

# **PACIFIC AGREEMENT ON CLOSER ECONOMIC RELATIONS (PACER) PLUS**

# **RULES OF ORIGIN MANUAL**



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**OCEANIA CUSTOMS ORGANISATION**

## **DISCLAIMER**

This Manual intends to help Customs administrations and its stakeholder understand the Rules of Origin (ROO) under PACER Plus.

It is compiled by the Oceania Customs Organisation and no representation is made or warranty (either expressed or implied) given as to the completeness of accuracy of the information it contains.

Although this Manual is based on the official PACER Plus legal texts (Chapter 2 and Chapter 3), it is not a substitute for those official texts and must therefore be used in conjunction with them.

The examples used in the Manual are merely for illustrations purposes and do not constitute any commercial or other professional advice.

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## Abbreviations & Acronyms

HS	Harmonized Commodity Description and Coding System (Harmonized System)
LDC	Least Developed Country
MSGTA	Melanesian Spearhead Group Trade Agreement
PIC	Pacific Island Countries
PICTA	Pacific Island Countries Trade Agreement
SPARTECA	South Pacific Regional Trade and Economic Cooperation Agreement
SPS	Sanitary and Phytosanitary
WTO	World Trade Organisation

## 1. Introduction

The aim of this manual is to provide assistance for economic operators and customs authorities in understanding and applying the rules of origin (ROO) on determining the originating status of a product under the Pacific Agreement on Closer Economic Relations (PACER) Plus.

The Manual:

- provides an overview of the tariff commitments contained in PACER Plus;
- describes the ROO provisions of the Agreement;
- outlines the Agreement's requirements on the use of Declaration of Origin in order to make use of tariff preferences when a good is imported into a PACER Plus Party from the PACER Plus region; and
- notes the Agreement's provisions on verification, including its requirements on retention of records demonstrating that a good meets PACER Plus ROO.

The manual is intended to ensure the uniform interpretation and application of the provisions of Chapter 3 of PACER Plus.

PACER Plus is a free trade agreement between Australia and New Zealand and a number of the Forum Pacific Island Countries. PACER Plus builds on existing trade agreements: the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) (1980) and the original PACER Agreement (2001) and covers goods, services, labour, sanitary and phytosanitary (SPS) measures and other issues.

PACER Plus was signed in 2017 by Australia, New Zealand and nine Pacific Islands Countries, namely: Cook Islands, Kiribati, Nauru, Niue, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

Australia, New Zealand and Samoa have ratified the Agreement and the other signatory PICs are working towards ratifying it. The Agreement will enter into force 60 days after the eighth signatory to ratify the Agreement notifies the Depositary that they have completed their domestic processes.

## 2. UNDERSTANDING RULES OF ORIGIN

### 2.1 Rules of Origin

ROOs help determine the “nationality” of a good. It establishes the goods’ eligibility for preferential tariff treatment under a Free Trade Agreement (FTA). Goods that satisfy the ROOs and other applicable requirements under an FTA may be considered as an originating good and be allowed to pay lower or no import tariffs when imported into a Party under the FTA.

ROOs vary from FTAs to FTAs. For example, ROO for Pacific Island Countries Trade Agreement (PICTA) and Melanesian Spearhead Group Trade Agreement (MSGTA) are different as such, a good which qualify for a FTA may not be able to qualify as an originating good in other FTAs.

### 2.2 What is an originating good?

A good is considered to be originating if it meets the origin criteria stipulated in the ROO chapter of FTA. An originating good in an exporting Party can be broadly classified under 2 categories –

- a) A good that is Wholly Obtained (WO) i.e. wholly grown or produced; or
- b) A good that is manufactured using non-originating and often originating materials.

### 2.3 What are non-originating materials?

Non-originating materials are materials/components –

- a) Imported from a country that is not a Party to the FTA;
- b) Produced in one of the Parties to the FTA but are not able to meet the Rules of Origin under the FTA; or
- c) Whose origin cannot be determined.



## 2.4 Origin Criteria

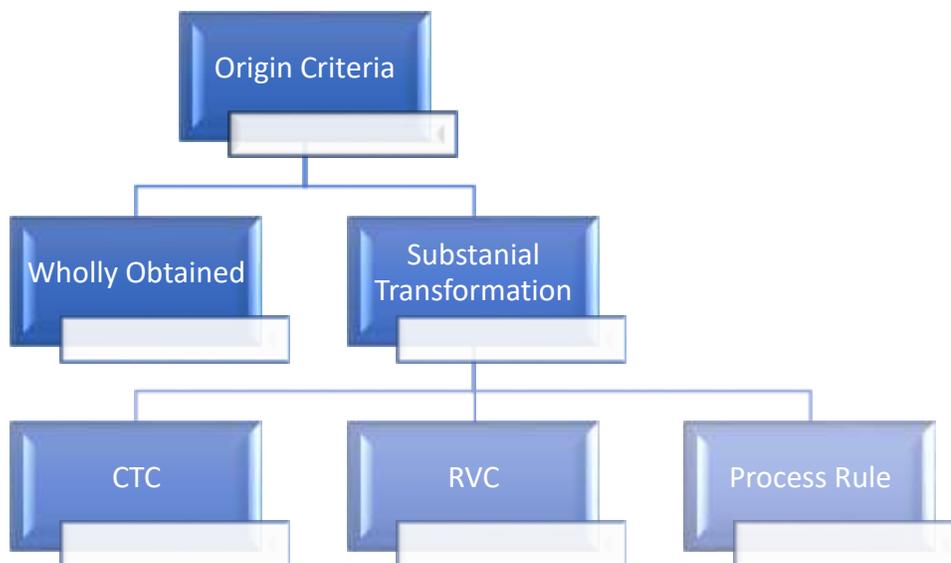
A **good is considered to be Wholly Obtained (WO)** if it occurs naturally; is a plant that is grown and harvested; or is an animal that is born and raised; or it is a waste that is derived from production in the country of export.

