

NEW ZEALAND – THAILAND CLOSER ECONOMIC PARTNERSHIP AGREEMENT (NZTCEPA): INFORMATION ABOUT THE RULES OF ORIGIN - IMPORTS

This fact sheet outlines the rules of origin for goods imported into New Zealand that are the subject of a claim for the tariff preference applied under Chapter 4 and Annex 2 of the New Zealand - Thailand Closer Economic Partnership Agreement (NZTCEPA).

The fact sheet should be used only as a general guide. It does not set out every requirement of the rules of origin. Accordingly, it is strongly recommended that the fact sheet be read in conjunction with the Customs and Excise Act 2018, the Customs and Excise Regulations 1996 and Schedule 3 to those Regulations: Thai-Goods containing non-originating materials (see www.customs.govt.nz)

CHANGE IN TARIFF CLASSIFICATION (CTC) APPROACH

The NZTCEPA was New Zealand's first trade agreement where the change in tariff classification (CTC) approach was used.

The CTC approach allows a good produced in New Zealand or in Thailand to be treated as originating if it is classified in a different classification within the internationally-accepted Harmonized Commodity Description and Coding System (HS) from any non-originating materials (as defined in regulation 51F) used in its production.

In most cases, when goods imported from Thailand are not "wholly obtained" (see "wholly obtained goods" opposite), the principal requirement is that those goods must have undergone a process which resulted in a change in tariff classification as set out in Schedule 3 to the Customs and Excise Regulations 1996.

WHAT ARE ORIGINATING GOODS?

Particular goods are treated for the purposes of the Customs and Excise Act 2018 and the Tariff Act 1988 to originate in Thailand if the goods:

- » are goods wholly obtained in New Zealand or Thailand; or
- » are goods that satisfy the requirements of Schedule 3 as a result of processes performed entirely in New Zealand or Thailand, or both; and did not enter the commerce of another country after export from Thailand and before import into New Zealand, unless the Comptroller of Customs otherwise permits subject to conditions approved by the Comptroller either generally or in a particular case.

The following points below provide more detailed information on the methods of determining whether a good imported from Thailand is originating.

WHOLLY OBTAINED GOODS

Wholly obtained goods means goods originating in New Zealand or Thailand that are:

- (a) mineral goods extracted in New Zealand or Thailand; or
- (b) agricultural goods gathered, harvested, or picked in New Zealand or Thailand; or
- (c) live animals born and raised in New Zealand or Thailand; or
- (d) goods obtained from live animals in New Zealand or Thailand: or
- (e) goods obtained directly by capturing, farming, fishing, gathering, hunting, or trapping in New Zealand or Thailand; or

- (f) goods (including fish, plants, shellfish, and other marine life):
 - (i) taken from within the territorial sea or the relevant maritime zone of Thailand seaward of the territorial sea under Thailand's applicable laws in accordance with the United Nations Convention on the Law of the Sea 1982, or taken from within the territory sea or the relevant maritime zone of New Zealand; or
 - (ii) taken from the high seas by a vessel flying, or entitled to fly, the flag of New Zealand or Thailand.
- (g) goods obtained or produced, from goods referred to in paragraph (f), on factory ships flying, or entitled to fly, the flag of New Zealand or Thailand; or
- (h) goods taken by:
 - (i) Thailand, or a person of Thailand, from the seabed or subsoil beneath the seabed of the territorial sea or the continental shelf of Thailand, in accordance with the United Nations Convention on the Law of the Sea 1982; or
 - (ii) New Zealand or a person of New Zealand, from the seabed or subsoil beneath the seabed of the territorial sea or the continental shelf of New Zealand.
- (i) waste and scrap derived from production of goods in New Zealand or Thailand, or used goods collected in New Zealand or Thailand, if those goods are fit only for the recovery of raw materials; or
- (j) produced entirely in New Zealand or Thailand exclusively from goods referred to in paragraphs (a) to (i) above.

Such goods are typically natural resource-based products obtained or produced in New Zealand or Thailand, or by or onboard Thai or New Zealand ships, and final products made from these that do not include any non-originating materials. (Waste and scrap, and used goods, covered by (i) above, are an exception to this, and are treated for the purposes of the Thai rules of origin regulations as containing no non-originating materials).

Examples: Minerals mined in Thailand, and gold jewellery made in Thailand solely from gold mined in Thailand are examples of goods qualifying as originating under these wholly obtained goods provisions.

GOODS PARTLY PRODUCED IN NEW ZEALAND AND/OR THAILAND

These are goods manufactured in New Zealand or Thailand, or both, and are produced wholly or, in part, from non-originating materials. A general outline of the criteria conferring originating status is as follows:

- » for goods other than those of Tariff chapters 50 to 64 inclusive, a change in tariff classification (CTC) as specified by the product-specific rule of origin applicable to the tariff classification of the finished good.
- » for goods of Tariff chapters 50 to 64 inclusive, a CTC plus a regional value content (RVC) of not less than 50 percent of the export FOB value of the good must be achieved.
- » for goods classified in Chapter 27 through to and including Chapter 40, an alternative chemical reaction rule can be utilised to confer originating status on the final good. In such instances, compliance with the chemical reaction rule, or alternatively the product-specific rule of origin specified in Schedule 3 to the Regulations, will confer originating status on a good.

