005) or be subject to tariff reduction. Tariff commitments adhere to the updated HS 2007 tariff classification format.

There is no actual modality in writing provided for in the Agreement. Rather, the FTA uses a flexible approach and indicates tariff reduction, elimination or exclusion for each Party as relevant in each Party's actual tariff schedule. This report, however, utilizes a categorization based upon standard language in other FTAs in order to allow for an analysis of the tariff treatment of products falling under HS Chapter 84, 85 and 87. These "created" modalities include: the Fast Track, the Normal Track (divided into two sub-tracks), the Sensitive Track (divided into two sub-tracks), and the Exclusion List.

Fast Track

Tariffs for items under the so-called Fast Track were eliminated immediately upon entry into force of the Agreement, *i.e.* January 1, 2010. The total number of tariff lines under HS 84, 85 and 87 in the Fast Track include the following:

Party	Chapter 84	Chapter 85	Chapter 87
Australia	546	301	143
Brunei	711	73	62
Cambodia	39	0	49
Indonesia	959	175	17
Laos	0	0	0
Malaysia	477	291	49
Myanmar	95	0	13
New Zealand	626	365	83
Philippines	173	207	565
Singapore	All tariff lines	All tariff lines	All tariff lines
Thailand	464	176	5
Vietnam	783	226	321

Normal Track (1)

Tariffs on items placed in the so-called Normal Tack (1) will be reduced to zero by January 1, 2013. The total number of tariff lines under HS Chapters 84, 85 and 87 in the Normal Track (1) include:

Party	Chapter 84	Chapter 85	Chapter 87
Australia	65	35	5
Brunei	570	612	290
Cambodia	0	0	0
Indonesia	381	568	451
Laos	0	0	0
Malaysia	133	200	264
Myanmar	0	0	0
New Zealand	58	54	72
Philippines	1,270	562	380
Singapore	0	0	0
Thailand	168	233	68
Vietnam	0	0	0

Australia applies special slower phasing arrangements for tariffs on vehicles classified under HS Chapter 87 manufactured in Indonesia, Malaysia and Thailand as follows:

Passenger Motor Vehicles (PMVs)

- For PMVs manufactured in Indonesia, tariffs will be phased to zero by 2013, 2014, 2019, or 2020 depending on engine size or engine type.
- For PMVs manufactured in Malaysia, tariffs will be phased to zero by 2010 or 2017, depending on engine size.
- For PMVs manufactured in Thailand, tariffs will be phased to zero by 2020. Australia already receives tariff free access to Thailand for all motor vehicles from 2010 under the Thailand-Australia Free Trade Agreement (TAFTA).

Other Vehicles

- For other vehicles manufactured in Indonesia, tariffs will be phased to zero by 2013 or 2015.
- For other vehicles manufactured in Malaysia, tariffs will be phased to zero by 2010.
- For other vehicles manufactured in Thailand, tariffs will be phased to zero by 2020.

Normal Track (2)

Tariffs on items placed in the so-called Normal Tack (2) will be reduced to zero by 2020 for Australia, Brunei, Malaysia, New Zealand, Philippines, Thailand, and Vietnam, by 2023 for Laos, by 2024 for Cambodia and Myanmar, and by 2025 for Indonesia. The total number of tariff lines under HS Chapters 84, 85 and 87 in the Normal Track (2) include:

Party	Chapter 84	Chapter 85	Chapter 87
Australia	3	2	0
Brunei	155	81	553
Cambodia	1,100	481	695
Indonesia	42	5	490
Laos	1,243	732	447

Malaysia	108	5	9
Myanmar	1,334	629	506
New Zealand	6	12	1
Philippines	0	0	14
Singapore	0	0	0
Thailand	0	4	35
Vietnam	588	537	262

Sensitive Track (1)

Tariffs on items placed in the so-called Sensitive Track (1) will be reduced, but not eliminated, by 2020 for Australia, Brunei, Malaysia, New Zealand, Philippines, Thailand, and Vietnam, by 2023 for Laos, by 2024 for Cambodia and Myanmar, and by 2025 for Indonesia. The total number of tariff lines under HS Chapters 84, 85 and 87 in the Sensitive Track (1) include:

Party	Chapter 84	Chapter 85	Chapter 87
Australia	0	0	0
Brunei	0	0	0
Cambodia	217	186	118
Indonesia	35	20	170
Laos	188	34	139
Malaysia	0	0	75
Myanmar	7	64	152
New Zealand	0	0	0
Philippines	0	10	22
Singapore	0	0	0
Thailand	0	0	0
Vietnam	63	3	341