It also includes goods which are produced entirely from originating materials.

**Goods that are produced using non-originating materials** will have to undergo substantial transformation in one or more of the Parties for the good to be qualified as originating. The methods used to measure the transformation change are:

- a) Change in Tariff Classification (CTC)
- b) Regional Value Content (RVC)
- c) Process Rule

These 3 methods can be used in combination or standalone, depending on the origin criteria (on) for the good in a FTA. The goods may qualify via one or a combination of the methods listed above, depending on the FTAs.

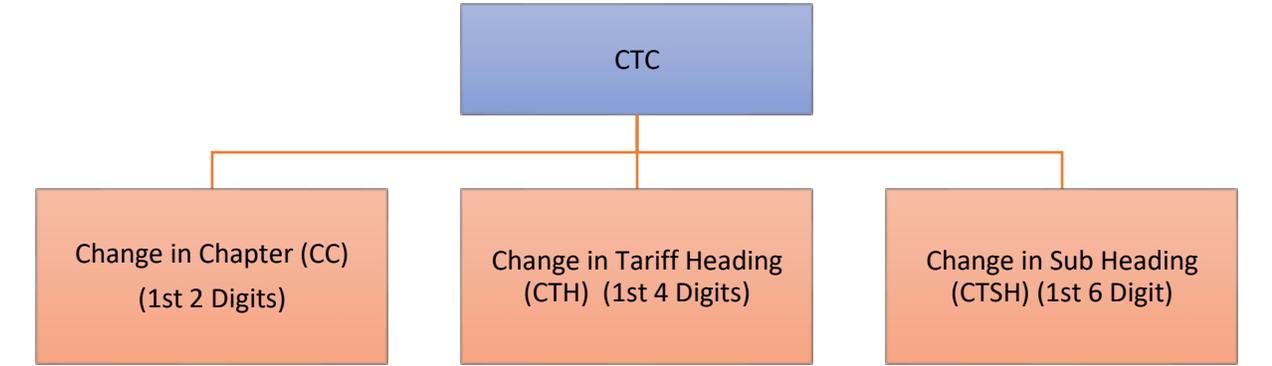


### 2.4.1 Change in Tariff Classification (CTC) Method

The CTC method is applicable only to non-originating materials. To qualify under this origin criterion, non-originating materials that are used in the production of the good must not have the same HS classification (e.g. Chapter level, Heading level or Sub Heading Level) as the final good.

Depending on the FTA requirements, the good would have to undergo either a change in Chapter, Heading or Sub Heading level in order to qualify for preferential treatment under the FTA.

Therefore, to use this method, manufacturers and/or exporters are required to know the HS classification of the final good to be exported and the non-originating raw materials used in the production of that final good.



**Example**

Good: Strawberry Jam (HS 2007.99) manufactured in Samoa

Rules of Origin criteria: Change in Tariff Heading (PACER Plus)

Assessment: The strawberry jam is classified under Chapter 20 while the strawberries fruit and sugar are classified under Chapters 08 and 17 respectively. The strawberries fruit and sugar are non-originating since they are imported from American Samoa and Fiji respectively. The non-originating materials, strawberries and sugar has changed at Chapter level. The strawberry jam is an originating good because a change from Chapter 08 and 17 to Chapter 20 has occurred.



**2.4.2 Regional Value Content (RVC) Method**

This rule requires that a certain percentage of the good’s value originates in one or more of the Parties to the Free Trade Agreement for the good to be considered as original. There are a few approaches but the following two methods are commonly used to calculate RVC:

- ❖ Build-Up (BU); or
- ❖ Build-Down (BD)

The main reason for including these two methods is that it gives an exporter the flexibility to choose one of them as exporters may have different systems to record and manage information.

**BU Approach**

In this method, all the originating materials used in the production, production costs, and profit are added to calculate the ‘*originating content*’ as a percentage of the value of the good to be exported (FOB).

$$RVC = \frac{\text{Value of locally produced materials+direct labour \& overhead+profit}}{\text{FOB Value}} \times 100$$

## BD Approach

In this method, all the non-originating materials used in the production are added to calculate the 'non-originating content' as a percentage of the value of the good to be exported (FOB).

$$RVC = \frac{\text{FOB Value} - \text{Value on non-originating materials}}{\text{FOB Value}} \times 100$$

### Example

Good: Biscuit (HS 1905.31) manufactured in Samoa

Rules of Origin: RVC of not less than 40percent of the FOB value

Raw Material	Origin	Value
Flour (Originating)	AU	\$4
Sugar (Originating)	AU	\$2.50
Flavor (Originating)	NZ	\$3.00
Eggs (originating)	WS	\$1.00
Direct Labour & Overhead		\$2.00
Profit		\$2.50
<b>FOB</b>		<b>\$15</b>

$$RVC \text{ (BU Approach)} = RVC = \frac{15}{15} \times 100 = 100\%$$

$$RVC \text{ (BD Approach)} = RVC = \frac{15-0=15}{15} \times 100 = 100\%$$

Assessment: We can use RVC method to show that the originating content is 100% but this is a good example for a production situation to illustrate Article 2(b) of Chapter 3. This production situation can be described as "a good produced entirely in one or more of the Parties, by one or more producers, exclusively from originating materials", This is an originating good

## 2.4.3 Process Rule Method

FTAs often include certain manufacturing processes as processes that substantially transform the final product. Examples are: processing of fish, crushing or grinding spices, refining, chemical reaction process and textile manufacturing processing..

