

WCO ORIGIN COMPENDIUM



WORLD CUSTOMS ORGANIZATION

MAY 2017

WCO Origin Conference, 3-4 May 2017, Addis Ababa, Ethiopia
Closing remarks/way forward by Secretary General

The first meeting of the biennial WCO Conference of Origin has been successfully completed with the sharing of a wide breadth of knowledge and experiences and new ideas for the way forward on the work on rules of origin (ROO). At the very outset, I wish to thank the African Union for hosting this event, the Ethiopian Revenues and Customs Authority for logistic support and the Korea Customs Service for financial support. Also, I would like to convey my appreciation to all the speakers, moderators and participants for their active participation and valuable input.

The lively discussion at the conference seems to confirm that as regional integration continues to be a driving force for the Global and Regional Value Chain, rules of origin remain a prominent feature of today's international trading system.

As a conclusion of this thought-provoking session, allow me to offer my observation on the way forward, based on what I have learned throughout the conference.

First, it is noteworthy that many participants stressed the importance of better involvement of the private sector in matters pertaining to origin. As regional integration aims at creating a big market, it is natural for governments to work in close consultation with the business sector to reflect their interests in setting and implementing the rules of origin. From this point of view, it was mentioned that it would be beneficial for governments to improve transparency and data accessibility in origin matters, provide facilitation for small-and-medium-sized enterprises (SMEs) and enhance cooperation with the private sector. Customs would be particularly relevant in this regard as it promotes a partnership approach with the business community, including dialogue and consultation that supports the strengthening of economic competitiveness. In this connection, the urge to better inform businesses of the way to use preferential rates may suggest that Customs should be more involved in communication and negotiations in ROO in order to contribute to raising awareness of the private sector, especially SMEs and the public on the benefit of regional integration and its enabling tools, including the origin.

Secondly, improving compliance is the other element to consider when involving the private sector. Origin irregularities and fraud cases are increasingly challenges for Customs. Apart from the revenue implication, the fraudulent use of origin is also exploited to conceal the true origin of goods and thus the risk of illicit trade. These trends require Customs intervention for enhanced risk management based on data analysis, which is WCO's theme for this year. In addition, the origin's aspect of consumer protection and "Fair Trade" were raised and they are also part of the Customs mission of protecting society and citizens from health and safety threats. Cooperation with compliant traders and providing concrete benefits would be all the more important.

Thirdly, harmonization of ROO was a major interest during the Conference. I think we need to distinguish non-preferential ROO, preferential ROO used in Free Trade Agreements (FTAs) and preferential ROO for LDCs used for the General System of Preference. The third one is linked to the development issue and there was a question of the validity of a one size fits all approach.

Regarding the non-preferential ROO, the unfinished work for its harmonization in the WTO affected the Annex K of the WCO Revised Kyoto Convention (RKC) relevant to the ROO. At the time of finalizing the RKC in 1999, there was an ongoing harmonization work on non-preferential ROO in the WTO and therefore the RKC's Annex K was deliberately kept open, without details, in the expectation of revisiting it after the completion of the WTO negotiations. With the faded hope for the WTO work in this regard, there was an attempt to salvage some of the progress achieved by the WTO, to attach it to the Annex K proposed by the European Union a couple of years ago.

With regard to the preferential ROO for regional integration, there are two aspects, namely rules and administrative procedures. When it comes to rules, there are some similarities in principles as was the case in the non-preferential ROO. However, given the diversified commercial interests, there might be a limit to harmonization. Nevertheless, many participants observed that the tariff-shift method seems to be more in use than the added-value method because of its user-friendliness, including from the Customs point of view. Consequently, the Harmonized System (HS) could provide a useful help. To address this issue, the revision work of HS, hitherto fiscal-oriented should take into account the user-friendliness in terms of ROO. When it comes to administrative procedures, one noteworthy change is the gradual shift from third-party certification to self-certification and administrative cooperation. This entails change in Customs officers' work from the comfort zone of checking the authenticity of stamp to risk-based verification, requiring capacity building. In this connection, paper-based certificate of origin has been often identified as the last obstacle to dematerialization, in support of Digital Customs, last year's WCO theme. With the realization of Single Window however, many other government procedures and permits are now incorporated in the online clearance process and certificate of origin might not be the only obstacle these days.

Fourthly, there were several suggestions about the ongoing negotiations of ROO in the context of regional integration, including those in Africa. Negotiations on ROO are often stuck because of sticking to little detail without taking into account actual business needs or paying too much attention to political agenda. Another stumbling block is often revenue concern expressed by political leaders, especially in the context of Africa-EU Economic Partnership Agreement negotiations that tries to address the WTO rules. When it comes to harmonization work of ROO between FTAs, one possibility might be introducing cumulation between FTAs. Based on the Latin American experience, this solution seems worthwhile exploring but requires more study to avoid the ROO becoming rather complicated. Another suggestion was that regional integration could take more practical steps to facilitate trade than concentrating on ROO negotiations.

Fifthly, participants made relevant suggestions about the future work of the WCO. They appreciated the launch of the WCO Origin Compendium that includes many of WCO's guidelines on ROO areas, including certification, verification, irregularities and technical update of ROO in line with the HS as well as comparative studies. The Compendium is a living document and should incorporate more national practices in the future. E-learning modules and origin database were also identified as helpful in terms of capacity building. There was a proposal to develop a WCO toolbox on ROO for negotiators as well as the study on cumulation. Finally, participants also suggested that the update of the Annex K of the RKC would be an ideal and direct way for streamlining and harmonizing origin administrative procedures, subject to the approval of WCO Members.

These are some of the voices that I picked up from the gathering of experts. Once again, thank you very much for your input. Needless to say, the WCO will continue its work in close collaboration with national governments, other international organizations including the WTO, business community and academia.

I hereby declare the closure of the conference.

A handwritten signature in black ink, appearing to read 'Kunio Mikuriya', with a long, sweeping underline that extends to the right.

Kunio MIKURIYA

Secretary General

WCO ORIGIN COMPENDIUM

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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

Modern trends in international fragmentation of production have contributed to growing trade interconnectedness, with the result that the number of preferential trade agreements has been steadily increasing over the last decades. At present more than 300 free preferential trade agreements are in force around the world, and around 100 more are in some stage of negotiation or ratification.

Customs administrations and the business community are faced with these preferential trade agreements that offer preferential treatment going beyond the application of the GATT most-favoured-nation (MFN) clause under GATT Article XXIV or the autonomous granting of preferences under the Generalized System of Preferences (GSP).

Rules of origin are important legal instruments for the application of preferential trade agreements. With the proliferation of these agreements, economic operators and Customs administrations are faced with a plethora of divergent and often overlapping rules of origin which presents challenges, both to the business community and the authorities. They also represent an important concern in terms of customs revenues for developing countries. The complication which arises from the application of intertwining free trade agreements with its tangle of multiple and complicated preferential rules of origin is called “spaghetti bowl effect”.

Moreover, rules of origin are also needed for the application of other trade policy measures of the World Trade Organization (WTO). They are called non-preferential rules of origin. In the Uruguay Round of Multilateral Trade Negotiations, the WTO members have agreed to harmonize the non-preferential rules of origin. For that purpose the WTO Agreement on Rules of Origin (1994) established a work programme (Harmonization Work Programme (HWP)). However, with extremely polarized views about the need for and benefits of harmonized non-preferential rules of origin, the negotiations for the harmonization of the non-preferential rules of origin within the WTO are stalled for the time being. According to notifications to the WTO, only one third of the WTO Members applies national rules of origin for non-preferential trade, which leaves the majority of countries in a vacuum of not applying specific legislation related to non-preferential rules of origin. This situation also contributes to the “spaghetti bowl effect” of rules of origin.

The aim of the Origin Compendium is to gather all information on origin rules published by the World Customs Organization (WCO) in one document in order to facilitate the immediate access to the knowledge on all origin related topics, thus enhancing the understanding and correct application of rules of origin.

1.2 SCOPE OF THE ORIGIN COMPENDIUM

This Compendium comprises all of the current tools and instruments in the field of origin (studies, guidelines, handbooks, conventions, best practices etc.) which have been developed and published by the World Customs Organisation (WCO). Each topic is presented by a short introductory abstract with hyperlinks referring to the WCO publications of the respective tools and instruments.

The Origin Compendium encompasses virtually all aspects of rules of origin, both for preferential and non-preferential origin rules, found in the various origin legislations worldwide.

The Comparative Study on Preferential Rules of Origin, developed by the WCO highlights in detail the basic standards and norms, as well as, the differences in major trade agreements, such as the pan-Euro-Mediterranean, NAFTA, ASEAN and TPP preferential origin systems ensuring that all aspects of these rules are clearly understood and implemented correctly.

WCO COMPARATIVE STUDY ON PREFERENTIAL RULES OF ORIGIN

The Study is aiming at helping to enhance the overall understanding of the origin legislations. The study is comparing the European rules of origin system, rules of origin legislations in NAFTA, ASEAN and the TPP free trade context.

European rules of origin, i.e. the *Regional Convention on Pan-Euro-Mediterranean Preferential Rules of Origin*: the single legal instrument regarding the origin rules in the context of approximately 60 bilateral free trade agreements between countries in the pan-Euro-Mediterranean area (EU, EFTA, Turkey, the Western Balkan countries involved in the EU's Stabilisation and Association process (Bosnia & Herzegovina, the former Yugoslav Republic of Macedonia, Albania, Montenegro, Serbia and Kosovo) and the Mediterranean countries which are signatories to the Barcelona Declaration (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Tunisia) and the Faroe Islands.

