

**New Zealand Chambers of Commerce & Industry
Submission to Ministry of Foreign Affairs and Trade on the
ASEAN-Australia-New Zealand Free Trade Agreement
Upgrade (AANZFTA) Consultation**

31 July 2019

Kei te rangatira, tēnā koe,

The New Zealand Chambers of Commerce & Industry (NZCCI) welcome the opportunity to make a submission on New Zealand businesses' views on ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and the upgrade of the Agreement. We hope the feedback we have received from our exporting members will help you form your overall approach to the AANZFTA upgrade.

Summary of Recommendations

- 1) Widen the scope of the AANZFTA Upgrade to include addressing non-tariff barriers/non-tariff measures.
- 2) We endorse New Zealand International Business Forum's position on the following key trading issues: Services, e-Commerce, Investment, Customs Procedures, and Government Procurement.
- 3) The status quo regarding certification of origin is maintained through the use of third-party certificates.
- 4) AANZFTA, Chapter 3, Operational Certificate Procedures (OCP), Rule 7, Paragraph 3i be changed to read "*shall be electronic*".
- 5) In the event origin certification status quo is not continued, look at a two-pronged system where both self-certification and third-party certification is permitted.
- 6) Should a two-pronged origin certification system be utilised, Ministry of Foreign Affairs and Trade (MFAT) negotiators look at the system implemented in Japanese trade agreements.
- 7) The minimum value of a shipment required for a certificate of origin be increased to US\$1,000 FOB value.
- 8) Exporters continue to have the option of using either the '*Change of Tariff Classification*' (CTC) or '*Regional Value Content*' (RVC) rules when determining origin.
- 9) All domestic regulations relating to AANZFTA are required to reflect a consistent interpretation of AANZFTA provisions.

1. Introduction

- 1.1 The NZCCI is the umbrella organisation serving the interests of 30 Chambers of Commerce nationwide. These in turn represent over 20,000 businesses, across all industries and all around the country. While many of our members are small to medium enterprises, our membership also includes some of the largest businesses in New Zealand.
- 1.2 Our organisation writes to endorse the beginning of negotiations to upgrade AANZFTA. Since AANZFTA was implemented in 2010, our exporters have taken full advantage of the agreement and our trading relationship with ASEAN has grown. Using the number of certificates of origin issued by our Chamber, we can see that trade to our partners in South-East Asia has grown consistently since the Agreement's implementation. Many of our exporting members are also showing a healthy interest in doing business in ASEAN countries due to our free-trading arrangement with the region.
- 1.3 We believe there is an opportunity to modernise the agreement in line with the Ministry of Foreign Affairs & Trade's (MFAT) recent *Trade For All* agenda thinking to generate more opportunities and benefits for New Zealanders from different communities.
- 1.4 We are, however, disappointed that the issue of market access and non-tariff barriers/non-tariff measures have been omitted from the upgrade. In our opinion, the first objective of free-trade agreements should be to lower barriers to trade, whether they be economic, political, social, or legal. We would certainly support MFAT in consulting with exporters to understand what barriers they are now facing in exporting under AANZFTA.
- 1.5 On this issue, we endorse the comments made by the New Zealand International Business Forum (NZIBF). We also endorse NZIBF's position on the following key trading issues: *Services, e-Commerce, Investment, Customs Procedures, and Government Procurement*.
- 1.6 ***Recommendation: Widen the scope of the AANZFTA Upgrade to include addressing non-tariff barriers/non-tariff measures.***
- 1.7 ***Recommendation: We endorse NZIBF's position on the following key trading issues: Services, e-Commerce, Investment, Customs Procedures, and Government Procurement.***
- 1.8 Though we mention the above, our submission will focus on the issues of self-certification for origin of goods and rules of origin. Self-certification for origin is an issue we have not raised recently with other MFAT consultations on free-trade agreements, but we feel it is important to note our position on the issue in regard to AANZFTA.