### Example

FTA: PACER Plus

Good: Polypropylene paste (HS 3902.10)

Rules of Origin under PACER Plus: Any good of Chapter 28-40 shall be considered to be originating good if they undergo a chemical reaction, purification, mixtures and blends, isomer separation in a Party.

Assessment: Polypropylene paste is produced from propylene by a process known as metallocene catalysis polymerization, which is a form of chemical reaction. As, Polypropylene meets the ROO under PACER Plus, it is an originating good.

## 2.5 Harmonised System (HS) of Tariff Classification

HS comprises about 5,000 commodity groups; each commodity is harmonised internationally at the six-digit level of the HS code. They are arranged in a legal and logical structure and supported by well-defined rules to achieve uniform classification.

The HS is arranged into 97 chapters covering all products. Each Chapter is divided into Headings, Headings can be divided into subheadings.

Chapter 62.....Article of apparel and clothing accessories, not knitted or crocheted  
    Heading 6209.....Babies' garments and clothing accessories  
        Subheading 6209.10.....Of wool or fine animal hair

As shown above, Chapter means the two-digit Chapter number. Headings are identified with a four-digit number, subheadings have a six-digit number. Subheadings give a more specific description than headings. At domestic level, countries normally extend their tariff codes beyond six digit to facilitate better classification of goods.

Under the HS, the Chapter, heading, and subheading numbers for any good are identical in any country using the HS. However, tariff codes beyond the sixth digit a country's domestic tariff are not harmonized - each trading nation individually assigns them.

You will need to understand how HS is structured before you can apply them in ROO as the origin criteria(on) of a good in the Product Specific Rule (PSR) Annex are arranged according to the HS classification numbers.

## 3. PACER Plus Rules of Origin

### 3.1 Product Coverage

Chapter 2 of PACER Plus sets out the rules concerning trade in goods and the tariff commitments of each Party is listed in the Schedule to Annex 2-A.

The Pacific island countries' tariff commitments under PACER Plus take into account their unique economic situation as small island developing economies and individual capacities including Least Developed Country (LDC) status, WTO membership and reliance on tariff revenues.

#### **Most-Favoured Nation (MFN) tariff treatment**

PACER Plus requires a Party to extend immediately and unconditionally to other Parties treatment no less favourable than provided to non-parties (this principle is known as 'most favoured nations treatment'). MFN tariff treatment provides a guarantee of non-discrimination where an FTA partner excludes some goods from liberalisation or has yet to complete its scheduled liberalisation and negotiates an FTA with a third country with liberalisation commitments or faster liberalisation in relation to those goods.

In practice, the PACER Plus MFN provision will mean that any improvements on goods outcomes compared with PACER Plus will flow to Australian businesses should the Pacific island countries negotiate an FTA with a developed or significant trading country from outside the region.

#### **Flexibilities**

PACER Plus provides flexibilities to Pacific island country Parties when they undertake scheduled tariff reductions. These flexibilities recognise Pacific island countries' limited resource base, geographical isolation and vulnerability to natural disasters.

- Pacific island countries can renegotiate their tariff commitments through provisions for compensated modification or withdrawal of tariff concessions if they experience difficulties in implementing them before or after final implementation of scheduled tariff reductions
- Pacific island countries can apply a transitional safeguard if a sudden influx of imports causes or threatens serious injury when tariffs are reduced
- Pacific island countries can pause their tariff reductions – or even raise tariffs temporarily – for the purpose of industry development if certain criteria are met.

Australia and New Zealand have committed to bind (guarantee) their tariffs on Pacific island country products at zero, providing certainty for Pacific island country exporters. Pacific island countries' tariff commitments will extend or reinforce predictable, secure and, over time, more liberal market access for their exports to the region.

Pacific island countries have committed to liberalise tariffs. See the [Schedule of tariff commitments](#) by each PACER Plus Party.

## Transparency

Transparency provisions on trade in goods and the broader Agreement should provide clearer information to businesses trading in the Pacific. The Trade in Goods Chapter requires each Party to:

- publish all laws, regulations, judicial decisions and administrative rulings that affect trade, all international trade agreements, and any new impost, restriction or prohibition on imports
- administer all such measures in a uniform, impartial and reasonable manner
- exchange information with other Parties on all rates of duty, all fees and charges, and new or modified import licensing procedures
- exchange and publish up-to-date information on these matters, and
- establish contact points to transmit and receive requests and notifications from Parties, as well as to facilitate requests for information and for technical discussions on measures affecting trade.