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.054.01.0003.01.ENG&toc=OJ:L:2013:054:TOC#L_2013054EN.01000401

NAFTA:(North American Free Trade Agreement), a comprehensive free trade agreement that sets the rules of trade and investment between Canada, the United States, and Mexico. The NAFTA Rules of Origin are stipulated in Annex 401 and its annex containing the defining set of origin specifications.

<https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement>

ASEAN: (Association of Southeast Asian Nations) comprising ten Southeast Asian states: Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei, Cambodia, Laos, Myanmar and Vietnam. The rules of origin are found in Chapter 3 of the ASEAN Trade in Goods Agreement (ATIGA):

<http://asean.org/asean-economic-community/asean-free-trade-area-afta-council/agreements-declarations/>

TPP: (Trans-Pacific Partnership) a free trade agreement among the United States and 11 other Pacific Rim countries (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam). The agreement, after its signing by the twelve countries in February 2016, was stopped after US election in November 2016. TPP's rules of origin are stipulated in Chapter 3:

<https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>

With the analysis of these origin legislations, it is possible to explain and exemplify virtually all aspects of rules of origin found in various origin legislations worldwide. All existing rules of origin legislations are in fact influenced by one of these sets of provisions or they are composed of elements taken from these legislations.

The study gives detailed information on all origin topics found in these agreements and outlines the similarities and differences between these origin models.

<http://www.wcoomd.org/en/topics/origin/instrument-and-tools/comparative-study-on-preferential-rules-of-origin.aspx>

CHAPTER 2: ORIGIN TOPICS OF A GENERAL NATURE

2.1 WHAT ARE RULES OF ORIGIN?

The reason why countries wish to determine the origin of goods lays in the existence of differentiated treatment on international trade. Rules of origin would not be necessary in a completely free trade world economy, as all commodities would be treated in the same way regardless of their origin.

Rules of origin relate to the identification of the rules and regulations used for the determination of the country of origin in preferential and non-preferential trade in goods. "Goods" are defined to be all those commodities which are classifiable under the Harmonized System (HS).

However, rules of origin do not encompass rules for geographical indications (GIs) as indications according to the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that identify a product as originating in a specific place (country, region or locality) where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin (e.g. Regional Appellation, such as "Champagne", "Cognac", "Port wine" or "Parmesan cheese").

The determination of the country of origin is a very important element in international trade relations and it is not surprising that different international instruments address this topic. The first international instrument to deal with rules of origin was the WCO Kyoto Convention (International Convention on the Simplification and Harmonization of Customs Procedures), which was drawn up by the Customs Co-operation Council (CCC). Three chapters in the Kyoto Convention deal with rules of origin (Annex K to the Revised Kyoto Convention – former Annex D). There, rules of origin are defined in a broad way as "specific provisions, developed from principles established by national legislation or international agreements applied by a country to determine the origin of goods". However, the Kyoto Convention does not address the issue of an internationally agreed definition on how to determine the origin of a specific product.

REVISED KYOTO CONVENTION

The WCO Council adopted the revised Kyoto Convention in June 1999 as the blueprint for modern and efficient Customs procedures in the 21st century. The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures.

Link to the Kyoto Convention:

http://www3.wcoomd.org/Kyoto_New/Content/content.html

The WTO Agreement on Rules of Origin distinguishes between the following two distinct types of rules of origin:

- **Non-Preferential Rules of Origin;** and
- **Preferential Rules of Origin.**

Non-Preferential Rules of Origin

According to the WTO Agreement on Rules of Origin, non preferential rules of origin are defined as *“those laws, regulations and administrative determinations of general application applied by any WTO Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of Paragraph 1 of Article I of GATT 1994”*.

The non-preferential rules of origin are used for the implementation of an array of trade policy measures which are listed under paragraph 2 of Article 1 of the WTO Agreement on Rules of Origin:

- Application of Most-Favoured Nation-Treatment;
- Anti-Dumping and Countervailing Duties;
- Safeguard Measures;
- Origin Marking Requirements;
- Quantitative Restrictions or Tariff Quotas;
- Government Procurement; and
- Trade Statistics.

Preferential Rules of Origin

Preferential rules of origin determine whether goods qualify for a preferential treatment under a given free trade agreement. They respond to specific trade interests linked to a preferential trade agreement and they clearly reflect those specific interests. Preferential rules of origin are therefore patterned after the economic interests of the parties involved with the result that preferential rules of origin are unavoidably individualistic and differ from agreement to agreement. Preferential rules of origin are designated to ensure that free trade agreements and trade preference programmes benefit only the intended countries.

Thus, for the customs clearance of goods, it is necessary to determine the "nationality" of the goods, i.e. to ascertain the country of origin of imported products. After the classification of a commodity into the Harmonized System and the determination of its value, the determination of the country of origin is the third key element in the assessment of Customs duties and taxes. The laws, regulations and administrative rulings applied by governments to determine the country of origin are called "Rules of Origin".

2.2 ORIGIN PROVISIONS IN A FREE TRADE AGREEMENT

Preferential rules of origin play a central role in preferential trade agreements as they define the conditions under which preferential market access is granted to products coming from trading partners.

Preferential rules of origin legislation can broadly be structured into two distinct categories:

- general/regime wide rules of origin provisions; and
- sectoral/product specific rules of origin provisions.

There is a wide variety of combinations of product specific and regime wide rules of origin in different free trade agreements. The benefits linked to these agreements are limited to “originating products” and a reference in the general text of the free trade agreement is made to a

specific part (Annex or Protocol) where the provisions determining the “originating status” are grouped.

The general/regime wide rules of origin provisions consist of general topics, i.e. the general requirements needed for origin determination which are the criteria of “wholly obtained” and the fulfillment of a substantial transformation requirement (either specified as product specific rules in a list under a separate annex or protocol, or as an across the board requirement), the roll-up/absorption principle, the general description of calculation methods, various definitions, the use of accumulation/cumulation, general tolerances (de minimis rules), non-qualifying/insufficient operations and other specific provisions (treatment of accessories, spare parts and tools, packaging) etc.. They often also contain detailed provisions on origin certification and origin verification.

The requirements for origin determination consist of the criteria for substantial transformation based on changes in tariff classification, value-added rules or specific technical manufacturing processes or operations or a combination of these three categories.

2.3 THE RATIONALE OF RULES OF ORIGIN

2.3.1 WHEN ARE NON-PREFERENTIAL RULES OF ORIGIN NEEDED?

Non-preferential rules are used for all kinds of commercial trade policy measures which are not related to the granting of tariff preferences, e.g. the application of anti-dumping or countervailing duties, trade embargoes, safeguard and retaliation measures, quantitative restrictions, tariff quotas, for the compilation of trade statistics, for calls for tender in public procurement or for origin marking etc..

Non-preferential rules of origin attribute a single country of origin to goods, according to where a substantial transformation/major portion of production took place, for the application of non-preferential trade policy measures (see the specific trade policy measures under paragraph 2.1. Explanations on the scope of application of non-preferential rules of origin are also given in the “Rules of Origin Handbook under paragraph 5.1.2 on page 12 – [hyperlink to electronic version of the document is found in paragraph 2.6](#)).

2.3.2 WHEN ARE PREFERENTIAL RULES OF ORIGIN NEEDED?

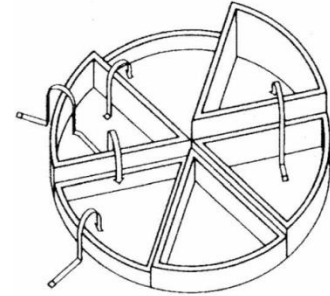
The following charts show different tariff regimes among different trading partners.

Each segment represents an individual country. The walls represent the customs tariffs and the different heights of the walls illustrate that each country maintains its own tariff regime towards other countries. Dashed lines signify free trade relations between the countries.

Individual countries have their own external customs tariff

Most favoured nation (MFN) tariff regimes of independent states do not require preferential origin legislation, since each country maintains its own customs tariffs towards imports from other countries. Origin determination is not necessary since the regime does not differentiate between different countries. Countries are free to shape their own trade policy.

No rules of origin needed – customs duties are levied according to the most-favoured nation principle.



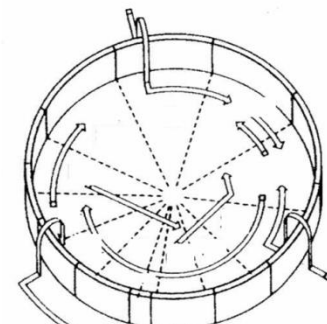
Tariff Regime of Independent States

Illustration by Rudolf H. Strahm "Wirtschaftsbuch Schweiz", Verlag Sauerländer

Customs Union

Customs tariffs and other trade barriers are eliminated between countries forming a Customs union. The goods circulate freely among the members. For imports from outside the Customs union, there is one common external Customs tariff applied (note that the wall representing the Customs duties is the same height, as a barrier against countries outside the customs union).

No rules of origin are needed within the Customs union. Goods circulate freely once external duties have been paid.



Tariff Regime of a Customs Union

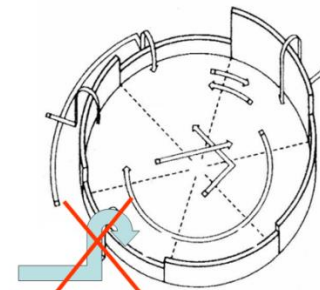
Illustration by Rudolf H. Strahm "Wirtschaftsbuch Schweiz", Verlag Sauerländer

Free Trade Area

Trade barriers between the countries of the free trade area are eliminated, but each country maintains its external Customs tariff towards countries outside the free trade area (so-called "third-countries").