- 1.9 NZCCI opposes the implementation of self-certification for AANZFTA as a system of declaring and certifying origin. We recommend the status quo continues regarding certification of origin and third-party issuers of documentation. Our position is explained in full below.
- 1.10 ***Recommendation: The status quo regarding certification of origin is maintained through the use of third-party certificates.***

2. Background

- 2.1 Chamber to chamber trade certification has a long history, dating to the beginnings of our modern trade system. Under the authorisation of New Zealand Customs, the NZCCI is accredited to issue AANZFTA Certificates of Origin on behalf of the New Zealand Government. This responsibility is delegated to the four regional hub Chambers; Auckland Business Chamber, Wellington Chamber of Commerce, Canterbury Employers' Chamber of Commerce, and Otago Chamber of Commerce.
- 2.2 Since AANZFTA came into force, NZCCI have issued [REDACTED] certificates of origin under the Agreement.
- 2.3 The Chamber network uses an electronic application and certifying system, directly interfaced with most major exporter EDI systems, to enable efficient application and issuance of AANZFTA Certificates of Origin in a pdf format.
- 2.4 The cost of an AANZFTA Certificate of Origin is \$33.00 + GST per certificate.
- 2.5 In recent communication with MFAT officers, we were advised that New Zealand would be pursuing self-certification in their trade negotiations at the explicit request of New Zealand businesses and industry groups who want the flexibility to use this approach.
- 2.6 Such an approach, the Ministry stated, also accords with the paperless trading approach at the centre of international best practice for Customs Administration.
- 2.7 In subsequent conversations with MFAT officials on the subject, we have not received adequate justification for MFAT's pursuit of self-certification except for the above stated reasons. In several conversations with officials, there has been no mention or appreciation of the potential risks exporters will face at the border without third-party assurance.
- 2.8 Officials have also acknowledged that self-certification is not suited to every exporter's needs.
- 2.9 Though we trust that MFAT officials have engaged with exporters and consulted them on the issue, we have not seen evidence of this, nor was NZCCI asked to provide information or consulted about a decision. This, despite NZCCI being an

integral part of the certification process as a high volume provider of certificates of origin under the AANZFTA and NZ/China FTA certification processes.

3. Explanation of Position

- 3.1 Our submission and advocacy for a continuation of the status quo in the certification process for the AANZFTA is supported by feedback given to us by our exporting members who trade under the current rules and processes, as well as our experiences as third-party certifiers, where we are fully involved with each exporters processes on a daily basis.
- 3.2 Our involvement does not simply stop at checking compliance for certificates of origin, but also includes close support before and after a certificate has been certified. NZCCI invests in employing staff up-and-down the country who are trained specifically to deal with certificates of origin and other issues when it comes to exporting. We are able to call on a wide network of Government agencies, experienced exporters, business groups, and logistics companies to assist us and the exporter when they have difficulty.
- 3.3 Our organisation is a not-for-profit, incorporated society, mandated and directed by our members. As with all our services, we undertake certification to support business, and use charges to cover costs rather than use as an income stream. As such, we acknowledge that the Chamber of Commerce network may be seen to have a potential conflict of interest in this issue. However, while we have raised this as a potential conflict, we believe that this interest is secondary to the substantive issues that must be taken into consideration.
- 3.4 Our organisation wholly believes and advocates for free trade, but we also believe it is necessary to be realistic about the Customs regulations, tax regimes, and procedures of the other markets in AANZFTA. We want to work to provide New Zealand exporters with the path of least resistance when exporting to these markets. A robust system with independent and trusted third-party assurance provides the best trade facilitation pathway through a high tariff border in several ASEAN countries.
- 3.5 Robust systems to verify New Zealand origin, as provided by the NZ Chambers, provides an additional advantage of protecting the 'Made in New Zealand' brand and protects from those who would want to take advantage of the free-trade we advocate for and celebrate. We need to ensure that New Zealand's international reputation as a high-quality and lawful trade partner is not ruined by those unwittingly misrepresenting the origin of their goods or those looking to stretch the rules.
- 3.6 Origin and claims of substantive change in the process are critical to New Zealand exporters and to the New Zealand brand. There is no doubt the Chamber is a credible third party, is independent, ensures current information is used to establish a document, and can provide the support when needed to assist an exporter with a problem in a foreign market.