Note:

A chemical reaction means a process, including a biochemical process, which results in a molecule with a new structure by breaking intramolecular bonds and forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule. The following are not considered to be a chemical reaction for the purposes of this definition:

- dissolving in water or solvents.
- the elimination of solvents, including solvent water.
- the addition or elimination of water of crystallisation.
- » the production process that generates the change in tariff classification of the materials used to produce a good must be performed in New Zealand or Thailand, or both.
- » the goods must not enter the commerce of another country after export from Thailand and before import into New Zealand, unless the Comptroller of Customs otherwise permits subject to conditions approved by the Comptroller either generally or in a particular case.

Note:

Except where goods are subject to a RVC, goods produced by minimal processes, (operations or processes which contribute minimally to the essential characteristics or properties of goods) with some examples being, drying, freezing, classification or grading, grouping in packets, packing, dilution, simple assembly, etc, must not be treated as originating goods even where those minimal processes meet change in tariff classification requirements specified in Schedule 3 to the Regulations. Packing materials and containers in which the goods are packaged for transport are not included in determining the origin of the good.

Materials originating in New Zealand that are used in the production of particular goods in Thailand are deemed to originate in Thailand.

Any material of unknown or unconfirmed origin is treated as a non-originating material.

The de minimis rule

Particular goods that do not satisfy a change in tariff classification required by Schedule 3 are originating goods if:

- (a) the value of non-originating materials used in their production does not exceed 10 percent of the FOB value of the goods; and
- (b) the good meets all other applicable criteria of the Regulations.

WHAT ARE NON-ORIGINATING MATERIALS?

Non-originating materials are those materials used in the production of goods in New Zealand or Thailand that would not qualify as originating under the Regulations. These are:

- » materials that are not wholly obtained in New Zealand or Thailand.
- » materials or components imported from a third country.
- » materials or components that are made in New Zealand or Thailand using imported inputs which do not meet the applicable rule of origin.

GOODS THAT MEET THE REQUIREMENTS OF A PRODUCT SPECIFIC RULE

(a) Change in Tariff Classification (CTC)

By and large, the product-specific rules of origin for Thai goods are CTC based. This requires the production process within New Zealand and/or Thailand to result in a good classified in a different tariff heading (Harmonized System 4-digit) or subheading (Harmonized System 6-digit), as appropriate, than that of any non-originating materials.

To determine what the product-specific rule is, and whether or not a good is an originating good, a manufacturer, importer, or exporter must first determine the tariff classification of the good and the tariff classification of any non-originating materials that go into the production of that good.

The tariff classification of the traded good can then be used to locate the product-specific rule related to that good in Schedule 3 to the Regulations.

The difference between the classification of the traded good and the classification of the material(s) that went into the manufacture of that good will determine whether or not the conditions of the specific CTC rule have been met. The following example illustrates how a CTC rule operates in practice.

- » a Thai producer of steel nails classified in HS heading 73.17 uses non-originating steel wire classified in HS heading 72.17.

The rule for steel nails of HS heading 73.17, specified in Schedule 3, reads as follows:

“Change to heading 7317 from any other heading.”

The result of this rule is that the steel nails are treated as originating in Thailand. This is because the non-originating steel wire is classified within a different tariff heading from the steel nails.

Some CTC rules include the phrase, “except from [heading / subheading specified]”. The “except-from” rules are intended to ensure that processing deemed to be of minimal significance does not, in itself, confer origin.

A comment on packaging materials and containers

Packaging materials and containers in which goods are packaged for retail sale, if classified with those goods, are not included in determining whether non-originating materials used in the production of those goods have undergone the applicable CTC as set out in Schedule 3.

A comment on accessories, spare parts, and tools

If goods are subject to a CTC requirement (as set out in Schedule 3) any accessories, spare parts, or tools delivered with originating goods that form part of the standard accessories, spare parts, or tools for those goods **must** be treated as originating goods and must be disregarded in determining whether or not all the non-originating materials used in the production of the originating goods undergo the applicable CTC, if:

- » the accessories, spare parts, or tools are not invoiced separately from the originating goods; and
- » the quantities and value of the accessories, spare parts, or tools are customary for the originating goods.

(b) The 50 percent regional value content rule

This rule (required in respect of goods classified in Chapters 50 to 64) departs from New Zealand’s traditional 50 percent threshold “ex factory cost—added value” approach. Instead, the NZTCEPA provides for a “build down” formula calculated from the export FOB value of the good. In short, this formula requires the CIF value of all non-originating materials used in the production of a good to be deducted from the export FOB value. To comply with the rule, the outcome must be not less than 50 percent of the export FOB value. The formula is as follows:

$$RVC = \frac{FOB - VNM}{FOB} \times 100$$

- » RVC is the regional value content expressed as a percentage.
- » FOB is the FOB value of the goods.
- » VNM (value of non-originating materials) is the CIF value of non-originating materials.