Within a free trade area, the determination of origin is needed to ascertain whether a traded product is eligible for preferential treatment in the importing country. Thus, origin rules are necessary to prevent goods from non-parties of a free trade area from gaining preferential access through the member country of the free trade area with the lowest customs tariff.

Preferential rules of origin in free trade agreements define certain minimum transformation requirements which have to be fulfilled in the participating countries of a free trade agreement in order to identify the goods which may benefit from preferential market access. Without origin rules, goods could simply be transshipped through the country with the lowest tariff barrier. This transshipment is called "trade deflection". Preferential rules of origin are thus aiming at preventing trade deflection.



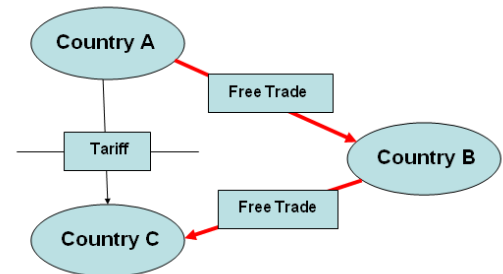
Imports into a Free Trade Area through the Country with the lowest Trade Barriers

Illustration by Rudolf H. Strahm "Wirtschaftsbuch Schweiz", Verlag Sauerländer

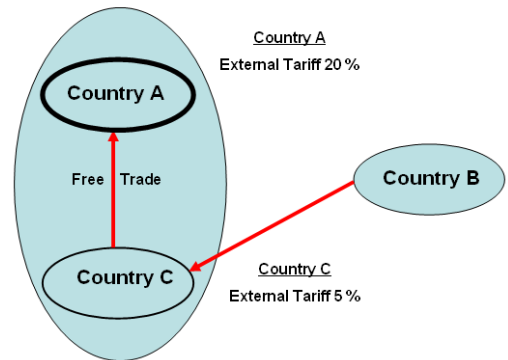
2.3.3 THE ECONOMIC RATIONALE OF PREFERENTIAL RULES OF ORIGIN

Preferential rules of origin in free trade agreements define certain transformation requirements which have to be fulfilled in the participating countries of a free trade agreement in order to identify the goods, which may benefit from preferential market access. The rationale for preferential rules of origin in free trade agreements is to ensure that concessionary market access is limited to the beneficiary parties of a free trade agreement, i.e. that only goods originating in participating countries of a free trade agreement will enjoy preferential treatment.

In the example, rules of origin shall prevent that goods manufactured in country A from being transshipped through country B in order to enter country C under preferences, thus avoiding the payment of duties in country C when two individual free trade agreements exist between countries A and B, and B and C, without offering cumulation possibilities between the two preferential trade areas.



Within a free trade area, rules of origin also prevent goods from being imported into the free trade area through the member country with the lowest external tariff barrier. If the benefit of a free trade agreement were to depend solely on the geographical location from which goods are shipped, imports into the free trade area would be channeled through the country offering the most favorable market access for countries outside the free trade area. This would cause major trade distortions and in the end it could mean that the higher Customs duties applied by other countries of the free trade area (in this example: country A) would have to be aligned on the level of the Customs duties of the country that applies the lowest duties (in our example, the Customs duties of country C).



Without rules of origin, it would not be possible to establish a free trade area where all participating countries continue to maintain their own external customs tariff towards countries outside the free trade area. Therefore, rules of origin are needed to prevent transshipment through countries with lower trade barriers. The rationale for the use of preferential rules of origin in free trade agreements is, thus, to curb such trade deflection.

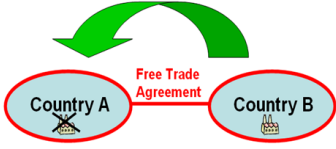
In other words: rules of origin are instruments in free trade agreements which ensure that the concessions foreseen in those agreements are granted only to products originating in the contracting parties to those agreements. The rules of origin are needed to avoid the deviation of products to the contracting parties of a free trade agreement because of tariff concessions involved. The higher the external tariff, the higher the preferential margins and the greater the incentive for trade deflection.

Trade liberalization through preferential trade agreements may have an enormous impact on trade flows and investment decisions of countries, either in a positive or a negative way and rules

of origin may influence this considerably. Depending on how rules of origin are shaped in a free trade setting, they may promote or restrict trade, promote or misdirect investment and contribute to or inhibit productivity growth and in the end contribute to sustaining or reducing welfare of a country.

2.3.4 THE IMPACT OF THE VARYING STRINGENCIES OF PREFERENTIAL RULES OF ORIGIN ON TRADE FLOWS

The economic effects of trade liberalization through preferential trade agreements may be influenced through the varying stringency of rules of origin, i.e. by varying the degree of the required transformation and the liberty to use cumulation or tolerances/de minimis rules, countries try to steer trade flows and influence investment decisions. If rules of origin are more restrictive than is necessary to prevent trade deflection, they may even have protectionist effects and they can serve as trade barriers.

<p>The creation of a free trade area should result in an expansion of trade between its members. More efficient suppliers in a partner country will have the opportunity to export since domestic production will be replaced with imports from partner countries (trade creation symbolized by the green arrow). Trade creation is defined as the reduction or substitution of domestic production by imports from a free trade partner country.</p>	
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It is intuitive that when rules of origin become more stringent, the effect of trade creation (the replacement of domestic production by imports from preferential trade partners) will be reduced since the cost of compliance with the rules of origin will exceed the benefits from preferences and imports will progressively be replaced by domestically produced goods.

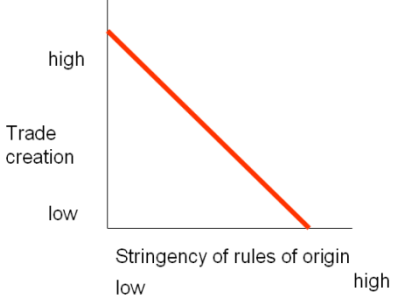
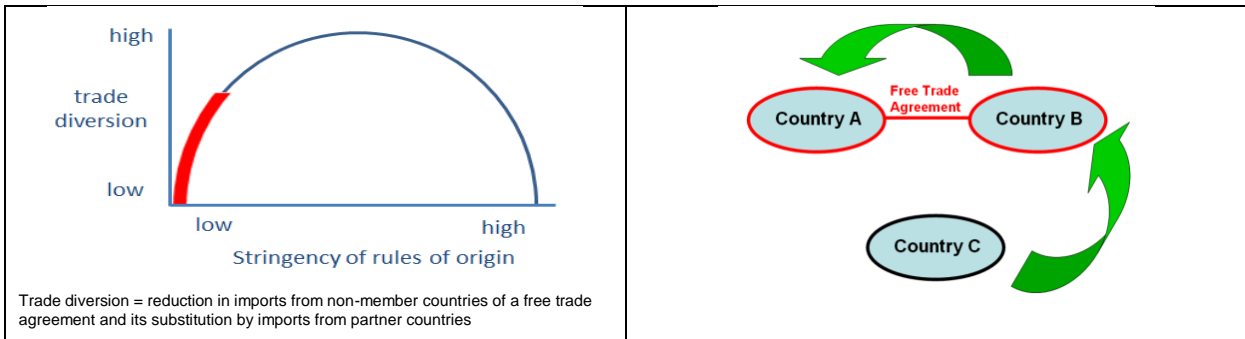
	<p>The trade creation effect, i.e., the substitution of domestically produced goods by imports, is very high with liberal rules of origin but will be reduced or nullified with more stringent rules.</p> <p>The more stringent the rules of origin, the lower the trade creation effect.</p>
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Illustration: "effects of stringency of rules of origin" from Stefano Inama „Quantifying the trade effects of rules of origin on preferences: the case of GSP, AGOA and ACP preferences"

The three examples illustrate that rules of origin should neither be too liberal nor too stringent in order to fulfil their intrinsic purpose, i.e. to prevent trade deflection (stopping the transshipment of goods into a free trade area through the country with the lowest tariff barrier) without being protectionist:



Trade diversion = reduction in imports from non-member countries of a free trade agreement and its substitution by imports from partner countries

Illustration inspired by "effects of stringency of rules of origin", Stefano Inama
 „Quantifying the trade effects of rules of origin on preferences: the case of GSP, AGOA and ACP preferences“

Less stringent or liberal rules of origin do not prevent trade deflection, as the substantial transformation criteria in the free trade area do not have a sufficient degree of transformation requirements, and thus do not have the effect of stopping transshipment of goods through the country with the lowest trade barrier (Illustrated by the green arrows: with overly liberal rules of origin there is no “stopping” effect, and goods from country C can be transhipped through country B to enter country A with preferences, under the free trade agreement of countries A and B).

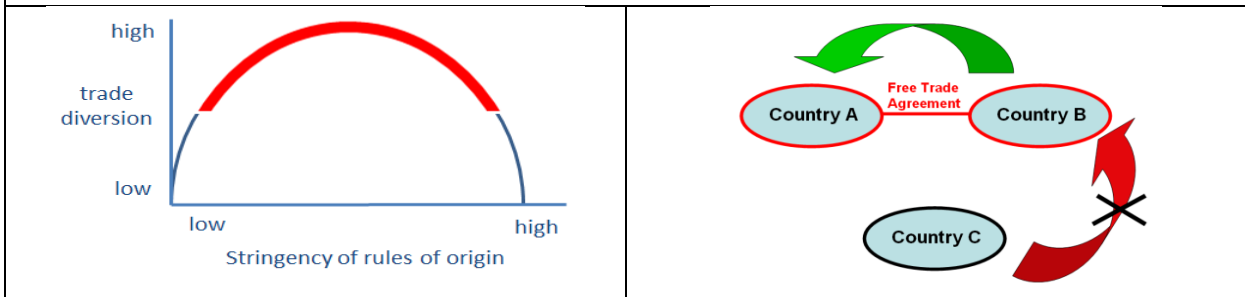


Illustration inspired by "effects of stringency of rules of origin", Stefano Inama
 „Quantifying the trade effects of rules of origin on preferences: the case of GSP, AGOA and ACP preferences“

More restrictive rules of origin prevent the transshipment of goods via the country with the lowest external tariff (illustrated by the red arrow) and promote the use of intra-free trade area supplies (illustrated by the green arrow), thus replacing imports from outside the free trade area through free trade supply and in this way increasing trade diversion.