## 3.2 Determination of Origin

Under Chapter 3 of PACER Plus, good will be considered as originating good if:

- (a) is wholly obtained or produced in a Party as defined in Article 3;
- (b) is produced entirely in one or more of the Parties, by one or more producers, exclusively from originating materials, in accordance with this Chapter;
- (c) satisfies all applicable requirements of Annex 3-B, as a result of processes performed entirely in the territory of one or more of the Parties by one or more producers; or
- (d) otherwise qualifies as an originating good under this Chapter, and meets all other applicable requirements of this Chapter.

## 3.3 Goods wholly obtained or produced

Wholly obtained products are basically raw products of a preference country. These are goods which have undergone no process of manufacture and contain no foreign parts or inputs.

The following shall be considered as wholly obtained in the Parties' territories:

- (a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked or gathered in a Party;<sup>1</sup>

### Example

Teak trees grown and harvested in the Solomon Islands which are then cut into blocks and exported to Australia and New Zealand will qualify as originating goods of Solomon Islands.

- (b) live animals born and raised in one or more Parties;
- (c) goods obtained from live animals in a Party;

**Example**

Cows and hens; and milk or eggs from those animals raised in Samoa will qualify as originating good of Samoa.

- (d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering or capturing in a Party;
- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international laws, by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;

**Example**

Tuna fish caught in the high seas with the fishing vessel having Kiribati registration and flying its national flag on its mast. Fish will qualify as Kiribati originating vide Chapter 3(f)

- (g) goods produced from the goods referred to in subparagraph (f) on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party;
- (h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with international law;
- (i) goods which are:
  - (i) waste and scrap derived from production and or consumption in a Party provided that such goods are fit only for the recovery of raw materials; or
  - (ii) used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and

**Example**

Waste and scrap Insulated copper wire is recovered in Tuvalu from scrap telephone or electrical cables. This scrap wire is, vide Chapter 3(i), considered to be Tuvalu originating regardless of where the cable was produced.

- (j) goods produced or obtained in a Party solely from products referred to in subparagraphs (a) to (i) or from their derivatives.

Many agricultural, fishery and mineral goods will meet the requirements for being wholly produced or obtained.

There are also goods that can be produced entirely in one or more of the Parties, by one or more producers exclusively from originating materials (vide Article 2(b) of Chapter 3). The 'biscuits' example cited earlier: Biscuits made in Samoa using originating materials (flour and sugar) from Australia, flavor from New Zealand and eggs from Samoa.

However, manufactured goods often make use of components and inputs from a range of countries and will therefore generally involve at least some use of non-originating materials.

This means that most manufactured goods will need to comply with PACER Plus rules on substantial transformation of these non-originating materials in order to be deemed a PACER Plus originating good.

### 3.4 Product Specific Rule

One way by which a good is eligible for preferential treatment under PACER Plus is if it satisfies all applicable requirements of Annex 3-B, as a result of processes performed entirely in the territory of one or more of the Parties by one or more producer.

The PSR Schedule (Annex II) in PACER Plus sets out three alternative rules to determine if an imported good originates from a Party. Any one of these must be met to qualify for a preference:

- a) Change of Tariff Classification (CTC): a good has undergone a significant production process that changes its tariff classification. The degree of change required to confer origin is specified for each product in the PSR Schedule,
- b) Regional Value Content: at least 40 per cent of value-adding has taken place within the PACER Plus membership, is an option for some but not all products, and
- c) Process Rules: a good has undergone a specific process that fundamentally changes its nature. For example, a substance that undergoes a chemical reaction that transforms it but does not necessarily change its tariff classification or changes it sufficiently to apply the CTC rule. This is available for some products.

Clause 5 of Annex 3-B says that where a range of PSR are provided for a particular good (meaning that if more than one rule applies to a good) then origin may be claimed on the basis that at least one of the PSR is satisfied.

As reflected in the Table below, PSR Rule for Chapter 0401-0406 under PACER Plus there are two alternative rules, CTC or RVC (40percent).

HS2/HS4	HS6	Option 1 (CTC)	Option 2 (RVC)	Option 3 (Process Rule)
<b>Chapter 04</b>				
0401-0406		CTSH	RVC (40)	
0407-0410		CC	RVC (40)	

### 3.4.1 Change in Tariff Classification (CTC)

These rules require that a material (imported from a party outside PACER Plus) that is incorporated into a product that is exported to a party must go through a specified change in tariff classification under the Harmonized Commodity Description and Coding System (Harmonized System or HS).

- “**CC**” means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 2-digit level (**Chapter level change**);
- “**CTH**” means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 4-digit level (**Change in Tariff Heading level**);
- “**CTSH**” means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 6-digit level (**Change in Tariff Sub-heading level**);

#### Example

Good: Basketwork (HS 4602) made in Vanuatu

ROO: CTH or RVC (40)

#### Assessment

The rattan used (HS 1401) is a non-originating materials imported from Indonesia, a non-party to PACER Plus. The basketwork is an originating good under the PACER Plus because a change from HS Heading 1401 to HS Heading 4602 has occurred.

#### Example

Frozen pork (HS 0203) is imported into Nauru from China and combined with spices from Fiji (HS 0907-0910) and cereals produced in the Nauru to make pork sausages (HS 1601).

ROO: CC Chapter

Assessment: As the frozen meat is classified to Chapter 2 and the spices to Chapter 9, the non-originating materials meet the transformation (CC) requirement (the cereal is the produce of Nauru and is therefore an originating material and is not required to change in classification). The pork sausages are therefore Nauru originating goods.