- 3.7 The oversight the Chamber's centralized certifying system gives for managing inevitable border issues, is a benefit of third party certifying. It enables immediate determination of whether an issue is sector or country-wide, and if it is related to a particular port and/or importer.
- 3.8 On our behalf and as part of our submission, the Wellington Chamber of Commerce consulted with the 34 exporters who applied for an AANZFTA certificate of origin within the past year. They asked exporters three questions:
- Do you see the third-party certificates of origin as a facilitator or a barrier to exporting?
 - As an exporter that currently requires the Chamber to produce certificates of origin for your exports to Australia or South-East Asia would you be comfortable self-certifying export documentation?
 - What benefits do you see from using Chamber-certified documentation?
- 3.9 NZCCI have considered the feedback the Wellington Chamber received and have grouped together this information along with our own thoughts below.

4. Transaction Time & Cost

- 4.1 One of the reasons we believe MFAT are pursuing self-certification is to reduce transaction time and cost. We understand that a paperless transaction is the best practice for Customs administration and the Ministry sees the need to move into the digital age.
- 4.2 NZCCI in-fact issues 'paperless' AANZFTA Certificates of Origin already. The only reason that AANZFTA Certificates are printed is due to the requirement in AANZFTA Chapter 3 Operational Certificate Procedures (OCP) Rule 7, Paragraph 3i;

*"3. The Certificate of Origin shall:
i) be in hardcopy"*

To achieve 'paperless trading', the Chambers recommends edit Rule 7 Paragraph 3i to read "*shall be electronic*". In addition, all the parties of AANZFTA would require a system to accept electronic certificates of origin

4.3 Recommendation: AANZFTA, Chapter 3, Operational Certificate Procedures (OCP), Rule 7, Paragraph 3i be changed to read "*shall be electronic*".

- 4.4 To truly achieve paperless trading, all documents associated with export would need to be accepted by the importing customs authorities in electronic format. Bills of lading, packing lists, commercial invoices, and health certificates, as well as the Certificates of Origin.

- 4.5 A document confirming origin will continue to be required as long as there are AANZFTA that have duties. This must be of paramount consideration in assessing whether to reduce requirements or provide a waiver under AANZFTA, and indeed irrespective of whether self-certified or third-party certified, as there will be a need for such a service and that will be a paper document.
- 4.6 The NZCCI process for verifying whether goods meet the required Product Specific Rules (PSRs) is robust and focussed solely on relevant information, making the application process efficient. This process is coupled with the Chamber's electronic application and certification system is modern, digital, paperless, efficient, and in our opinion, one of the best e-certification systems available.
- 4.7 FTA Certificates of Origin, with pre-approved goods, can be processed immediately on receipt and routinely within a couple of hours. New company or goods registrations are processed within one working day, subject to the applicant having the information required and readily available.
- 4.8 For a nominal fee, an experienced certifier double-checks details and provides the assurance of a trusted third-party on behalf of the New Zealand government. This fee can be considered small, especially when considering that the majority of certificates entitle the applicant to duty reductions of up to the tens of thousands of dollars.
- 4.9 The Chamber certifying fee is in the lower range of administrative fees charged by government agencies for documentation associated with international trade and provides exporters 'in-market' product value advantage (due to eligibility for duty reductions).
- 4.10 The certifying fee takes into account the experience, information, and time Chambers need to process them. This expertise means exporters have the time to focus on more important aspects of their business – something we look at further below.
- 4.11 The Chamber certifying fee per certificate includes the Chamber's follow-up support service should the exporter's client experience bureaucratic difficulties at the border or as a result of a post-entry audit.
- 4.12 In the feedback received, our exporters did not mention any frustration regarding the timeliness of the service we provide. Two exporters raised cost as a minor mitigating factor. Much of the feedback was appreciative of our service and the assurances we are able to provide as a certified provider.