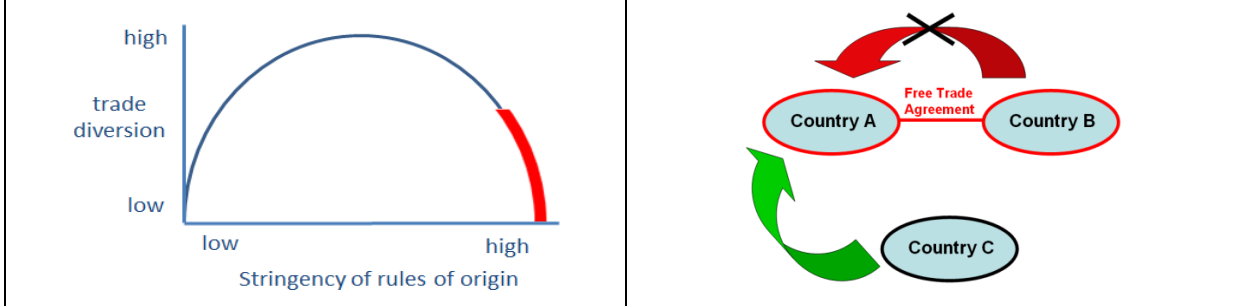


Illustration inspired by "effects of stringency of rules of origin", Stefano Inama
 „Quantifying the trade effects of rules of origin on preferences: the case of GSP, AGOA and ACP preferences“

The more restrictive rules of origin are, the more difficult it is for an importer to comply with the rules; thus, overly restrictive rules will nullify trade preferences because it is too costly to comply with the rules and no importers will seek to take advantage of the free trade agreement, with the result that no preferential trade is happening and trade is not diverted.

2.4 HARMONIZATION HISTORY OF RULES OF ORIGIN

Rules of origin as border control devices appeared with the development of differentiated tariffs and other trade measures in the beginning of the 20th century. However, there were no attempts to harmonize rules of origin at that time, nor when the General Agreement on Tariff and Trade (GATT) was established. No importance was given to rules of origin in the GATT, the view being that the unconditional most favoured nation clause in the text of the GATT would make origin rules legally superfluous. Thus, the GATT mentioned rules of origin in Article IX for the purpose of origin marking only, with the consequence that the GATT Contracting Parties were free to determine their origin rules according to their own legislations.

Failed Attempt to Harmonize Rules of Origin in the 1950s

The first attempt to harmonize rules of origin was launched by the International Chamber of Commerce (ICC) in 1953, with a resolution to the Contracting Parties recommending the adoption of a uniform definition for determining the nationality of manufactured goods. The abstract principle of “substantial transformation” was proposed as a guiding definition for the determination of origin. Whereas some countries were in favour of a standard international definition of origin with uniform rules for origin determination, others considered origin to be “inescapably bound up with national economic policies” which they considered to be different in each country (this split in opinions continues to exist to this day), and a consensus could not be reached amongst GATT Contracting Parties to envisage a possible harmonization of the rules in the field of origin.

Although the members of the United Nations Conference on Trade and Development (UNCTAD) had recognized that there was a need to examine rules of origin at the multilateral and systemic levels, the second attempt to harmonize preferential rules of origin, initiated during the discussions on the establishment of the General System of Preferences (GSP) in the 1960s, was unsuccessful, with the consequence that the preference-giving countries opted to retain their own origin systems.

The Kyoto Convention: The First Guidelines on Rules of Origin on an International Scale

More successful was the further attempt to harmonize rules of origin with the inclusion of guidelines on rules of origin in the International Convention on the Simplification and Harmonization of Customs Procedures (commonly known as the Kyoto Convention).

The International Convention on the Simplification and Harmonization of Customs Procedures (commonly known as the Kyoto Convention) was negotiated under the auspices of the Customs Cooperation Council in Brussels. The Convention laid down common principles with the aim of simplifying and harmonizing Customs procedures. To achieve this objective, standards and recommended practices are set out in the Annexes to the Convention, without preventing Contracting Parties from granting greater facilities than those provided in the Convention. Consequently, each Contracting Party is recommended to grant such greater facilities as extensively as possible.

The Kyoto Convention offered broad guidelines and recommended practices for the application of origin rules, without differentiating between preferential and non-preferential origin. Definitions, standards and recommended practices were given which became generally accepted by the international community and influenced the shaping of many origin rules, such as the principles of wholly obtained and substantial transformation, the documentary evidence of origin and its control. Nevertheless, the individual countries keep great freedom under the Kyoto Convention in drafting their own origin provisions.

The Kyoto Convention as an international instrument constituted the first attempt to evolve a common approach to the drafting of rules of origin. Originally, the Kyoto Convention set out standards and recommended practices regarding rules of origin in Annexes D.1, D.2 and D.3.

Those annexes were integrated almost unchanged in Annex K Chapters 1 to 3 of the Revised Kyoto Convention, on the ground that a further review could be undertaken once the WTO would have completed its work on harmonization of the rules of origin under the WTO Agreement on Rules of Origin.

Rules of Origin are included into the Multilateral Trading System of the World Trade Organization

Amid fears that rules of origin might unfairly restrict imports they have increasingly become the subject of complaints, and more and more countries were of the opinion that rules of origin should be subjected to some form of GATT discipline. In 1980, disputes between Japan and other East Asian countries and their major trading partners led Japan to propose that the harmonization of preferential and non-preferential rules of origin be carried out within the Uruguay Round of Multilateral Trade Negotiations. Those disputes derived from different views on the application of rules of origin in conjunction with anti-dumping proceedings. The United States supported the idea. However, European countries were reluctant to address preferential rules of origin as part of the same exercise. Despite the divergent views on this issue, rules of origin were included into the Uruguay Round negotiations with a compromise that only non-preferential rules of origin should be discussed.

Preferential rules of origin were included into a non-binding Common Declaration imposing a number of general exhortations with broad commitments, in the hope of creating a more transparent, rule of law-like system for applications of preferential rules of origin (i.e., trying to make preferential rules of origin clear, have them based on positive standards, have them published in accordance with GATT rules, assert that changes should not be applied retroactively, and to guarantee judicial review mechanisms).

The results of the discussions on rules of origin within the Uruguay Round talks were compiled into the "Agreement on Rules of Origin" and were annexed to the Marrakech Agreement establishing the World Trade Organization which entered into force in 1995. The principle of the single undertaking in WTO requires that all WTO members undertake to implement the whole legal framework of the WTO, without having the possibility to opt out certain aspects. All members are, thus, bound to apply the Agreement on Rules of Origin. The WTO Agreement on Rules of Origin seeks to harmonize all non-preferential rules of origin used by WTO members into a single set of international rules. Negotiations on the harmonization of non-preferential rules of origin are underway. However, until they are finalized each country continues to apply its own non-preferential rules of origin.

The WTO Agreement on Rules of Origin does not foresee the harmonization of preferential rules of origin, and each country continues to be free to shape its own preferential rules of origin in its preferential trade relations.

2.5 RULES OF ORIGIN IN THE KYOTO CONVENTION: DEFINITIONS, PRINCIPLES, STANDARDS AND RECOMMENDED PRACTICES

The Kyoto Convention specifies the country of origin of a product to be the country:

- where the commodity has been wholly produced (this concept is used when only one country is involved in the origin attribution), or
- where the last substantial transformation took place (this concept is used when two or more countries have taken part in the manufacturing process of the commodity).

According to the Kyoto Convention the last substantial transformation is the transformation that is deemed to be sufficient to give a commodity its essential character. Such a broad definition offers a variety of interpretations and gives countries the freedom to specify the meaning of substantial transformation by themselves.

Proposals to adopt more substantive rules in the Kyoto Convention were rejected, as preferential rules of origin were considered to be part of commercial policy of an individual country and many countries were of the opinion that a substantive standardisation with an international supervision was not desirable in the field of preferential origin.

Thus, the Kyoto Convention only listed in a broad way three distinct methodologies to express substantial transformation in Chapter 1, i.e.:

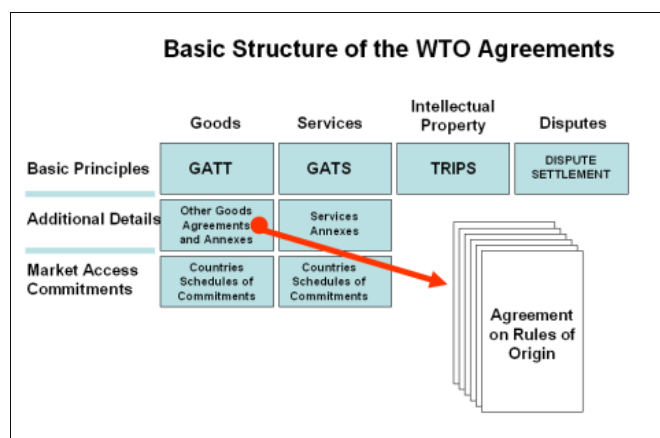
1. Requirements based on a Change of Tariff Heading;
2. Prescribed Thresholds of Percentages of Value Addition;
3. Descriptions of Specified Manufacturing or Processing Operations.

