



# **Department of Home Affairs submission to the Inquiry into strengthening Australia's trade and investment relations with Africa**

Joint Standing Committee on Foreign Affairs, Defence  
and Trade

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# Overview

## Introduction

The Department of Home Affairs (the Department), including the Australian Border Force (ABF), welcome the opportunity to provide a submission to the Inquiry into strengthening Australia's trade and investment relations with Africa by the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee).

As Australia's frontline border law enforcement agency and customs service, the ABF facilitates the movement of people and goods across the border and delivers operational activities across the border continuum.

The ABF works to enhance economic growth through streamlined trade and traveller processes, while undertaking targeted trade enforcement activities to protect government revenue and ensuring compliance with Australia's customs laws.

## Background on existing trade and investment relations with Africa

The ABF implements the Australian System of Tariff Preferences (ASTP), Australia's Generalised System of Preferences (GSP) Scheme for developing and least developed countries. The Department of Foreign Affairs and Trade (DFAT) has policy responsibility for the ASTP reflecting DFAT's leading role on trade and investment policy for the Government, working closely with portfolio agencies and other Commonwealth government departments.

Australia first extended preferential rates of customs duty to developing countries unilaterally in 1966 under the Australian System of Tariff Preferences (ASTP). The Enabling Clause of the General Agreement on Tariffs and Trade (GATT), as a result of the conclusion of Tokyo Round in 1979, created a permanent legal basis for granting preferential trade treatment to developing countries. Prior to the Enabling Clause, the ASTP was allowed through a waiver to provide most-favoured-nation (MFN) tariff treatment under the GATT. MFN tariff treatment aims to create equal trade terms among countries and promote non-discriminatory trade.

Many nations, including Australia, offer Generalised System of Preferences (GSP) schemes to developing countries under a framework established by the United Nations Conference on Trade and Development (UNCTAD). GSP schemes are preferential trade programs where developed countries offer developing countries reduced or zero customs duties on their exports to enter the developed nation's market. The aim of GSP schemes is to promote economic growth in developing nations by making their products more competitive and by lowering trade barriers. All GSP schemes are applied on a non-reciprocal basis and there are no underlying agreements governing conditions of entitlement to the reduced or zero customs duties. Each nation that offers a GSP scheme is free to specify its own rules of origin that are used to determine the "nationality" of a good and therefore which goods are eligible for preferential tariff treatment under a GSP scheme.

While the Australian Government froze some preferences during the early 1990's, there are 179 Countries and Places still eligible for preferential rates of customs duty under the ASTP. Generally, developing country preferences are now focussed on imports from Least Developed Countries (LDCs) and certain Pacific Island nations that are members of the Pacific Islands Forum (PIF), where the goods do not meet the rules of origin criteria under the South Pacific Regional Trade and Economic Cooperation Agreement.

## Level of preferential rates of customs duties under the ASTP

### Least Developed Countries (LDC)

Since 2003, Australia has provided duty and quota-free access to 50 LDC countries and places including 34 Countries in Africa ([Attachment A](#)).

### Developing Countries (DC)

There are 69 countries and places subject to Developing Country (DC) rates of customs duty including the 34 African Countries subject to LDC rates as well as Namibia and Botswana ([Attachment A](#)).

These countries and places are entitled to DC rates of duty on 2,893 tariff lines.

In most cases, qualifying goods from DC countries and places receive a 'Free' rate of duty rather than the 5 per cent MFN or general rate of duty.

**Table 1: Number of tariff lines, most favoured nation rates and developing country rates**

No. of lines	MFN Rate	DC rate
2,872	5 per cent	Free
4	5%, or, if lower, \$0.45/kg TSS	Free
12	4 per cent	Free
5	\$1.22 per kg	5 per cent reduction on MFN rate

Only 55 tariff lines do not have reductions to the rates of customs duties under the DC preferences. These cover certain textile products and dental floss.