5. Self-Certification Costs to Exporters

- 5.1 Two factors that must be considered are the more-than-likely added financial and time costs involved in self-certifying for New Zealand exporters.

- 5.2 Several of the exporters we contacted believed that self-certification would mean added costs in order to self-certify correctly. This would be in the form of employing extra export administration staff, training them to an appropriate level, and continuously updating them on rules and standards.
- 5.3 In regard to time costs and pressures, exporters would much prefer to spend their time on other parts of their business. We deal with several SMEs that do not have the capacity to hire staff specifically for exporting, or are exporting for the first time. It is the CEO or a Director of the company who is attempting to complete the compliance. To ask these people to take the time to learn about rules of origin or to create a template for a certificate would be unreasonable and not productive.
- 5.4 One word that was used many times in the feedback we received was '*assurance*'. The Chamber processes involved with certification of origin give our exporter's confidence that they are using the correct HS codes and origin criterion, among other things. Exporters can rely on the Chamber to double-check that their certificates and declarations are compliant under the Agreement.
- 5.5 We believe that in this instance, MFAT and Customs see a third-party certificate of origin as an 'unnecessary compliance cost' and also a 'barrier to exporting'. On the contrary, the feedback we received shows that exporters see certificates as a facilitator of free-trade, while having a third-party notarise the document gives it credibility and means they don't need to employ unnecessary staff or spend valuable time resource on compliance.

6. Standardisation & Ease of Process

- 6.1 Other benefits of third-party certification we gained from the exporter feedback was the easy process and standard format we implement.
- 6.2 Exporters find it useful to have the certificate generated for them with the information provided and believe this standard format eliminates any confusion at the border.
- 6.3 Without a standard format, some believed this could create confusion at borders, with information being in different places or with the wrong information being provided.
- 6.4 One prominent exporter also said that while her organisation had a good process for self-certification to other markets, she believed self-certification would allow some to abuse the guidelines. She said the Chamber process makes them work within the rules and guidelines, which keeps everything clear and understood.
- 6.5 Our exporters also believed that the Chamber's standards for what is required on a certificate of origin is useful to them. Due to our high standards, exporters know to check with us before complying to every importer's request for information to be included on a certificate.

- 6.6 This is a common occurrence and can range from importers requesting full ingredients lists on the certificate, to having the invoice amount in different currencies, to adding information multiple times.
- 6.7 Third-party certification adds a layer of accountability to the process. Exporters depend on the Chambers to keep the certificates of origin as simple as possible, any request from the importer for information is scrutinized and checked to see if there are any new obligations from the foreign customs that documentation must meet.
- 6.8 Self-certification can lead to, as another exporter called it, a *'grey area'* for exporters and importers to abuse the rules.

7. Higher Liability & Risks at the Border

- 7.1 As mentioned above, third-party certificates of origin give exporters a higher degree of assurance than they would have with self-certified documentation.
- 7.2 For the best part of 200 years, the understanding and trust in a certificate of origin is based on the fact that it is signed by an independent third-party with no commercial interest in the business of the exporter.
- 7.3 If the third-party aspect of the certification process were to be removed, the oversight that should be absolutely necessary when declaring the origin of a product would be lost. Self-certification provides no basis for trust in the claims of the exporter, and this can come back to hurt exporters when they face audits by foreign customs.
- 7.4 What would stop a Customs official rejecting a self-certified claim of origin (regardless of its accuracy), and who would be there to assist the exporter in fighting this claim, especially when as a result of a retrospective audit 2 or 3 years after import?
- 7.5 Having an independent third-party gives the both the Customs officials and the importer assurances that the origin declaration is correct and means we can be a force if this declaration comes into question.
- 7.6 Using self-certification would make this process trickier because there is no one independent of the company that would be able to support their origin claims.
- 7.7 **All of the exporters that responded with feedback said the third-party certificates are a facilitator of trade, not a barrier. Several said they are much more comfortable with the third-party documents because of the assurance and credibility they have when presented at the border.**