During the talks on the Uruguay Round Agreement, these three methodologies were integrated into the WTO Agreement on Rules of Origin (non-preferential origin) and they provide the methodological basis for the harmonization work of the non-preferential rules of origin. The three methodologies were also listed in the Common Declaration in Annex II for preferential origin purposes.

In spite of the low level of binding rules and the fact that the acceptance of Annex K of the Revised Kyoto Convention is voluntary, the Convention offers general guidance for the determination of origin and provides basic standards and recommended practices with regard to the documentary evidence of origin and its control which are globally applied.

2.6 WTO AGREEMENT ON RULES OF ORIGIN

The WTO Agreement on Rules of Origin is part of Annex 1 A to the Agreement establishing the World Trade Organization. The Agreement is one of the results of the Uruguay Round of Multilateral Trade Negotiations signed in Marrakech in 1994.



With regard to non-preferential rules of origin, the Agreement requires all WTO members to ensure that their rules of origin are stipulated in a transparent manner without restricting and distorting international trade or having disruptive effects on trade. Furthermore, the Agreement requests that rules of origin are administered in a consistent, uniform, impartial and reasonable manner. The Agreement also stipulates that rules of origin should be based on positive standards (i.e., rules of origin should state what does confer origin, rather than what does not).

With the elaboration of a single set of rules applied by all WTO members under non-preferential trading conditions, the WTO Agreement on Rules of Origin aims to harmonize of non-preferential Rules of Origin¹ according to a Harmonization Work Programme (HWP).

The WTO Agreement on Rules of Origin exempts Preferential Rules of Origin from harmonization. Nevertheless, certain disciplines which are applicable for non-preferential rules of origin were also taken to be applicable for preferential rules of origin regimes. These disciplines are contained in the Common Declaration in Annex II.

WTO AGREEMENT ON RULES OF ORIGIN
ANNEX II
COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN

The following disciplines with regard to Preferential Rules of Origin are applicable:

- requirements that origin determination has to be based on the following three clearly defined methodologies:
 - 1) based on Change of Tariff Heading

¹ Non-preferential rules of origin are defined by the Agreement as "those laws, regulations and administrative determinations of general application applied by any Member to determine the country of origin of goods provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of Article I of GATT 1994."

- 2) prescribing a thresholds of Percentages of value addition
- 3) describing Specified manufacturing or processing operations

- principle that preferential rules of origin have to be based on positive standards;
- obligation to publish preferential origin legislation;
- possibility to request origin assessments;
- principle not to apply preferential rules of origin legislation retroactively
- legal possibility to challenge any administrative action with regard to the origin determination through judicial, arbitral or administrative procedures;
- assurance of the confidential nature of provided information; and
- obligation to notify preferential origin legislation to the WTO.

However, these broad principles do not lead to international standards. Each country is free to negotiate and shape its own sets of preferential rules of origin tailored to its needs with the result that preferential rules of origin vary across products and agreements. The plethora of different rules of origin systems contributes considerably to the complexity of preferential trade agreements and adds costs and other burdens to participation in, and the administration of, those agreements.

RULES OF ORIGIN – HANDBOOK (2012)

The Handbook outlines the state of play with regard to the harmonization of non-preferential rules of origin at the stage when the Technical Committee on Rules of Origin (TCRO) of the World Customs Organization completed its examination under the Harmonization Work Programme and lists the major outstanding issues by the end of 2011.

The Handbook gives the definitions of both, preferential and non-preferential rules of origin and explains the economic effects of rules of origin to international trade. Short explanations are also given on the criteria to determine the country of origin of goods and the methodologies to express substantial/sufficient transformation.

Furthermore, the Handbook explains the various non-preferential trade policy measures where non-preferential rules of origin are applied.

Short insights are given on the WTO Agreement of Rules of Origin.

The full text of the handbook:

<http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/overview/origin-handbook/rules-of-origin-handbook.pdf>

CHAPTER 3: GENERIC TOPICS COMMONLY FOUND IN PREFERENTIAL ORIGIN LEGISLATION

In general, preferential rules of origin legislations broadly consist of the following elements :

- Conditions for Origin Determination
Provisions outlining the general requirements for the determination of the originating status of the goods.
- Territorial and Consignment Criteria
Administrative requirements imposed on the preferential trade, ensuring that the goods are manufactured in the free trade area and that the goods arriving in the country of import are the same as those which left the country of export and/or the goods are not manipulated during transport.
- Procedural Aspects
Rules dealing with the origin certification and verification requirements.
- Other Provisions
Additional provisions in origin legislations stipulating provisions on penalties, confidentiality of information, international cooperation and mutual assistance or dispute settlement etc..

3.1. PROVISIONS FOR ORIGIN DETERMINATION

The part of origin legislation devoted to the determination of the preferential origin provides the guiding principles and conditions for acquiring originating status. They also contain the definitions which explain the terminology used in the origin legislation. They may also add leniency to rules of origin determination, alleviating the impact of the product specific rules through general tolerances/de minimis rules, cumulation/accumulation possibilities or other derogations (derogation to the principle of territoriality, etc.). By contrast, they may also render the application of the rules of origin more restrictive, with provisions on insufficient working or processing operations/non-qualifying operations or the application of a no-drawback rule.

3.1.1 DEFINITIONS

Definitions constitute an important part of origin legislation, as they explain major terminology used in the legal wording of the origin provisions. In order to apply the origin rules, it is essential to be familiar with the meaning of the various terms used in the context of the rules.

There is no general approach with regard to definitions. Although the terms to be defined are mainly the same in many agreements, the definitions themselves are not harmonized and it is possible that the same term may have different legal interpretations in different agreements. A slightly different definition might have considerable effects on the interpretation and application of origin rules.

Definitions might be aggregated under one specific article; alternatively, the explanations of them might be found under other articles dealing with specific topics, or the definitions may be

explained under different entries in the general parts of a free trade agreement or in the origin provisions themselves.

Consulting the definitions is one of the first steps to take when applying origin provisions.

3.1.2 ORIGIN CRITERIA

These are the core origin provisions stipulating the criteria to be fulfilled within the free trade area that goods can be considered as originating.

The core requirements for origin determination generally include the following two broad criteria:

- goods wholly obtained or produced (where only one country or area is involved in the production of the goods; or
- goods substantially transformed or goods that satisfy the applicable requirements of product specific rules (where inputs from more than one country or area are used in the production of the goods).

Origin criteria are listed according to the Harmonized Commodity Description and Coding System (HS), and classification is of utmost importance for origin determination. Moreover the origin rules are in many cases based on the change of tariff classification, which requires – for a correct origin determination - a classification of the final manufactured product and of the input materials used in its production.

Thus, classification and origin determination of goods are closely interlinked. It is therefore critically important to update rules of origin (i.e. product specific rules) to ensure consistency between HS classification and origin determination. This would help to prevent misapplication of rules of origin, ensure efficient and effective revenue collection, and facilitate trade.

In order to assist Members with the updating of their existing rules of origin in relation to changes in the Harmonized System, the WCO has issued the “Guide for the Technical Update of Preferential Rules of Origin”. The guide can be found in Section 5.

In addition, there are two types of requirements as to where the goods are obtained or produced: the goods have to satisfy the above-mentioned requirement either i) in a single party or ii) in one or more of the parties to the agreement, in order to be treated as originating goods.

3.1.2.1 WHOLLY OBTAINED OR PRODUCED GOODS

The criterion “wholly obtained or produced” is one of the two basic types of origin criteria which have to be fulfilled for the purpose of determining the country of origin of a commodity in preferential trade relations. It is mainly used for natural products and for goods made from natural products which are obtained entirely in one country or area, comprising products extracted or harvested in a country and live animals born, raised or hunted there. The scope of wholly obtained or produced products is normally interpreted in a very strict way, insofar as the addition of imported parts or materials excludes such products from being wholly obtained or produced.

Commodities with imported parts or materials cannot be considered to be wholly obtained or produced. Such products must be substantially transformed by satisfying the applicable requirement set out in the general provisions or in the product specific rules (PSRs), if they are to be considered as originating in the context of a specific free trade agreement.

The Revised Kyoto Convention depicts in Specific Annex K/Chapter 1 under Standard 2, the definition of wholly obtained goods:

REVISED KYOTO CONVENTION, SPECIFIC ANNEX K, CHAPTER 1

2. Standard

Goods produced wholly in a given country shall be taken as originating in that country. The following only shall be taken to be produced wholly in a given country:

- mineral products extracted from its soil, from its territorial waters or from its seabed;
- vegetable products harvested or gathered in that country;
- live animals born and raised in that country;
- products obtained from live animals in that country;
- products obtained from hunting or fishing conducted in that country;
- products obtained by maritime fishing and other products taken from the sea by a vessel of that country;
- products obtained aboard a factory ship of that country solely from products of the kind covered by paragraph (f) above;
- products extracted from marine soil or subsoil outside that country's territorial waters, provided that the country has sole rights to work that soil or subsoil;
- scrap and waste from manufacturing and processing operations, and used articles, collected in that country and fit only for the recovery of raw materials;
- goods produced in that country solely from the products referred to in paragraphs (a) to (ij) above.

Origin legislations set out, in an exhaustive list, the different requirements for goods to be considered wholly obtained or produced. Virtually all origin legislation systems use the criterion of wholly obtained or produced, however the list of products is adapted in each case, which makes it necessary to always consult the relevant legal text.

The goods found in the list of wholly obtained or produced products are normally natural resource based goods or goods produced from such materials.