Sensitive Track (2)

Tariffs on items placed in the so-called Sensitive Track (2) will be bound at MFN base rates by 2020 for Australia, Brunei, Malaysia, New Zealand, Philippines, Thailand, and Vietnam, by 2023 for Laos, by 2024 for Cambodia and Myanmar, and by 2025 for Indonesia. The total number of tariff lines under HS Chapters 84, 85 and 87 in the Sensitive Track (2) include:

Party	Chapter 84	Chapter 85	Chapter 87
Australia	0	0	0
Brunei	0	0	0
Cambodia	62	64	38
Indonesia	0	0	0
Laos	5	0	319
Malaysia	0	0	0
Myanmar	0	75	269
New Zealand	0	0	0
Philippines	0	0	0
Singapore	0	0	0
Thailand	0	0	0

Vietnam	2	0	262
---------	---	---	-----

Exclusion List

The total number of tariff lines under HS Chapters 84, 85 and 87 in the so-called Exclusion List, which are indicated as “U” (unbound) in each Party’s schedule, include:

Party	Chapter 84	Chapter 85	Chapter 87
Australia	0	0	0
Brunei	0	0	0
Cambodia	18	34	5
Indonesia	22	0	1
Laos	0	0	0
Malaysia	0	0	0
Myanmar	5	1	3
New Zealand	0	0	0
Philippines	0	0	0
Singapore	0	0	0
Thailand	0	0	0
Vietnam	0	0	16

B. Rules of Origin

General Rules

The ANNZFTA rules of origin are based on a co-equal rule approach under which exporters can choose to meet either (i) a change in tariff classification (CTC) based rule, or (ii) a regional value content (RVC) rule. The co-equal rule applies to approximately 83% of total tariff lines. Under the CTC approach, all non-originating materials used in the production of a good must undergo a CTC at the 4-digit level (*i.e.* change in tariff heading). Under the RVC approach, a good shall be treated as an originating good if the good has an RVC of not less than 40% of the FOB value. The RVC can be calculated using either of the following:

Direct Method or Build-up Formula:

$$\text{RVC (\%)} = \frac{\text{AANZFTA Material Cost} + \text{Labor Cost} + \text{Overhead Cost} + \text{Profit} + \text{Other Costs}}{\text{FOB Value of Goods}} \times 100\%$$

Indirect Method or Build-down Formula:

$$\text{RVC (\%)} = \frac{\text{FOB-Value of Non-Original Materials}}{\text{FOB Value of Goods}} \times 100\%$$

Approximately 1% of total tariff lines have an RVC-only approach, mainly those in the automotive sector. A CTC-only approach applies to about 10% of total tariff lines, primarily textiles and clothing products. About 1.4% of total tariff lines are covered by special rules for waste and scrap products. For the remaining 4.5% of tariff lines covering agricultural and aquaculture goods, these products will need to meet the rules of wholly produced or obtained within the ANNZFTA region.

The product specific rules of origin (PSR) provide a choice of: (i) an RVC based rule of origin, (ii) a CTC-based rule of origin, (iii) a specific manufacturing or processing operation, or (iv) a

combination of any of these rules. The PSRs are outlined in Annex 2 and attached to the Rules of Origin Chapter of the Agreement.

Rules on Accumulation of Inputs

Originating materials from any of the AANZFTA Parties, if they are incorporated into a good produced in the exporting Party and comply with the origin requirements, may be regarded as originating materials of the exporting Party.

De Minimis

AANZFTA provides relief when a good does not qualify as an originating good only because some non-originating materials of little value fail to meet an HS classification change requirement. If the total value of the non-originating materials in question is no more than 10% of the FOB value of the good (for all HS Chapters, except Chapters 50 to 63 which provide a choice between weight or value), then the exporter or producer can consider the good to be an originating good.

C. Certification Rules

General Description

The rules of origin are supported by a requirement that exports be accompanied by a Certificate of Origin (Form AANZ) issued by a designated authority from each Party. Relevant provisions can be found in the Annex on Operational Certification Procedures (OCP) and Appendix 1 with respect to minimum data requirements for certificate of origin (CO) application. The CO confirms that the goods meet the rules of origin set out in Chapter 3 of AANZFTA. The Agreement allows multiple goods declared on the same CO provided that each good is originating in its own right. If a problem occurs with one of the multiple goods listed on the CO, this will not affect or delay the granting of preferential treatment of the remaining goods listed on the CO. AANZFTA does not require a CO for shipments valued not more than USD 200 FOB value or such higher amount specified in the importing Party's domestic laws, regulations or administrative practices.

