

MALAYSIA-NEW ZEALAND FREE TRADE AGREEMENT (MNZFTA): INFORMATION FOR IMPORTERS AND EXPORTERS ABOUT THE RULES OF ORIGIN

This fact sheet outlines the rules of origin for goods that are the subject of a claim for the tariff preferences applied under Chapter 3 (Rules of Origin) and Annex 2 (Product Specific Rules) to the Malaysia-New Zealand Free Trade Agreement.

This 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 Chapter 3 and Annex 2 to the MNZFTA and the relevant legislation including the Customs and Excise Act 2018 and the Customs and Excise Regulations 1996.

WHAT DOES THE MNZFTA PROVIDE FOR?

The MNZFTA entered into force on 1 August 2010, and amongst other things, provides for New Zealand and Malaysia to apply preferential rates of tariff duty to *originating goods*. The MNZFTA runs alongside the existing twelve-country Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA Agreement) to which New Zealand and Malaysia are parties. The MNZFTA, however, goes beyond the commitments made in the AANZFTA Agreement by eliminating import tariff duty rates on goods traded between both countries at a faster pace.

Further information including a tariff locator and a copy of the MNZFTA text and its associated instruments can be found on the New Zealand Ministry of Foreign Affairs & Trade website (see www.mfat.govt.nz).

WHAT ARE ORIGINATING GOODS?

Goods traded between New Zealand and Malaysia are treated as originating goods if they conform to one of the following origin requirements:

- goods which are wholly obtained or produced (see note below under 'Wholly obtained or produced goods'); or
- goods produced entirely in New Zealand or Malaysia or in both countries exclusively from originating materials from New Zealand or Malaysia or from both countries; or
- goods produced in New Zealand or Malaysia from non-originating materials provided such goods meet the requirements specified in Annex 2 (Product Specific Rules) to the MNZFTA;

and the goods meet all other applicable requirements of Chapter 3 of the MNZFTA.

The following points provide more detailed information on the methods of determining whether a good traded between New Zealand and Malaysia is originating.

WHOLLY OBTAINED OR PRODUCED GOODS

The following goods shall be treated as wholly produced or obtained:

- plant and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi, and live plants, grown, cultivated, harvested, picked, or gathered in New Zealand or Malaysia
- live animals born and raised in New Zealand or Malaysia
- goods obtained from live animals in New Zealand or Malaysia
- goods obtained from hunting, trapping, fishing, farming, cultivating, aquaculture, gathering, or capturing in New Zealand or Malaysia

- (e) minerals and other naturally occurring substances extracted or taken from the soil, waters or seabed and subsoil in New Zealand or Malaysia
- (f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with the United Nations Convention on the Law of the Sea 1982 (UNCLOS), by any vessel registered or recorded and entitled to fly the flag of New Zealand or Malaysia
- (g) goods produced on board any factory ship registered or recorded and entitled to fly the flag of New Zealand or Malaysia from the goods referred to in subparagraph (f)
- (h) goods taken by New Zealand or Malaysia, or a person of New Zealand or Malaysia, from the seabed and subsoil beyond the Exclusive Economic Zone and adjacent Continental Shelf of New Zealand or Malaysia and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with UNCLOS
- (i) goods which are:
 - (i) waste and scrap derived from production and consumption in New Zealand or Malaysia provided that such goods are fit only for the recovery of raw materials; or
 - (ii) used goods collected in New Zealand or Malaysia provided that such goods are fit only for the recovery of raw materials; and
- (j) goods produced or obtained in New Zealand or Malaysia solely from products referred to in subparagraphs (a) to (i) above or from their derivatives.

Note:

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

Examples:

Minerals mined in Malaysia, logs cut from trees grown in New Zealand, peppercorn cultivated from a pepper vine in Malaysia, and copper extracted from the soil of Malaysia are examples of goods qualifying as originating under these wholly obtained or produced provisions. Another example would be metal shavings from a machining process carried out in New Zealand when the product being machined does not originate in either New Zealand or Malaysia.

Note:

'Obtained' does not mean 'purchased'. The term is used simply to acknowledge that origin can be conferred on goods that are naturally occurring as well as on goods that are produced by human endeavour.

GOODS ENTIRELY PRODUCED

Goods are also treated as originating goods if they are produced entirely in New Zealand or Malaysia or in both countries exclusively from materials that would themselves qualify as originating goods.

GOODS THAT MEET THE REQUIREMENTS OF A PRODUCT SPECIFIC RULE

Annex 2 to the MNZFTA sets out the product specific rule(s) of origin for each category of goods traded between New Zealand and Malaysia.

(a) Change in tariff classification (CTC) rule

Many goods traded between New Zealand and Malaysia will qualify under the rules of origin criteria on the basis that they can satisfy a change in tariff classification (CTC) rule specified Annex 2 to the MMNZFTA.

The CTC approach allows a good produced in New Zealand or Malaysia 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 the MNZFTA) used in its production.