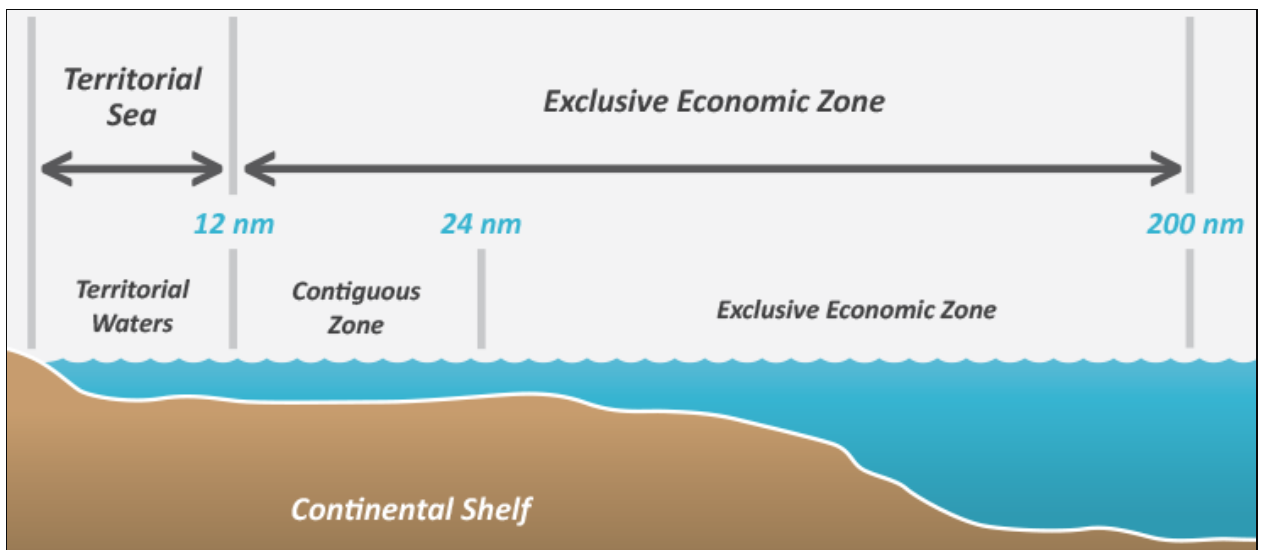
For the sea fishing industry, the wholly obtained or produced criterion is very important. The sea beyond territorial waters (the open sea) is not considered to belong to the national territory of a

country. The (Revised) Kyoto Convention requires that fish caught outside the territorial sea and other products extracted from marine soil or subsoil outside a country's territorial waters have to be taken by vessels of that country in order to fulfil the criterion of wholly obtained.

The Territorial Sea is an area of water not exceeding 12 nautical miles (22,2 km) in width which is measured seaward from the territorial sea baseline. The territorial sea is regarded as the sovereign territory of the coastal state. If this zone overlaps with another state's territorial sea, the border is taken as the median point between the states' baselines, unless otherwise agreed.

The contiguous Zone is a belt of water adjacent to the territorial sea with its outer limits not exceeding 24 nautical miles (44,4 km). This zone must be claimed and does not exist automatically. It allows coastal states to exercise the control necessary to prevent and punish infringements of Customs, sanitary, fiscal and immigration regulations.

The Exclusive Economic Zone is the area of sea beyond and adjacent to the territorial sea. Its outer limit cannot exceed 200 nautical miles (370 km) from the territorial sea baseline. A coastal state has control of all economic resources within its Exclusive Economic Zone, including fishing, mining and oil exploitation.



US

Illustration: Secure Fisheries, Broomfield Colorado.

With regard to goods of the sea fishing industry, the provisions on wholly obtained or produced goods might also be supplemented by definitions of what constitutes a vessel of a contracting party.

3.1.2.2 SUBSTANTIAL TRANSFORMATION / SUFFICIENT WORKING OR PROCESSING

Origin determination of manufactured goods is done on the basis of certain manufacturing requirements which should be carried out in the preferential area, in order to guarantee a certain amount of manufacturing taking place in the preferential area and ensure that minor or insufficient transformation operations do not confer preferential origin status on goods. Under substantial transformation/sufficient working or processing requirements, goods are deemed to be originating when they are substantially transformed or satisfy the applicable requirements of product specific rules in the free trade area. This is the case where inputs from more than one country are used in the production of a product.

Substantial transformation/sufficient working or processing is a production requirement guaranteeing that a meaningful manufacturing process has taken place in the free trade area in order to confer originating status to a product.

The substantial transformation/sufficient working or processing criterion can be expressed:

- By a rule requiring a change of tariff heading in a specified nomenclature with lists of exceptions; and/or
- By a list of manufacturing or processing operations which confer, or do not confer, upon the goods the origin of the country in which those operations were carried out; and/or
- By the ad valorem percentage rule, where either the percentage value of the materials utilised or the percentage of the value added reaches a specified level.

According to the Kyoto Convention the substantial transformation can be expressed in three ways:

KYOTO CONVENTION

Standard 3.

Where two or more countries have taken part in the production of the goods, the origin of the goods shall be determined according to the substantial transformation criterion.

Notes

1. In practice the substantial transformation criterion can be expressed:
 - By a rule requiring a change of tariff heading in a specified nomenclature with lists of exceptions, and/or
 - By a list of manufacturing or processing operations which confer, or do not confer, upon the goods the origin of the country in which those operations were carried out, and/or
 - By the ad valorem percentage rule, where either the percentage value of the materials utilized or the percentage of the value added reaches a specified level.

The WTO Agreement on Rules of Origin, in its declaration on preferential rules of origin, also operates with the concept of substantial transformation:

**WTO AGREEMENT ON RULES OF ORIGIN
ANNEX II
(COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN)**

3. The Members agree to ensure that:
- (a) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:
 - (i) in cases where the criterion of change of tariff classification is applied, such a preferential rule of origin, and any exception to the rule, must clearly specify the subheadings or headings within the tariff nomenclature that are addressed by the rule;
 - (ii) in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the preferential rules of origin;
 - (iii) in cases where the criterion of manufacturing or processing operation is prescribed, the operation that confers preferential origin shall be precisely specified;

In the same way the Kyoto Convention indicates, in a Recommended Practice, that “Where two or more countries have taken part in the production of the goods, the origin of the goods should be determined according to the substantial transformation criterion”, including a reference to the Harmonized System as well as a list of operations which do not confer origin to a product due to their insufficient contribution to the essential characteristics of the product.

The product specific rules of origin are set out in quite voluminous lists which are defined at the HS classification level of disaggregation. The degree of disaggregation may vary from a detailed disaggregation with groupings of product specific rules based on HS subheading level (HS 6-digits) with possibilities of further national disaggregation in the description of the goods to a broader set out based on HS Chapters (HS 2-digit) disaggregation, or headings (HS 4-digit) disaggregation.

3.1.2.3 THE METHODOLOGIES TO EXPRESS SUBSTANTIAL TRANSFORMATION / SUFFICIENT WORKING OR PROCESSING

3.1.2.3.1 THE METHODOLOGY OF “CHANGE IN TARIFF CLASSIFICATION (CTC)”

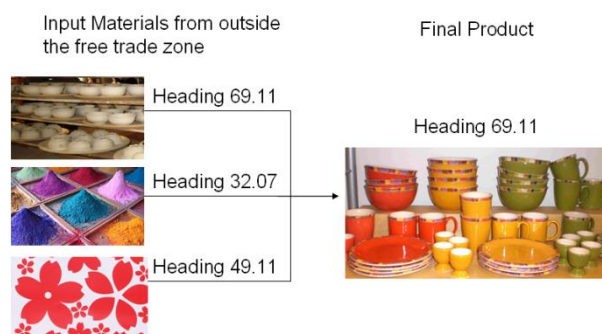
The change of tariff classification criterion is found in virtually all origin systems. This criterion may be applied together with other criteria such as an ad-valorem.

Most systems make wide use of the criterion of change in tariff classification.

Example :

Manufacture, in a contracting party of a free trade agreement, of porcelain tableware decorated in several colours, of tariff heading 69.11, using the following materials from countries outside the free trade area:

Product Description	Heading
Plain porcelain tableware	69.11
Pigments	32.07
Decorative designs	49.11



Given the use of plain tableware which is classified in the same tariff heading as the final decorated tableware, the working carried out in the contracting party to the free trade area does not fulfil the product specific rules based on a change of tariff classification, and the decorated tableware therefore cannot be considered as originating in the free trade area.

The criterion based on tariff classification changes is considered to have the following specific features:

Features of the Change in Tariff Classification Criterion:

- Synergy effects can be gained by using the Harmonized System for origin determination, as most goods in international trade are classified in the Harmonized System Nomenclature;
- The Harmonized System is designed to be a multi-purpose nomenclature and has been established as a common Customs language; traders and Customs officers are familiar with the Harmonized System;

- Product specific rules based on a change in tariff classification criterion are unambiguous and simple to apply and control, with a correct classification of the input materials and the final product;
- They can normally be used across-the-board for all product categories, with specific adaptations of the rules (change of tariff subheading or split-heading or split-subheading) under certain circumstances;
- Once created, product specific rules based on a change of tariff classification are predictable;
- Although the Harmonized System is a multi-purpose nomenclature, it is not always structured in a suitable way for origin determination purposes;
- In some Chapters extensive knowledge on the Harmonized System is needed;
- The Harmonized System is amended every five years which requires a transposition of the rules of origin (as explained in Section 5);
- The application of product specific rules based on a change in tariff classification may require additional provisions, such as minimal operations/insufficient working or processing operations.