### Developing countries subject to Developing Country Status (DCS) rates of duty

There are 106 countries and places that are entitled to DCS rates of customs duty – this includes 16 African Countries and St Helena ([Attachment A](#)).

These countries and places are entitled to DCS rates of duty on a smaller set of 745 tariff lines.

**Table 2: Number of tariff lines, most favoured nation rates and developing country status rates**

No. of lines	MFN Rate	DC rate
147	5 per cent	Free
11	4 per cent	Free
1	5 per cent	2.5 per cent
16	5 per cent	3 per cent
570	5 per cent	4 per cent

## **Guide on using the ASTP**

The ABF maintains a detailed guide for Australian importers to assist them in utilising the ASTP which includes information such as the rules of origin requirements.

The guide supports Australian businesses working with traders across Africa by maximising existing opportunities under the ASTP.

Alongside examples of how to determine the originating status of goods, the guide provides sample declarations that may be made by the manufacturer for the importer to use when claiming preferential rates of customs duty under the ASTP.

## **Free, Timely and Binding Origin Advice**

The ABF also provides Origin Advice that enables traders with a prospective importation into Australia to seek a binding ruling as to whether their goods meet the rules of origin under the ASTP. The ABF does not charge for this service. Guidance on seeking an Origin Advice is available on the ABF website.

Alongside Valuation Advice and Tariff Advice the ABF endeavours to provide these rulings within 30 days of receiving a correctly completed application.

## **Australian Trusted Trader benefits under the ASTP**

The Australian Trusted Trader program (ATT) is a government partnership with accredited Australian businesses to streamline legitimate trade. The ATT reduces red tape at the border for Trusted Traders, improves certainty in export markets, and expedites the flow of cargo in and out of Australia resulting in faster access to the Australian market. ATT accredited importers have demonstrated a strong compliance record and robust supply chain security.

The ATT Origin Waiver Benefit removes the requirements to obtain or present a Certificate of Origin which is an alternative form of documentation available under GSP schemes more generally. This provides ATT importers a simpler mechanism for claiming preferential rates of customs duty.

## Potential for the African Continental Free Trade Area (AfCFTA) to stimulate greater economic engagement between Australia and Africa

In the context of the Committee's deliberations on the potential for the AfCFTA to stimulate greater economic engagement between Australia and Africa, the Department draws the Committee's attention to the Pacific Agreement on Closer Economic Relations (PACER) Plus.

The PACER Plus is a trade and development agreement between Australia, New Zealand, and 10 Pacific Island Forum (PIF) members that aims to promote economic growth, create employment, and raise living standards by lowering trade barriers, increasing investment, and facilitating labour mobility.

Like Australia's relationship with African nations, Australia provides ASTP benefits to many PIF members. Australia and New Zealand worked together on the negotiation and implementation of the PACER Plus Agreement that includes several PIF members. Australia and New Zealand have also worked together in the negotiation and implementation of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA).

PACER Plus provides a model to demonstrate how an agreement can be negotiated with partners at a range of differing levels of development with a strong focus on economic development, cooperation and capacity building.

The Department has identified three aspects of PACER Plus to consider as a model should a deeper trade relationship with AfCFTA be sought on goods. These are set out in detail at **Attachment B** under:

1. Structuring tariff commitments to provide flexibility for tariff elimination and reduction over extended periods of time to recognise differing levels of development.
2. Ensuring the Rules of Origin (ROO), including necessary Product Specific Rules of Origin (PSR) are simple, transparent and trade facilitative.
3. Aligning documentation for claiming preferential rates of customs duty with existing arrangements with Australia.

## Conclusion

The Department thanks the committee for the opportunity to provide a submission and looks forward to the committee's report. Departmental representatives are available should the committee wish to discuss this submission further.