Example

A producer sells a good for \$100 in an arm's length sale. The CIF value of non-originating materials used in production of the good is \$40.

Using the above formula, the producer calculates the RVC as follows:

$$RVC = \frac{100 - 40}{100} \times 100 = 60\%$$

In this example, deducting the CIF value of non-originating materials from the FOB value results in residual qualifying content of 60 percent, which means the good, subject to also meeting the CTC requirement, is originating and entitled to tariff preference.

A comment on packaging materials and containers

If the goods are subject to an RVC requirement, then the value of the packaging materials and containers used for retail sale will be counted as originating or non-originating, as the case may be, in calculating a RVC.

A comment on accessories, spare parts, and tools

If the goods are subject to an RVC requirement, then the value of the standard accessories, spare parts, or tools for those goods is taken into consideration as originating materials or non-originating materials, as the case may be, in calculating the RVC of the goods.

Note:

This provision does not apply where the accessories, spare parts, or tools have been added solely for the purposes of artificially raising the RVC of the goods.

WHAT CONDITIONS ARE PRECEDENT TO ENTRY AT PREFERENTIAL RATES?

The Customs and Excise Act 2018 places the onus upon the importer to make a correct and accurate declaration in respect to the origin of goods.

An importer in New Zealand may claim the applicable tariff preference on the basis of a declaration made by the producer or exporter. In this respect the Thai producer or exporter may certify on the face of the export invoice (in English) one of the following declarations.

Goods wholly obtained

"I (state name and position) hereby declare that the goods enumerated on this invoice originate in (New Zealand) (Thailand) and comply with the provisions of Article 4.2.1(a) of the NZTCEPA".

Goods partly produced

"I (state name and position) hereby declare that the goods enumerated on this invoice originate in (New Zealand) (Thailand) and satisfy the requirements of Article 4.2.1(b) and Annex 2 of the NZTCEPA."

In circumstances where goods are invoiced from a third country but exported directly from New Zealand or Thailand, the following declarations will apply:

Goods wholly obtained

"I (state name and position) of (state name of entity invoicing the goods) being the authorised agent of (state name of producer of the goods) hereby declare that the goods enumerated on this invoice originate in (New Zealand) (Thailand) and comply with the provisions of Article 4.2.1(a) of the NZTCEPA".

Goods partly produced

"I (state name and position) of (state name of entity invoicing the goods) being the authorised agent of (state name of producer of the goods) hereby declare the goods enumerated on this invoice originate in (New Zealand) (Thailand) and satisfy the requirements of article 4.2.1(b) and Annex 2 of the NZTCEPA."

Note:

- (1) Provided the meaning is clear, minor variations of the declaration are acceptable, and
- (2) While such certification may be accepted as attesting to the origin of the goods, it should not be regarded as determinative of this status. Customs may request further evidence that the goods are the origin of New Zealand or Thailand as the case may be. This evidence may require the importer to demonstrate the exporter is also a manufacturer and produced the goods for which preference is claimed. Where a regional value content rule also attaches to a good's preferential status, further details may be called for.

WHAT ARE ADVANCE RULINGS?

While the NZTCEPA requires advance rulings to be available only in respect of tariff classification, the Customs and Excise Act 2018 also provides for rulings to be issued on matters relating to the origin of goods. These rulings are, subject to certain conditions, binding on Customs, and provide a degree of certainty as to the origin of goods imported to New Zealand.

HOW DO I APPEAL AGAINST CUSTOMS DECISIONS?

The Customs Appeal Authority (CAA) is an independent authority that provides an avenue to appeal against decisions made by Customs, including determinations as to the origin of goods. The appeal should be addressed directly to the CAA and be accompanied by the relevant fee of \$410. The appeal must be lodged within 20 working days after the decision of the Comptroller was given.

The address for sending the appeal is:

The Registrar
Customs Appeal Authority
Tribunals Unit
Private Bag 32001
Panama Street
WELLINGTON 6146
Tel: 04 462 6660
Fax: 04 462 6686
Email: tribunals@justice.govt.nz
Website: [www.justice.govt.nz/tribunals/
customs-appeal-authority](http://www.justice.govt.nz/tribunals/customs-appeal-authority)

WHAT IS GOODS AND SERVICES TAX (GST)?

Goods and Services Tax (GST) is payable on most goods imported to New Zealand, although they may not attract a tariff.

HOW DO I OBTAIN FURTHER INFORMATION?

For any rules of origin queries or questions, contact:
Valuation, Origin and Classification
New Zealand Customs Service
PO Box 29
Shortland Street
Auckland 1140
Telephone: 09 927 8000
Email: voc@customs.govt.nz

FOR FURTHER INFORMATION

Contact your nearest office of the New Zealand Customs Service, visit the Customs website www.customs.govt.nz or call Customs on 0800 428 786 (0800 4 CUSTOMS).