Related WCO Tool on "Study on the use of Change of Tariff Classification-based rules" in Preferential Rules of Origin

The full text of this study:

[http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/instruments-and-tools/comparative-study/related-documents/study-on-the-use-of-change-of-tariff-classification based-rules-en.pdf?db=web](http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/instruments-and-tools/comparative-study/related-documents/study-on-the-use-of-change-of-tariff-classification-based-rules-en.pdf?db=web)

3.1.2.3.2 THE METHODOLOGY OF VALUE ADDITION (VALUE ADDED / AD VALOREM CRITERION)

Regardless of changes in its tariff classification, a product is considered as originating when the value of the product is increased up to a specified level expressed by an ad valorem percentage.

The rules based on a value-added/ad-valorem criterion may be described primarily in two distinct ways:

- **a maximum allowance for non-originating materials** (maximum third country content allowance), meaning that a final product can be considered as an originating product provided that the foreign inputs do not exceed a certain threshold;

Example 1

A drilling machine of heading 84.59 is manufactured from the following materials:

- case with origin from a free trade partner country	value 100
- electronic control panel, from country outside the free trade area	value 250
- electric motor, from country outside the free trade area	value 100
- other parts of undetermined origin	value 50
- labour costs and manufacturer's profit margin	<u>value 500</u>



Selling price of the final drilling machine (based on ex-works price) value 1000

Product specific rule (European model) for headings 84.56 to 84.66 =
Manufacture in which the value of all the non-originating materials used does not exceed 40 % of the ex-works price of the product.

Thus, the value of the non-originating materials incorporated in the drill (electronic control panels, motor and other parts = value 400) (N.B. input with undetermined origin counts as non-originating input) does not exceed 40 % of its ex-works price, i.e., the percentage required for substantial transformation; the drill therefore qualifies as originating product.

- a minimum requirement of domestic content (*minimum local content requirement*)

<p><u>Example of a product specific rule:</u></p> <p>Non-originating materials used 1.20 Cost of production <u>2.45</u> Net-Cost 3.65 Profit <u>0.50</u> Ex-Works Price 4.15 Transport <u>0.25</u> FOB Price 4.40</p>	
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<p><i>Product specific rule for headings 8516.32</i></p> <p><i>An electric hair curling iron (subheading 8516.32) is made in Mexico from Japanese hair curler parts (8516.90). Selling price value 4.40; the value of the non-originating hair curler parts is 1.20.</i></p>	
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Chapter85 Electric Machinery and Equipment and Parts thereof;	
8516.32	<p><i>A change to subheading 8516.32 from subheading 8516.80 or any other heading; or</i></p> <p><i>A change to subheading 8516.32 from subheading 8516.90, whether or not there is also a change from subheading 8516.80 or any other heading, provided there is a regional value content of not less than:</i></p> <p style="margin-left: 20px;">a. 60 percent where the transaction value method is used, or</p> <p style="margin-left: 20px;">b.</p> <p style="margin-left: 20px;">c. 50 percent where the net cost method is used.</p>

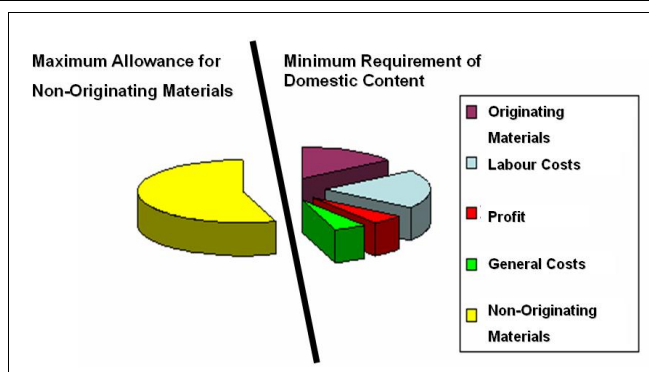
The first tariff shift rule requirement is not met, meaning that the second rule combines a tariff shift rule with a regional value content requirement. In our example, both the transaction value method and the net cost method are fulfilled:

Transaction value method:
$$\frac{(4.40 - 1.20) \times 100}{4.40} = \underline{\underline{72.72\%}}$$

Net cost method:
$$\frac{(3.65 - 1.20) \times 100}{3.65} = \underline{\underline{67.12\%}}$$

Main differences between “Maximum Allowance for Non-Originating Material” and “Minimum Requirement of Domestic Content”:

	Maximum Allowance for Non-Originating Material	Minimum Requirement of Domestic Content
<i>Overview</i>	<i>The use of foreign input materials in the manufacturing or processing operations carried out in a contracting party or a specified area is limited to a maximum amount.</i>	<i>The domestic content, e.g. the value of originating materials and the manufacturing or processing operations carried out in a contracting party or in a specified area, must be equal to or exceed a given percentage of the value of the final product.</i>
<i>Calculation method</i>	<i>This method requires a comparison between the value of the foreign input or the materials with undetermined origin and the value of the final product.</i>	<i>This method requires a comparison between the value added in a contracting party or in a specified area, and the value of the final product.</i>
<i>Examples of Calculation Method</i>	<ul style="list-style-type: none"> • <i>Indirect method</i> • <i>Build-down method</i> • <i>Transaction value method</i> • <i>Net cost method</i> • <i>Focused value method</i> 	<ul style="list-style-type: none"> • <i>Direct method</i> • <i>Build-up method</i>



The exact methods for calculating the input materials and the final product are stipulated in the applicable agreement.

A direct comparison between the percentages used in the different methodologies cannot be made because of the different calculation bases. The higher the allowed percentage for use of non-originating material, the more liberal the origin rule. The higher the minimum requirement for the domestic content, the more stringent the origin rule.

The ad-valorem calculation may also vary according to the price basis used for the final product, i.e. the price of the final product at the moment when it leaves the factory (ex-works price), or the price of the final product at the time of exportation or importation (FOB or CIF price).

The ad-valorem rule/value-added criterion has the following specific features:

Features of the Ad-valorem rule/Value-added criterion:

- Suitable for goods which have been further refined or processed without a change of tariff classification;
- Value-added criterion is relatively easy to understand and to apply in practice; value-added rules allow simple and flexible adjustments for different stages of development of developing countries;
- Economic operators are familiar with the cost components of their inputs as the values are known for commercial and Customs purposes;
- The administration of value-added rules is complex for small and medium sized companies and may demand additional book-keeping and sophisticated accounting systems;
- Requires disclosure of sensitive commercial information by suppliers;
- Relatively high administrative burden due to the necessity to calculate the various cost components;
- Susceptible to the impact of fluctuating exchange rates. A weakening of the exchange rate raises the value of the foreign inputs in relation to the total cost/ex-works price of a given product. An increase of the exchange rate of a foreign currency (imported goods are often invoiced in foreign currencies) will cause an increase of the value of all imported components priced in a foreign currency. This will render a given ad-valorem rule more restrictive;
- Susceptible to commodity value fluctuations.

3.1.2.3.3 THE METHODOLOGY OF SPECIFIC MANUFACTURING OR PROCESSING OPERATIONS

Regardless of any change in its classification or the extent of value added, a product is considered to be substantially transformed when it has undergone a specific manufacturing or processing operation which is described in the product specific list rules.

A product is considered as originating when the manufacturing operation described for the respective commodity was carried out.

Example : Marble of heading 25.15

Cutting, by sawing or otherwise, of marble (even if already sawn) of a thickness exceeding 25 cm

The “specific manufacturing/processing operations” methodology is widely used in most of the origin legislations, especially in the textile and apparel sector.

The specific manufacturing or processing operations criterion has specific features as follows:

Features of the Specific Manufacturing or Processing Operations Criterion:

- Specific manufacturing operations are objective and unambiguous;



- Rules can be drafted in an easily understandable manner;
- Frequent modifications may be needed to keep pace with technical developments;
- For the sake of precision, longer and more detailed texts are needed;
- The rules vary from product to product;
- Frequent need of new rules for new products.

3.1.3 BASIS FOR ORIGIN DETERMINATION / UNIT OF QUALIFICATION

In virtually all origin legislations, the origin determination is linked to the tariff classification, meaning that the basic unit for classification into the Harmonized Commodity Description and Coding System (HS) is also the basis for the origin determination. Thus, the correct tariff classification of a product is of utmost importance for origin determination.

A product composed of various components which is considered as one single item under the Harmonized System for classification purposes, shall also be considered as one single item for the origin determination.

Example : Milking machine of heading 84.34

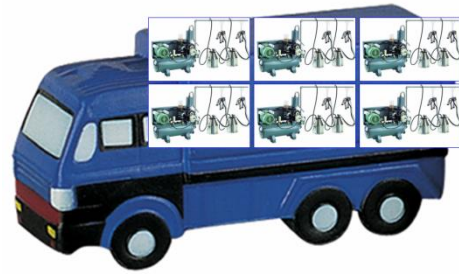
<p>Elements of milking machine presented for customs clearance at the same time:</p> <ul style="list-style-type: none"> • vacuum pump; • pulsator; • teat cup shells: • milk pail etc. 	
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In this case, all the components together are considered as one unit for classification purposes, and consequently also for the purposes of origin determination.

However, where a consignment consists of a number of identical products classified under the same heading, each product has to be considered individually for the purposes of origin determination.

Example : A consignment consisting of identical milking machines of heading 84.34

In this case, each product, i.e. each milking machine, must be taken individually for origin determination purposes.