To use a CTC rule under the MNZFTA, the trader must first determine the tariff classification of the final good being traded and ascertain the applicable product specific rule of origin set out in Annex 2 in respect of that tariff classification.

The difference between the classification of the final good and the classification of the non-originating materials that went into the production of that good in New Zealand or Malaysia will determine whether or not the conditions of the specific change in tariff classification rule have been met.

There are three types of change in tariff classification rules that a trader may encounter in Annex 2:

- 'CC' (Change in Chapter) — all non-originating materials used in the production of the good must have undergone a change in tariff classification at the two-digit level.
- 'CTH' (Change in Tariff Heading) — all non-originating materials used in the production of the good must have undergone a change in tariff classification at the four-digit level.
- 'CTSH' (Change in Tariff Sub-heading) — all non-originating materials used in the production of the good must have undergone a change in tariff classification at the six-digit level.

The following example illustrates how a CTC rule operates in practice:

- A dining room table of HS sub-heading 9403.60 is produced in Malaysia using non-originating teak wood, and non-originating furniture parts and is exported to New Zealand. The rule for a dining room table of HS sub-heading 9403.60, set out in Annex 2, is CTSH. The non-originating teak wood is classified in HS sub-heading 4407.29, and the non-originating furniture parts are classified in HS sub-heading 9403.90.

The result of this rule is that the dining room table is treated as originating in Malaysia. This is because a dining room table is classified within a different HS sub-heading (9403.60) from the non-originating materials used in its production (4407.29, and 9403.90).

Note:

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, itself, confer origin (eg, simply cutting a material to length or width).

Treatment of packaging materials and containers under a CTC requirement

Packaging materials and containers in which the goods are packaged for retail sale, if classified with the goods (in accordance with Rule 5 of the General Rules for the Interpretation of the Harmonized System), are disregarded in determining whether those goods have undergone the appropriate CTC requirement set out in Annex 2.

Treatment of accessories, spare parts, tools or instructional and information materials under a CTC requirement

If goods are subject to a CTC requirement (as set out in Annex 2) any accessories, spare parts, tools or instructional and information materials normally presented with the goods are regarded as originating goods, and will not be required to undergo the applicable CTC, provided that:

- (a) the accessories, spare parts, tools or instructional and information materials are classified with and not invoiced separately from the goods; and
- (b) the quantities of those accessories, spare parts, tools or instructional and information materials are customary for the good.

An exception to the CTC rule – the de minimis provision

A good which does not satisfy a CTC required by Annex 2 is nonetheless an originating good if the value of non-originating materials used in the production of the good that do not undergo the required CTC do not exceed ten percent of the FOB value of the good.

As well as having access to the provision mentioned above, a good classified in **Chapters 50 through 63** may also be an originating good if the weight of all non-originating materials used in the production of the good that do not undergo the required CTC do not exceed ten percent of the total weight of the good.

Note:

All goods that are subject to the *de minimis* provisions must meet all other applicable requirements of chapter 3 to the Agreement.

(b) Qualifying value content

For some goods, the product specific rule in Annex 2 requires or permits the use of a qualifying value content (QVC) rule linked to the FOB value of the finished goods.

How the qualifying value content rule operates

In any case where Annex 2 requires or permits the use of a QVC, the value is to be calculated as follows:

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

Where:

QVC is the qualifying value content of a good, expressed as a percentage.

FOB is the free-on-board valuation of the good (inclusive of the cost of transport to the port or site of final shipment abroad).

VNM is the value of the non-originating materials.

The value of non-originating materials is:

- the CIF value at the time of importation of the materials; or
- the earliest ascertained price paid or payable for non-originating materials (including materials of undetermined origin), in the territory of the party where the working or processing takes place. If the producer of a good acquires non-originating materials within a party, the value of such materials does not include freight, insurance, packing costs and any other costs incidental to the transport of those materials from the location of the supplier to the location of production.

Treatment of packaging materials and containers under a QVC requirement

If goods are subject to a QVC requirement, the value of the packaging materials and containers used for retail sale **must** be considered as originating or non-originating materials, as the case may be, in calculating the value of the goods.

Treatment of accessories, spare parts, tools or instructional and information materials under a QVC requirement

If goods are subject to a QVC requirement, the value of the accessories, spare parts, tools or instructional and information materials **must** be taken into account as originating materials or non-originating materials, as the case may be.

Note:

This provision above does not apply where the accessories, spare parts, tools or instructional and information materials have been added solely for the purpose of artificially raising the QVC of the goods.

(c) Specified process rules

A so-called specified process rule, such as a chemical reaction rule or a textile finishing process rule, can be an alternative to a CTC or QVC rule. These rules generally apply to goods falling in the chemical and textile chapters and can be found in Annex 2 to the MNZFTA. In such instances where a specified process rule is applicable for a good, compliance with the requirements of the rule will confer originating status.