### 3.4.2 Regional Value Content (RVC)

The formula for calculating RVC is:

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

Where:

**RVC** is the regional value content of a good; expressed as a percentage

**V** is the value of the good (for exported goods, it will be the FOB value of the good); and

**VNM** is the value of non-originating material including material of undetermined origin

#### Example

Good: Biscuit (HS 1905.31) manufactured in Tonga

ROO: RVC of not less than 40percent of the FOB value

Raw Material	Origin	Value
Flour (non-Originating)	China	\$1.00
Sugar (Non-Originating)	China	\$0.25
Flavor (Non-Originating)	Philippines	\$0.25
Eggs (originating)	To	\$1.00
FOB (includes costs & profits)		\$4

$$RVC = \frac{4 - (1 + 0.25 + 0.25)}{4} \times 100 = 62.5\%$$

Assessment: The RVC of the biscuit is 62.5% (greater than 40%), meet the ROO requirement and therefore is an originating good of Tonga.

### 3.4.3 Process Rule

Good has undergone a specific process that fundamentally changes its nature and that the specific process must take place within the territory of one or more Parties.

For example: the process “smoking, drying or production of flours, meals or pellets”, means that origin may be claimed only if all non-originating material used in the production of the good has undergone the specified processes such as (smoking, drying or production of flours, meals or pellet) within one of more of the Parties.

## Example

Good: Fish (HS 0302-0303)

ROO Under PACER Plus: CC or Process rule - Landed; gutted or cleaned; and vacuum-packed



Assessment: If all of the process is performed in the territory on one or more of the PACER Plus Parties by one or more of the producers – i.e., landing, gutting or cleaning and vacuum packing then it qualify as an originating good.

## 3.5 Cumulation

The Cumulation provision in PACER Plus allows PACER Plus Parties to procure raw materials from within the Parties and these materials will be treated as they are originating good. This recognizes the spirit of a free trade agreement and acknowledges the real situation for most Pacific Island countries that it has scarcity of raw materials and or/inputs for manufacturing and production of good.

- (i) A good is originating if the good is produced in one or more of the Parties by one or more producers, provided that the good satisfies the requirements in Article 2 and all other applicable requirements in this Chapter.
- (ii) Originating **goods** or materials of any of the Parties used in the production of a good in another Party shall be considered to originate in the latter Party.
- (iii) **Production** that occurs in the territory of one or more of the Parties by one or more producers may count as originating content in the origin determination of a good regardless of whether that production was sufficient to confer originating status to the materials themselves.

The Cumulation rule requires:

- ❖ Production process must occur within the territories of the Parties to the PACER Plus. In other words, all the countries involved in the production processes must be all PACER Plus Parties.
- ❖ All the originating materials or goods used in the production of the good are attributed to the PACER Plus exporting Party.

## Example

Good: Samoa Men's Elei Shirt

Rules of Origin: CC or RVC (40)



Raw Material	Origin	VALUE
Fabric (non-originating)	China	\$7.00
Buttons (originating)	Samoa	\$6.00
Thread (originating)	Australia	\$6.00
FOB = \$20		

Australia is a party of PACER Plus as such the manufactures of the Shirt in Samoa can now accumulate the thread imported from Australia and treat them as though they are of Samoa origin.

$$\text{RVC} = \frac{20 - 7}{20} \times 100 = 65\%$$

Assessment: The RVC of the shirt is 65% (more than 40%). As the shirt now meets the ROO requirement, it is an originating good of Samoa

## 3.7 De minimis

In Rules of origin, the *de minimis* (or tolerance) rule permits a specific share (often between 10% and 15%) of the value or volume of the final product to be non-originating without the final product losing its originating status.

If the percentage of non-originating materials satisfies the allowable percentage, the good can be granted originating status and given preferential treatment.

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3-B will nonetheless be an originating good if:
  - (a) the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; or alternatively
  - (b) for a textiles or apparel good provided for in Chapters 50 to 63 of the Harmonized System, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good.
2. The goods under paragraph 1 must meet all other applicable requirements of this Chapter.
3. The value of such non-originating materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.

### When does this rule apply?

Article 7 stipulates that if a good does not satisfy the change in tariff classification rule then the good can be considered for preferential treatment under the de minimis rule.

#### Example

Good: Nauru Lard Oil 1503

Rules of Origin: CTH- Change in tariff heading at the 4-digit level of the HS

Raw Material	Origin	HS Code	PASS CTH	VALUE
Lard Oil	Nauru	1503	N/A (originating good of Nauru)	\$20
Lard Oil	India	1503	No	\$3
FOB = \$50				

Assessment: The lard oil imported from India is the non-originating material that does not meet the CTC requirement under PACER Plus. The lard oil used is 6% of FOB value (less than 10% of the FOB). As such the final product is an originating good under PACER Plus upon applying the de minimis rule.

## 3.8 Other Aspects to Meeting ROO Requirements

### Minimal Operations and Processes

Some processes are recognised as simple/minimal and cannot be counted towards meeting the ROO regardless of the origin criteria (on) of the Free Trade Agreement. Even if these processes are undertaken as a combination with each other, it does not confer origin to a good.

Under Article 6, these processes include;

- (a) operations to ensure preservation of goods in good condition for the purposes of transport or storage;
- (b) facilitating shipment or transportation;
- (c) packaging or presenting goods for sale;
- (d) affixing of marks, labels or other like distinguishing signs on products or their packaging; and;
- (e) disassembly.