## Attachment A – African Countries and Places eligible for preferential rates of customs duty

Country or Place	LDC	DC	DCS	Country or Place	LDC	DC	DCS
Algeria	✗	✗	✓	Liberia	✓	✓	✗
Angola	✓	✓	✗	Libya	✗	✗	✓
Benin	✓	✓	✗	Madagascar	✓	✓	✗
Botswana	✗	✓	✗	Malawi	✓	✓	✗
Burkina Faso	✓	✓	✗	Mali	✓	✓	✗
Burundi	✓	✓	✗	Mauritania	✓	✓	✗
Cabo Verde (Cape Verde)	✓	✓	✗	Mauritius	✗	✗	✓
Cameroon	✗	✗	✓	Morocco	✗	✗	✓
Central African Republic	✓	✓	✗	Mozambique	✓	✓	✗
Chad	✓	✓	✗	Namibia	✗	✓	✗
Comoros	✓	✓	✗	Niger	✓	✓	✗
Congo, Republic of the	✗	✗	✓	Nigeria	✗	✗	✓
Côte d'Ivoire	✗	✗	✓	Rwanda	✓	✓	✗
Congo, Democratic Republic of	✓	✓	✗	São Tomé and Príncipe	✓	✓	✗
Djibouti	✓	✓	✗	Senegal	✓	✓	✗
Egypt	✗	✗	✓	Seychelles	✗	✗	✓
Equatorial Guinea	✓	✓	✗	Sierra Leone	✓	✓	✗
Eritrea	✓	✓	✗	Somalia	✓	✓	✗
Eswatini (Swaziland)	✗	✗	✓	St Helena	✗	✗	✓
Ethiopia	✓	✓	✗	Sudan	✓	✓	✗
Gabon	✗	✗	✓	Tanzania	✓	✓	✗
Gambia	✓	✓	✗	Togo	✓	✓	✗
Ghana	✗	✗	✓	Tunisia	✗	✗	✓
Guinea	✓	✓	✗	Uganda	✓	✓	✗
Guinea-Bissau	✓	✓	✗	Zambia	✓	✓	✗
Kenya	✗	✗	✓	Zimbabwe	✗	✗	✓
Lesotho	✓	✓	✗				

## Attachment B – Aspects of PACER Plus as a model for a relationship with AfCFTA

### Structuring tariff commitments to provide flexibility for tariff elimination and reduction over extended periods of time to recognise differing levels of development

Under PACER Plus, Australia and New Zealand agreed to provide a 'Free' rate of customs duties for originating goods on entry into force of the PACER Plus agreement. The agreement entered into force on 13 December 2020.

While some PACER Plus Parties were also able to rapidly reduce or eliminate tariffs for most originating goods, PACER Plus provides for 25-year phasing for several Parties and up to 35 years for LDC participants. There are a range of goods where tariff elimination is not achieved. Unlike the ASTP which is unilateral, PACER Plus required all Parties to commit to a level of tariff reduction or elimination.

Such outcomes reflect the level of development amongst the various participants. It is however important to note that while some traders in PACER Plus parties may use PACER Plus, many businesses continue to make use of the LDC or DC preferential rates of duty available under the ASTP. This reflects both historic relationships and the relative simplicity of the rules of origin under the ASTP.

Like PACER Plus members, AfCFTA members have different tariff outcomes between themselves when establishing the free trade area either at a country level or at the level of customs unions such as:

- Economic and Monetary Community of Central Africa (CEMAC)
- Economic Community of West African States (ECOWAS)
- East African Community (EAC) and
- Southern African Customs Union (SACU).

The Department notes that PACER Plus negotiations began in 2009 and concluded in 2017 and demonstrates the challenges of reaching a satisfactory outcome. Identifying goals, opportunities, capacity building needs, key outcomes and challenges early on across the diverse membership of AfCFTA is important to understand what may be achievable.

Australia has historically allowed a country to retain its existing ASTP preferences even in the case where an FTA is concluded providing a baseline on what Australia should provide those countries in a negotiation.

## **Rules of Origin – Ensuring the necessary Product Specific Rules of Origin (PSR) are simple, transparent and trade facilitative**

Under PACER Plus, Australia and New Zealand sought to provide modern and trade facilitative rules of origin while noting that the ASTP and NZ's GSP scheme have generous provisions.