- 7.8 Some also said that though they have the opportunity to export using self-certified documents under a different FTA, importers and customs brokers will instead ask for a third-party certificate under AANZFTA because of credibility of the document.
- 7.9 Both the Chamber network and our exporters see third-party certification as a facilitator of trade. The simple fact of an independent third-party certifier gives all parties involved assurance that the information is accurate, trustworthy, and reliable far beyond the assurance a self-certified document can offer.
- 7.10 We believe MFAT and NZ Customs need to reevaluate their position regarding certification of origin. We do not feel the Chamber network has been properly consulted about why third-party certification is and has been so important to the way free-trade is conducted.

8. Commercially Sensitive Information

- 8.1 Under self-certification, the exporter has a heightened risk of requests to divulge commercially sensitive information to importers who claim a need to provide substantive origin proof to Customs officials
- 8.2 NZCCI is aware of instances of these requests being made under the existing 'self – certification' FTAs. Exporters have no 'third party certifier' to refer to and protect them from these demands, risk front line staff providing financial records (for example to support a claim of RVC) or opt to pay the duty in full, rather than divulge information.
- 8.3 Under the current third party Certification process, Chambers obtain information relevant to the relevant PSR in such a way to minimise the need for the company to divulge sensitive commercial information and yet have a robust confirmation that the goods meet a PSR. Any sensitive commercial information is held in confidence and only provided to NZ Customs under audit request. NZ Customs then provide the assurance to the foreign customs authorities as to the validity of any preference claim being questioned.
- 8.4 Under self-certification, where there is no Chamber to screen requests, the exporter would be required to supply all information requested, leaving them vulnerable to the possibility of over-sharing information.

9. Two-Pronged Certification of Origin System

- 9.1 If the status quo regarding certification of origin is not maintained, we suggest a two-pronged system, where self-declaration or self-certification of origin is implemented in addition to tradition third-party certification.

- 9.2 Though we are opposed to the implementation of self-certification for AANZFTA because of the issues listed above, we can understand that there are some influential and large exporters who are confident in their own processes.
- 9.3 *Recommendation: In the event origin certification status quo is not continued, look at a two-pronged system where both self-certification and third-party certification is permitted.***
- 9.4 For a two-pronged system, we believe that the Japan model around certification is good model to follow. This is used for Japan's economic partnership agreements (EPAs) with Mexico, Peru, and Switzerland.
- 9.5 Japanese exporters wishing to self-certify origin are required to undergo an audit of their systems and declaration process and are then approved by the Japan Chamber of Commerce. The Japan Chamber of Commerce is also authorised to issue third-party certificates.
- 9.6 This system allows exporters to self-certify but also ensures that they follow the rules regarding origin.
- 9.7 *Recommendation: Should a two-pronged origin certification system be utilised, MFAT negotiators should look at the system implemented in Japanese trade agreements.***

10. Rules of Origin

- 10.1 An issue we do have with the requirement of certificates of origin is *Chapter 3, Annex on Operation Certification Procedures, Rule 14*. This states that a certificate of origin is required for any goods exceeding US\$200 FOB value.
- 10.2 We believe the US\$200 threshold for certificates of origin is too low and inconsistent with other FTAs.
- 10.3 The Chamber recommends this minimum amount be increased to US\$1,000 FOB value, qualified for consignments when believed to not be sent in small value consignments for the purpose of circumventing the Origin certification requirements. This recommendation is made regardless of the certification of origin process.
- 10.4 Increasing the value required for a certificate of origin would greatly relieve any cost pressures on small exporters who are either sending commercial samples overseas or some of their first exports for sale.
- 10.5 *Recommendation: The minimum value of a shipment required for a certificate of origin be increased to US\$1,000 FOB value.***