## **Accessories, Spare Parts, Tools and Instructional or other Information Materials**

1. For the purposes of determining origin, accessories, spare parts, tools or instructional or other information materials provided with the good shall be considered originating goods and shall be disregarded in determining whether all the non-originating materials used in the production of the originating goods undergo the applicable change in tariff classification or production process requirements.
2. If the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools or instructional or other information materials provided with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
3. Paragraphs 1 and 2 shall only apply if:
  - (a) the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the good; and
  - (b) the quantities and the value of those accessories, spare parts, tools or instructional or other information materials provided with the good are customary for that good.
4. If accessories, spare parts, tools and instructional or other information materials presented with the good are not customary for the good or are invoiced separately from the good, they shall be treated as separate goods for the purpose of determining origin.

### **Example**

A pump originating in Australia is sold to a Tongan company with rubber suction and discharge hoses made in Taiwan.

The hoses from Taiwan are invoiced and packed with the pump and are customarily sold with pumps of this kind.

The pump would be Australia originating. The rubber hoses would have to be counted as non-originating materials in any RVC calculation applicable to the pump.

## **Identical and Interchangeable Goods or Materials**

The determination of whether identical and interchangeable goods or materials are originating goods shall be made either:

- (a) by physical segregation of each of the goods or materials; or
- (b) by the use of an inventory management method recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by that Party, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

## Treatment of Packing Materials and Containers

1. Packing materials and containers in which a good is placed exclusively for transportation and shipment shall not be taken into account in determining the origin of any good.
2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification or process of production requirements for the good as set out in Annex 3-B.
3. If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

### Example

Leather footwear (6403) is made in New Zealand. The shoes are wrapped in tissue paper and packed in cardboard boxes, described with a brand logo, for retail sale.

The tissue paper and the cardboard box are of Chinese origin.

ROO: CTH or RVC (40)

Assessment: The tissue paper and cardboard box are disregarded for purposes of CTH requirement; their value though must be counted as non-originating when calculating the RVC applicable to the leather footwear.

4. If the packaging material and container is not customary for the good, its value shall not be included as originating in a regional value content calculation for the good.

## Indirect Materials

An indirect material shall be treated as an originating material without regard to where it is produced. The value of such a good shall be the cost registered in the accounting records of the producer of the good.

Materials such as lubricants, greases, compounding materials and other materials used in production or used to operate equipment, gloves and footwear; equipment, devices and supplies; and tools, dies and moulds which are used in the production, testing or inspection of a good (but is not physically incorporated into the final good) are some examples of indirect materials. These are treated as originating materials regardless of where they are produced.

### **Example**

Tools and safety equipment, produced in Japan, are used by workers in Solomon Islands during the production of the canned tuna. Such tools and safety equipment are considered to be “indirect materials”.

The use of such indirect materials in the production of goods in the Solomon Islands is treated as originating, therefore such goods are deemed to be Solomon Is originating materials.

### **Consignment**

Under Article 13, to retain the originating status of the good in the exporting Party, it is required for the good to be directly transported among the Parties. This is to ensure that the good is not manipulated during the transportation and retained its originating status so that it is still eligible for preferential treatment.

If the originating good is transited through a country which is not a Party to the PACER Plus, the good may still be able to retain its originating status provided this is justified as a transport requirement and that the goods have not entered into the commerce of the transit country and have not undergone any operation other than loading, unloading, storing or any other operation necessary to preserve the goods in good condition, repacking, relabelling or any other operation necessary to transport the goods to the territory of the importing Party.

### **Example**

Prefabricated homes manufactured in Australia are sent by ship to Kiribati. Before departure, they are coated with a protective veneer to inhibit damage to painted surfaces during transit on the vessel.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Fiji (currently a non-PACER Plus country) so that the protective veneer can be reapplied to ensure that the homes are preserved in good condition for the remainder of the voyage to Kiribati. This process would not affect the origin status of the vehicles as it fits within the exceptions Article 13(2) (a)

## 4. Verification of Origin Procedures

The Verification of Origin procedures basically covers the procedures on the issuance and verification of Declaration of Origin and other related administrative matters that shall be observed by each Party of the PACER Plus.

### 4.1 Declaration of Origin (DoO)

Article 15 of the Rules of Origin Chapter requires the use of a Declaration of Origin which must be completed by the exporter or producer or their representative.

There are certain requirements that the DoO must fulfill and these are that it must:

- (a) contain the information detailed in Annex 3-A;
- (b) be made in respect of one or more goods and may include a variety of goods;
- (c) be completed in English;
- (d) be in a written format, including electronic format; and
- (e) be an original, except that copies may be made for subsequent transactions.

The declaration that meets the above requirements can also be made on the invoice for the goods or it can be formally laid out in a document, even on one showing the company letterhead. The information required to be produced on the form is clearly set out in Annex 3-A which are:

- ❖ Personal and contact details – the personal and contact details of the party making the application must be provided and this applies to producers, exporters, authorised representatives and/or importers.
- ❖ Description and HS Tariff of item – a description of the good and its HS tariff classification should be provided ensuring that there is a clear link between these details and the goods covered by the declaration. If the declaration covers a single shipment and the invoice number is known, this should also be provided.
- ❖ Origin criterion – the codes of the rules of origin under which the good qualifies must be clearly specified.
- ❖ Period of validity – for multiple shipments of identical goods, the period of validity must be included.
- ❖ Authorisation, signature and date – the declaration must be signed and dated by the relevant party.