Other important elements of the rules of origin

(a) Accumulation

An originating good which is used in one party to the MNZFTA as a material in the production of another good is considered to originate in the other party where the working or processing of the finished good has taken place.

(b) Treatment of packing materials and containers for shipment

Containers and packing materials exclusively used for the shipment of goods are not taken into account in determining the origin of any good.

(c) Minimal operations and processes

Operations or processes undertaken by themselves or in combination with each other, such as those listed below, are considered to be minimal and do not confer origin:

- (i) ensuring preservation of goods in good condition for the purpose of transport or storage;
- (ii) facilitating shipment or transportation;
- (iii) packaging (excluding encapsulation by the electronics industry) or presenting goods for sale;
- (iv) affixing of marks, labels or other distinguishing signs on products or their packaging;
- (v) simple processes consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations; and
- (vi) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

CAN GOODS BE TRANSPORTED THROUGH ANOTHER COUNTRY?

A good that would otherwise qualify as originating under the rules of origin provisions will retain its originating status **only if** the good has been transported between New Zealand and Malaysia without passing through another country. Alternatively, a good may transit through another country, provided that:

- (i) the good has not entered the commerce of that other country;
- (ii) the good has not undergone subsequent production or any other operation outside of New Zealand or Malaysia (as applicable) other than unloading, reloading, storing, or any other operations necessary to preserve it in good condition or to transport it to New Zealand or Malaysia (as applicable); and
- (iii) the transit of the good through the other country is justified for geographical, economic or logistical reasons.

WHAT ARE THE ADMINISTRATION AND ENFORCEMENT REQUIREMENTS?

(a) Documentary evidence of origin

An important note for New Zealand exporters: Unlike with the AANZFTA Agreement, goods exported from New Zealand to Malaysia under the MNZFTA **do not** require a certificate of origin from a New Zealand certification body. A claim that goods are eligible for preferential tariff treatment instead must be supported by a declaration as to the origin of the good from the exporter or producer on the export invoice (see wording below).

An importer in New Zealand may claim preferential tariff treatment for goods exported from Malaysia on the basis of having in their possession:

- a declaration as to the origin of the good from the exporter or producer made on the export invoice. The declaration must state:

For goods wholly obtained:

“I [state name and designation], being the [exporter/producer/exporter and producer] hereby declare that the stipulated goods on this invoice [item numbers...] originate in [Malaysia/New Zealand] and comply with Article 3.2(a) or (b) (Origin Criteria) of the Malaysia – New Zealand Free Trade Agreement.”

For other originating goods:

“I [state name and designation], being the [exporter/producer/exporter and producer] hereby declare that the stipulated goods on this invoice [item numbers...] originate in [Malaysia/New Zealand] and comply with Article 3.2(c) and Annex 2 (Product Specific Rules) of the Malaysia – New Zealand Free Trade Agreement.”; or

- a certificate of origin obtained in Malaysia in accordance with its domestic legislation.

However, if requested by the New Zealand Customs Service, an importer who claims preferential tariff treatment for goods imported into New Zealand from Malaysia must be able to provide sufficient information to substantiate such a claim.

A claim for Malaysian preference should not be made for goods if the necessary documentation and information to substantiate such a claim is not held (see sections 66 and 67 of the Customs and Excise Act 1996).

(b) Records

New Zealand importers and exporters are required to retain origin documents for a period of seven years.

(c) Verification of origin

The Comptroller of Customs may decide to verify any claim for Malaysian preference by taking any one or more of the following steps:

- requesting information from the importer in New Zealand;
- requesting information from the exporter or producer in Malaysia;
- instituting reactive checking measures to establish the validity of the certificate of origin or other documentary evidence of origin;
- requesting the relevant Government authority of Malaysia to verify the origin of the good; or
- other procedures as New Zealand and Malaysia may agree.

The Royal Malaysian Customs Department may take similar steps to those listed above.

DO OTHER TAXES, LEVIES, OR CHARGES APPLY?

Relevant internal taxes and levies applicable in New Zealand or Malaysia will remain irrespective of preferential tariff treatment. For example, on importation into New Zealand, the following taxes and levies will remain payable:

- goods and services tax (GST)
- excise equivalent duties
- anti-dumping or countervailing duties
- entry and cargo transaction fees or other cost recoveries.

QUALIFYING FOR PREFERENTIAL TARIFF TREATMENT UNDER MULTIPLE TRADE AGREEMENTS/ARRANGEMENTS

In addition to the MNZFTA, and the AANZFTA Agreement (mentioned above), imports into New Zealand from Malaysia can claim the rate of tariff duty as a Less Developed Country, where applicable. However, it is important to note that the rules of origin provisions under each of these trade agreements/arrangements are different, and the rules of origin provisions are not transferable from one trade agreement/arrangement to another.

Therefore, in all cases, traders will need to determine the trade agreement/arrangement that is most suitable to their specific circumstances.

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).