- 10.6 As a current provider of certificates of origin, we have a sense ‘at the coal-face’ in regard to the rules of origin.
- 10.7 From our experience we would recommend that exporters continue to have the option of using either the ‘*Change of Tariff Classification*’ (CTC) or ‘*Regional Value Content*’ (RVC) rules when determining origin.
- 10.8 The Chamber favours using the CTC ruling over RVC, due to need for less commercially sensitive information. However, if required, we believe it is useful for the exporter to be given the RVC option, especially if the product in question does not comply with the CTC ruling.
- 10.9 *Recommendation: Exporters continue to have the option of using either the ‘Change of Tariff Classification’ (CTC) or ‘Regional Value Content’ (RVC) rules when determining origin.***
- 10.10 NZCCI would also like to recommend that all domestic regulations by all parties be required to reflect a consistent interpretation of AANZFTA provision.
- 10.11 Inconsistencies between domestic regulation and the requirements and provisions of AANZFTA Operational Procedures for Certificates of Origin is a leading non-tariff barrier. Regardless of whether origin is declared by an exporter or certified by a third-party, it is essential this upgrade achieves consistency among domestic regulations for all parties involved in the agreement and that all parties agree on a consistent interpretation.
- 10.12 *Recommendation: All domestic regulations relating to AANZFTA are required to reflect a consistent interpretation of AANZFTA provisions.***

11. Concluding Comments

- 11.1 The question we want to ask is – what problem is being solved by moving to self-certification?
- 11.2 There are clear benefits in having third-party certification for origin. If the issue is timeliness, paperless transactions, and cost, then we believe we have justified the cost, and shown that our procedures and system are ‘paperless’, quick, and easy for exporters to use.
- 11.3 Self-certification increases the risk for many New Zealand exporters leaving them vulnerable to the demands of foreign importers and Customs agencies without the support of an independent third-party.
- 11.4 We support our exporters with the export process and there is minimal confusion in that experience because we are able to use our expertise and knowledge.

11.5 Below is a summary of our recommendations on the AANZFTA Update;

- 1) *Widen the scope of the AANZFTA Upgrade to include non-tariff barriers/non-tariff measures.*
- 2) *We endorse NZIBF's position on the following key trading issues: Services, e-Commerce, Investment, Customs Procedures, and Government Procurement.*
- 3) *The status quo regarding certification of origin is maintained through the use of third-party certificates.*
- 4) *AANZFTA, Chapter 3, Operational Certificate Procedures (OCP), Rule 7, Paragraph 3i be changed to read "shall be electronic".*
- 5) *In the event origin certification status quo is not continued, look at a two-pronged system where both self-certification and third-party certification is permitted.*
- 6) *Should a two-pronged origin certification system be utilised, MFAT negotiators should look at the system implemented in Japanese trade agreements.*
- 7) *The minimum value of a shipment required for a certificate of origin be increased to US\$1,000 FOB value.*
- 8) *Exporters continue to have the option of using either the 'Change of Tariff Classification' (CTC) or 'Regional Value Content' (RVC) rules when determining origin.*
- 9) *All domestic regulations relating to AANZFTA are required to reflect a consistent interpretation of AANZFTA provisions.*

11.6 The views expressed here in regard to certification of origin also applies to all other free-trade and economic partnership agreements New Zealand has in place currently or negotiating now or in the future.

11.7 This submission contains commercially sensitive information. Should the Ministry wish to make this submission public information, please contact us in the first instance.

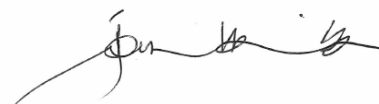
11.8 Thank you for the opportunity to submit our thoughts and the thoughts of our exporting members on the AANZFTA Upgrade.

11.9 The NZCCI board would appreciate the opportunity to speak to the MFAT negotiators on this issue.

Nāku iti noa, nā



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