A producer or exporter may seek a third party's (e.g. a customs broker, a trade consultant or a chamber) assistance to complete the declaration. However, the declaration has to be signed by the exporter or producer or an authorized representative of the exporter or the producer.

After the information has been laid out, the authorisation detailed in Clause 8 of Annex 3-A follows with the relevant date and signature.

The declaration is valid for two years from the date of signing.

## 4.2 Submission of Declaration of Origin

Article 16 requires that the original Declaration of Origin and/or a copy should be submitted to the customs administration of the importing party if the request is made.

The issue of method of submission has been left open for Parties to decide according to each country's risk and compliance requirements.

Depending on each country's present legislative requirement on submission of documents to Customs, traders might be allowed to submit an electronic copy of the Declaration of Origin or they may be required to manually produce a copy of the original only or the original may be required for visual verification if in the circumstances, the particular trader has previously been classified as non-compliant.

## Exceptions

There are two exceptions to the rule on the submission of a Declaration of Origin and they are:

- ❖ Where the customs value of a good does not exceed US\$200 FOB or its equivalent amount in the importing Party's currency; or it may be a higher amount as determined by the importing Party; and
- ❖ Where the requirement for a Declaration of Origin has been waived provided of course that the importation (which is the subject of the claim for preferential treatment) does not form part of one or more importations which may reasonably be considered to have been undertaken or arranged for the purpose of avoiding the submission of the Declaration of Origin.

## 4.3 Decision to Grant Claim or Verification of Claim

Subject to Article 22, the importing Party can grant preferential tariff treatment to a good imported from any other Party provided:

- ❖ The good is an originating good
- ❖ The consignment criteria has been met
- ❖ If applicable, the DoO requirements have been satisfied.

### ***Other important points to note include that:***

- ❖ The grant of preferential treatment is not invalidated by discovery of minor errors or discrepancies in documentation

- ❖ If multiple goods declared under one declaration and there is problem relating to one of the goods, this fact cannot invalidate the decision or delay or prevent the grant of preferential treatment to other goods

#### 4.4 Verification of Claim

For most if not all Customs administrations, the matters to be undertaken in this step are already addressed in some form in your present Customs laws. All that will most likely be required is expanding the current provisions to accommodate the requirements for verification of origin as required under PACER Plus or if need be, the insertion of the necessary provisions in the Customs law to cover the requirements under this part.

- ❖ If there is any doubts as to the origin of a good, the Customs Administration of an importing Party can conduct investigation on the eligibility of a good for preferential tariff treatment.
- ❖ Information can first be sought from the importer, and then request the exporter or producer to provide to provide information. The last option is to undertake a physical verification visit to the premises of the exporter or producer.

There are two important points to note at the outset and these are:

1. **Time Limit on Verification Process** - PACER Plus places time limits on the verification of a claim and the onus is upon the party requesting preferential treatment to provide the necessary information in a timely manner in order to quickly finalise his/her claim. The Customs administration of the importing Party is given 130 days from the date of commencement of verification proceedings to finalise the case or within 90 days of the conclusion of a verification visit, whichever is later. The decision must be made in writing and delivered within the 21 days subsequent to the time periods given above depending on which course of action has been undertaken. We will discuss the verification visit in more detail later on.
2. **Confidentiality of information** – all information communicated between the Parties for the purpose of verifying the origin of a good will be used for that purpose only and must not be used for any other purpose save with the permission of the Party that provided the information.

#### 4.5 Decision to deny preferential treatment

A claim may be denied for the following 3 reasons:

- (i) The good fails to meet the requirements set out in chapter 3.
- (ii) The importer, exporter or producer fails to comply with any of the relevant requirements of chapter 3.
- (iii) If a verification visit was conducted but failed to determine if the good was an originating good.

## 4.6 Right to Appeal

Article 23 requires that parties establish appeal process to allow for producers, exporters or importers to appeal decisions made against them from receiving preferential treatment for their goods.

## 5. Checklist of Key Points for Successfully Using PACER Plus to Export or Import Goods

Some of the key points to follow when using PACER Plus to export or import goods are set out below. But remember that authoritative and full details of PACER Plus's requirements are set out in the Agreement and its Annexes.

- ➔ Check the tariff commitments applying to products of interest to you, and in countries of interest, in the tariff schedules Annex 2A
- ➔ Check the rule of origin applying to your product following the steps outlined in this pamphlet.
- ➔ If you are exporting a good to a PACER Plus Party:
  - Complete Declaration of Origin for each shipment;
  - if you have not specified the FOB value in Box 9 of the DoO, and are claiming preference on the basis of an RVC rule, ensure that a completed Exporter Declaration containing this information accompanies the DoO;
- ➔ If you are importing a good from a PACER Plus Party:
  - ensure that that you have a DoO issued by an Issuing Authority in the exporting Party at the time of import declaration for the shipment.
- ➔ Ensure you maintain necessary records for at least three to five years.

## 6. Contact Points

The contact points refer to Heads of Customs Administration of Parties and Customs Officials who deal with ROO issues at national level.