Under the ASTP, goods are required to be unmanufactured raw produce (URP) or have a 50 per cent value addition made up of URP, labour and factory costs. For all arrangements except LDC, input from any LDC, DC, DCS or DCT country or place can be counted towards this 50 per cent value. This includes countries that have extremely limited remaining ASTP preferences including China, India, Korea and Singapore. For goods claiming an LDC preference under the ASTP, only 25 per cent of the 50 per cent value add can be met by DC, DCS and DCT inputs.

Generally, FTAs will provide three main options for goods to achieve originating status:

1. Wholly Produced or Obtained Goods
2. Produced entirely from Originating Materials
3. Goods Produced from non-originating materials through PSR.

While 1 and 2 are relatively consistent across trade agreements, the third aspect is often subject to intense negotiation as these define whether a good incorporating non-originating materials will be eligible for preferential rates of customs duties. This third aspect is often referred to as 'substantial transformation'.

Products that are particularly sensitive for negotiation partners may result in more complex, constraining or restrictive rules of origin. In most cases, the schedule of PSRs is lengthy and list every good at the 6-digit level of the of the Harmonized System (HS), the international standardised trade nomenclature.

PACER Plus provides one of Australia's most simple and straightforward schedules of PSRs by providing up to three options for most goods through a:

- Regional Value Content (RVC) Rule
- Process Rule; or
- Change in Tariff Classification (CTC) Rule.

Many outcomes are simplified making the PACER Plus PSR Schedule one of the least complex.

Broadly, RVC Rules are analogous to the value-add criteria used under the ASTP, however, calculations are slightly different because the minimum regional value content is often set at 40 per cent. Process Rules are often distinct and clear processes applicable to classes of goods such as refined food oils in Chapter 15 of the HS and Chemical Reaction and similar processes in Chapters 28 to 48 of the HS that covers products of the chemical or allied industries. Process rules are written in industry specific language thereby creating compliance and efficiency benefits.

Finally, CTC Rules require any non-originating material imported to produce the final good, to have a different Tariff Classification under which they were imported. These classifications must be either at the Chapter (2-digit), Heading (4-digit) or subheading (6-digit) level. There are provisions called *de minimis* provisions. That exempt a small amount of non-originating material from the CTC Rules. The amount of exempted material is often set at a threshold of 10 per cent by weight or value.

The PACER Plus PSR stands out as a model for the type of PSRs that could be achieved with countries and places already subject to substantial LDC and DC preferences under the ASTP. The greatest benefit of the PACER Plus PSR is that it provides alternatives to the value-add rule in the ASTP, by allowing CTC Rules or Process Rules to confer originating status.

## **Aligning Documentation for Claiming Preferential Rates of Customs Duty with existing arrangements with Australia**

Under the ASTP, Australian importers already claim preferential rates of customs duties using a manufacturer's declaration as found in Annex 2 of the ABF Preferential Rules of Origin guide. Alternatively,

Importers may claim preference based on a completed GSP Certificate of Origin, however, official certification is not required.

Under PACER Plus, recognising that Australian and New Zealand importers have long operated under declaration regimes, PACER Plus Parties agreed to simple Declaration of Origin Requirements in Annex 3-A of Chapter 3 of PACER Plus. This allows for Australian importers to seamlessly transition from ASTP preferences to PACER Plus preferences. Similarly, users of New Zealand's GSP scheme are experienced in using their trade facilitative documentation.

The additional costs of obtaining a Certificate of Origin issued by a government Issuing Authority or third-party Issuing Body may be a factor that discourages utilisation, including the complexity in amending such documentation once issued.

Under AANZFTA, Parties have begun a process of moving from a Certificates of Origin only system towards allowing Declarations of Origin to support claims for preferential rates of customs duty.

Such dual systems which provide both Declaration of Origin and Certificates of Origin options as equally valid, can assist utilisation of new agreements by allowing new and inexperienced traders to be supported by an Issuing Authority or Body.