Back-to-Back Certificate of Origin

The Issuing Authority of an intermediate Party may issue a back-to-back CO as a new CO for the originating good, if an application is made by the exporter or its authorized agent, and provided that:

- A valid original CO or its certified true copy is presented;
- The period of validity of the back-to-back CO does not exceed the period of validity of the original CO;
- The consignment which is to be re-exported using the back-to-back CO does not undergo any further processing in the intermediate Party, except for repacking or logistics activities such as unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party; and
- The back-to-back CO contains relevant information from the original CO in accordance with the minimum data requirements. The FOB value shall be the FOB value of the goods exported from the intermediate Party.

Third-party Invoicing

The Customs Authority of the importing Party may accept a CO in cases where the sales invoice is issued either by a company located in a third country or by an exporter for the account of that company, provided that the goods meet the rules of origin requirements.

Advance Rulings

AANZFTA allows for each Party to provide in writing advance rulings regarding tariff classification, questions arising from the application of the principles of the Agreement on Customs Valuation and/or origin of goods. Each Party shall adopt or maintain procedures for advance rulings as stipulated in Article 8 of Chapter 4 of the Agreement.

Authorized Bodies

In ASEAN countries, the authorized bodies are government bodies allowed to issue COs in accordance with the laws, regulations and policies applying to that body. These include:

ASEAN Member	Issuing Authority
Brunei	Ministry of Foreign Affairs and Trade
Cambodia	Ministry of Commerce
Indonesia	Ministry of Trade (Directorate General of International Trade)
Laos	Ministry of Commerce
Malaysia	Ministry of International Trade and Industry (Trade Services Division)
Myanmar	Ministry of Commerce
Philippines	Bureau of Customs (Export Coordination Division)
Singapore	Singapore Customs (Documentation Specialist Branch)
Thailand	Ministry of Commerce (Department of Foreign Trade, Bureau of Trade Preference Development)
Vietnam	Ministry of Trade (Export-Import Managing Department)

In Australia, the bodies authorized to register exporters and issue COs are the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (AiG). New Zealand does not require COs for products imported from ASEAN (or Australia) in line with its long-established practices. However, New Zealand exporters are required to obtain COs for products exported to ASEAN counterparts.

Post-Exportation Examination

Where importing Customs of any Party has reasonable grounds to believe that the goods are not originating from the AANZFTA Parties, it may introduce retroactive checking measures to authenticate the validity of the CO or other documentary evidence to verify the eligibility of goods for preferential treatment in the following steps:

- Verify that the application and CO are duly completed and signed by the authorized signatory;
- Request for records relating to the production, manufacture or export of the good;
- Issue written requests to the issuing authority of the exporting Party for information

from the exporter or producer. The recipient of a request must provide the information requested within a period of 90 days from the date the written request is made.; and

- Arrange to visit the factory or premises of the manufacturer or exporter of the good, with the consent of the relevant manufacturer or exporter. The Customs Authority of the importing Party must issue a written request to the Issuing Authority/Body of the exporting Party at least 30 days in advance of the proposed verification visit.

During an investigation, the importing Party may suspend the application of the tariff preference. Each Party has the right of appeal in matters to the relevant government authorities relating to eligibility for tariff preferences.

Document Retention Requirements

The Issuing Authority/Body, manufacturer, producer, exporter, importer, and their authorized representatives must maintain records relating to the importation, exportation and production of the good for at least three years after the date of exportation or importation. These records may be in electronic format.

D. Relevant FTA Provisions

- Legal Text:
<http://www.dfat.gov.au/trade/fta/asean/aanzfta/index.html#FullText>
- Tariff Schedules:
http://www.dfat.gov.au/trade/fta/asean/aanzfta/annexes/annex1_tc.html
- Rules of Origin, Chapter 3:
<http://www.dfat.gov.au/trade/fta/asean/aanzfta/chapters/chapter03.html>
- Product-Specific Rules of Origin:
http://www.dfat.gov.au/trade/fta/asean/aanzfta/annexes/annex2_psr.html
- Annex on Operational Certification Procedures:
<http://www.dfat.gov.au/trade/fta/asean/aanzfta/chapters/chapter03a.html>