	Head of Customs	ROO Contact Points
1. Australia		
2. Cook Islands	Mr. Xavier Mitchell Collector, Comptroller and Director Email: <a href="mailto:xavier.mitchell@cookislands.gov.ck">xavier.mitchell@cookislands.gov.ck</a>	Ms Maria Ioane <a href="mailto:maria.matua@cookislands.gov.ck">maria.matua@cookislands.gov.ck</a>
3. Kiribati	Mr. Tekaike Ititaake  Comptroller of Customs Email: <a href="mailto:tekaie@justice.gov.ki">tekaie@justice.gov.ki</a>	Mr. Etekie Betero <a href="mailto:ebetero@kiribaticustoms.gov.ki">ebetero@kiribaticustoms.gov.ki</a> -
4. Nauru	Mr. David Detudamo Principal Customs Officer Email: <a href="mailto:davidetudamo@gmail.com">davidetudamo@gmail.com</a>	Mr. Jessen Cain <a href="mailto:jessencaïn82@gmail.com">jessencaïn82@gmail.com</a> -
5. New Zealand		
6. Niue	Mr. Sione Sionetama Comptroller Email: <a href="mailto:Sionepokau.Sionetama@mail.gov.nu">Sionepokau.Sionetama@mail.gov.nu</a>	Mr. Morgan Mougavalu <a href="mailto:Morgan.Mougavalu@mail.gov.nu">Morgan.Mougavalu@mail.gov.nu</a>
7. Samoa	Ms Avalisa Viali Fautua'alii Chief Executive Officer, Ministry of Customs and Revenue Email: <a href="mailto:aviali@revenue.gov.ws">aviali@revenue.gov.ws</a>	Ms. Talaitupu Lia <a href="mailto:tlia@revenue.gov.ws">tlia@revenue.gov.ws</a>
8. Solomon Islands	Mr Jim Sutton Comptroller of Customs, Solomon Islands Customs and Excise Email: <a href="mailto:JSutton@customs.gov.sb">JSutton@customs.gov.sb</a>	Mr. Stephen Dikea <a href="mailto:SDikea@customs.gov.sb">SDikea@customs.gov.sb</a>
9. Tonga	Kelemete Vahe – Chief Executive Officer Email: <a href="mailto:kelemetev@gmail.com">kelemetev@gmail.com</a>	Mr. Esafe Tokai <a href="mailto:esafet@customs.gov.to">esafet@customs.gov.to</a>
10. Tuvalu	Tuilagi Teii Director of Customs & Boarder Protection Services Email: <a href="mailto:tuilagi2004@gmail.com">tuilagi2004@gmail.com</a>	Mr. Temumuni Talitiga <a href="mailto:TTalitiga@gov.tv">TTalitiga@gov.tv</a>
11. Vanuatu	Harold Tarosa Director, Customs and Inland Revenue Email: <a href="mailto:htarosa@vanuatu.gov.vu">htarosa@vanuatu.gov.vu</a>	Mr. Jerry Toran – <a href="mailto:jtoran@vanuatu.gov.vu">jtoran@vanuatu.gov.vu</a>



**OVERLEAF NOTES**

1. Countries which accept this DOO for the purpose of preferential treatment under PACER Plus:

Australia	Cook Islands	Kiribati	Nauru
Niue	New Zealand	Tuvalu	Tonga
Solomon Islands	Samoa	Vanuatu	

(herein after individually referred to as a Party)

2. **CONDITIONS:** To be eligible for the preferential treatment under PACER Plus , goods must:
- Fall within a description of products eligible for concessions in the importing Party;
  - Comply with all relevant provisions of Chapter 3 (Rules of Origin) of the Agreement.
3. **EXPORTER AND CONSIGNEE:** Details of the exporter of the goods (including name, address and country) and consignee (name and address) must be provided in Box 1 and Box 2, respectively.
4. **DESCRIPTION OF GOODS:** The description of each good in Box 7 must include the Harmonized Commodity Description and Coding System (HS) subheading at the 6-digit level of the exported product, and if applicable, product name and brand name. This information should be sufficiently detailed to enable the products to be identified by the customs officer examining them.
5. **ORIGIN CRITERIA:** For the goods that meet the origin criteria, the exporter should indicate in Box 9 of this Form, the origin criteria met, in the manner shown in the following table:

<b>Circumstances of production or manufacture in the country named in Box 12 of this form:</b>	<b>Insert in Box 9</b>
(a) Goods wholly produced or obtained satisfying Article 2(a) of Chapter 3 of the Agreement	<b>WO</b>
(b) Goods produced entirely satisfying Article 2(b) of Chapter 3 of the Agreement	<b>PE</b>
(c) Not wholly produced or obtained in a Party, provided that the goods satisfy Annex 3B of Chapter 3, all the product specific requirements listed have been met:	
- Change in Tariff Classification	<b>CTC</b>
- Regional Value Content	<b>RVC</b>
- Regional Value Content + Change in Tariff Classification	<b>CTC + RVC 40%”</b>
- Other, including a Specific Manufacturing or Processing Operation	<b>Other</b>

**EACH GOOD CLAIMING PREFERENTIAL TARIFF TREATMENT MUST QUALIFY IN ITS OWN RIGHT:** It should be noted that all the goods in a consignment must qualify separately in their own right. This is of particular relevance when similar articles of different sizes or spare parts are exported.

The FOB value is not required for consignments where the origin criteria does not include a Regional Value Content requirement.

**INVOICES:** Indicate the invoice number and date for each item. The invoice should be the one issued for the importation of the good into the importing Party.