In certain origin legislations there is a specific article describing in detail the connection between HS classification and origin determination, whereas this is not the case in other legislations where there is simply a reference to the HS classification rules for origin determination. However, in practical terms there is no difference in approach

3.1.4 REFERENCE TO HARMONIZED SYSTEM AND CUSTOMS VALUATION

Product specific rules of origin are listed according to the Harmonized Commodity Description and Coding System (HS). Thus, in order to find the respective origin rule for a product, classification is of utmost importance. Moreover, the origin rules are in many cases based on the change of tariff classification, which requires the correct classification of the final manufactured product and of the input materials used in its production.

Therefore, most origin provisions provide a reference to the Harmonized Commodity Description and Coding System (HS).

The value of the goods also plays an important role in the origin determination when the origin rules are based on ad-valorem. Thus, the correct determination of the value is important, and origin provisions may also provide a reference to the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

3.1.5 ACCUMULATION / CUMULATION

The concept of accumulation/cumulation, or cumulative rules of origin allows countries which are part of a preferential trade scheme to share production and jointly comply with the relevant rules of origin provisions. In other words, it allows products of one party to a preferential trade scheme to be further processed or added to products in another party of that preferential trade scheme, as if they originate in the latter country. In this way, the production may be aggregated with other countries' inputs, thus, offering additional opportunities to source input materials. This essentially widens the definition of originating products and provides flexibility to develop economic relations between countries within a preferential trade scheme. Hence, through the concept of accumulation/cumulation in a free trade agreement, the use of input materials and manufacturing processes within that free trade area is encouraged. This promotes regional economic integration amongst members of a free trade area.

Accumulation/cumulation is a deviation from one of the core concepts of origin legislations. The basic rules of origin specify that goods are deemed to be originating when they:

- are entirely obtained or produced in the free trade area (wholly obtained goods); or
- are substantially transformed or satisfy the applicable requirements of product specific rules in the free trade area.

The concept of accumulation/cumulation extends this principle insofar as it offers the possibility to use products originating in a partner country or in partner countries of a preferential trade area as originating materials for the manufacture of an originating product. Some agreements also offer the possibility to cumulate production processes (instead of originating inputs) to obtain an originating product.

The higher the degree of accumulation/cumulation, i.e. the greater the number of potential trading partners whose inputs can count towards satisfying the origin rules, the more liberal the rules and the easier to satisfy them. While broad accumulation/cumulation rules can make countries more competitive in manufacturing processes, and thus more attractive for foreign direct investments, they may, however, increase the possibility of unintended utilisation of preferences by countries which do not participate in a preferential area.

On the other hand, narrow accumulation/cumulation possibilities may provide greater incentives to add value within the preferential trade scheme, but may also impose greater costs on producers, with the risk that the origin rules are not satisfied or are satisfied only at prohibitively high costs, resulting in the preferences not being utilised.

Types of “accumulation/cumulation”

Different types of accumulation/cumulation exist, although they are not specifically mentioned as such in the legal texts. They can be classified according to which elements (i.e. materials or production) and whose elements can benefit from accumulation/cumulation.

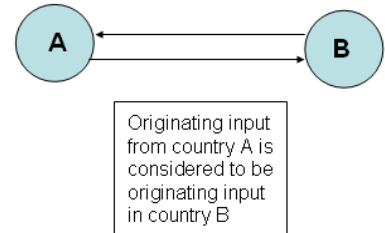
Provisions on accumulation/cumulation are found virtually in all origin legislations. Some agreements permit only one of the types of accumulation/cumulation shown in the table below, while others may permit more than one.

Different categories of accumulation/cumulation

What Whose	Goods (materials)	Production
Parties to the free trade agreement	Category 1 Originating materials of a party to the free trade agreement are treated as originating in another party where the final product is produced.	Category 2 The production in a party to the free trade agreement is treated as if it took place in the other party where the final product is produced.
Other countries with other preferential trade links	Category 3 Originating materials of a third country (not a party to the free trade agreement) with other preferential trade links with the final importing country are treated as originating in a party to the free trade agreement where the final product is produced.	Category 4 The production in a third country (not a party to the free trade agreement) with other preferential trade links with the final importing country is treated as if it took place in the party to the free trade agreement where the final product is produced.

- **Category 1 : Goods (materials) of a party to the free trade agreement can benefit from accumulation/cumulation**

This type of accumulation/cumulation applies only to originating products or materials (goods which have obtained originating status according to the origin legislation of a given free trade agreement). In short, this means that inputs originating in one member country of a preferential trade agreement may be considered as originating inputs in the another country.

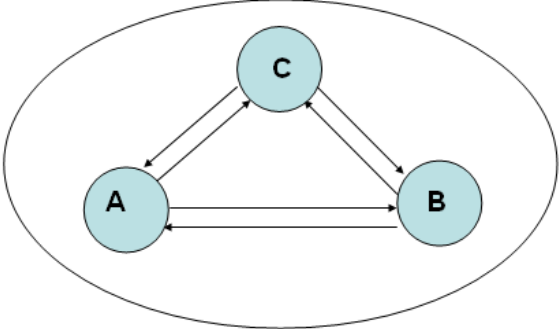


The type of accumulation/cumulation which applies between two countries of the free trade agreement may be called bilateral accumulation/cumulation. The type of accumulation/cumulation which operates between more than two countries provided they have concluded preferential trading agreements between each other may be called regional accumulation/cumulation.

Generally, the originating status of the products or materials has to be documented to the competent authorities with a proof of origin (e.g. origin certificate which was submitted when the products or materials had been imported).

Example : A pullover of HS heading 61.10 is manufactured in country A by sewing together knitted fabrics originating in country B. According to the free trade agreement between these two countries, the specific rule of origin for pullovers requires manufacturing from yarn in order for origin to be conferred on the pullover. The simple manufacturing process of sewing together knitted fabrics in country A would not confer origin, and the pullover would be considered as non-originating. Nonetheless, the pullover is considered originating since it was manufactured from originating fabrics from country B, in accordance with the accumulation/cumulation provision in the free trade agreement.

- **Category 2: Production taken place in a party to the free trade agreement can benefit from accumulation/cumulation**

<p>Under this type of accumulation/cumulation, <u>all stages of production</u> which have taken place in a party to the free trade agreement can be counted as qualifying operations in the manufacture of an originating product, regardless of whether the processing is sufficient to confer originating status to the materials themselves. This means that all operations carried out in the participating countries of a free trade area may be taken into account for origin determination purposes. While Category 1 only allows the accumulation/ cumulation of originating products or materials of a party to the free trade agreement, this type (Category 2) allows the accumulation/cumulation of production which has taken place in the partner countries regardless of the originating status of the product.</p>	 <p>All steps in the manufacturing processes in the three countries are taken into account for origin determination</p>
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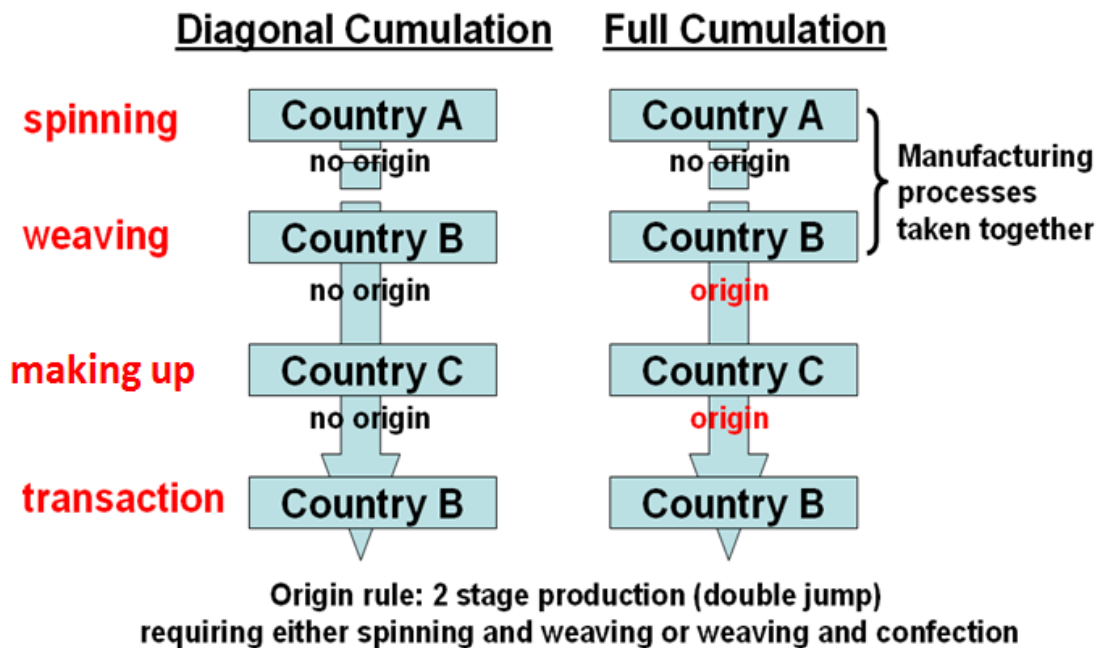
This type of accumulation/cumulation may be called full cumulation. Full cumulation simply demands that the origin requirements are fulfilled within the preferential trade area as a whole (i.e. the area of all participating countries is considered as one area for the origin determination).

Example : A pullover of HS heading 61.10 is manufactured in country A using non-originating materials sourced from country B. According to the free trade agreement between these two countries, the production which has taken place in a party to the free trade agreement is considered as having taken place in the other party where the final product is produced. The applicable product specific origin rule requires manufacturing from yarn in order that preferential origin is conferred on the pullover. The yarn was knitted into fabric and dyed in country B, and the dyed fabric was sewn together in country A. The operations in the individual countries do not confer origin. However, all operations taken together fulfil the origin requirement, and the final product is considered originating in country A.

Difference between diagonal and full cumulation:

Diagonal/Full Cumulation

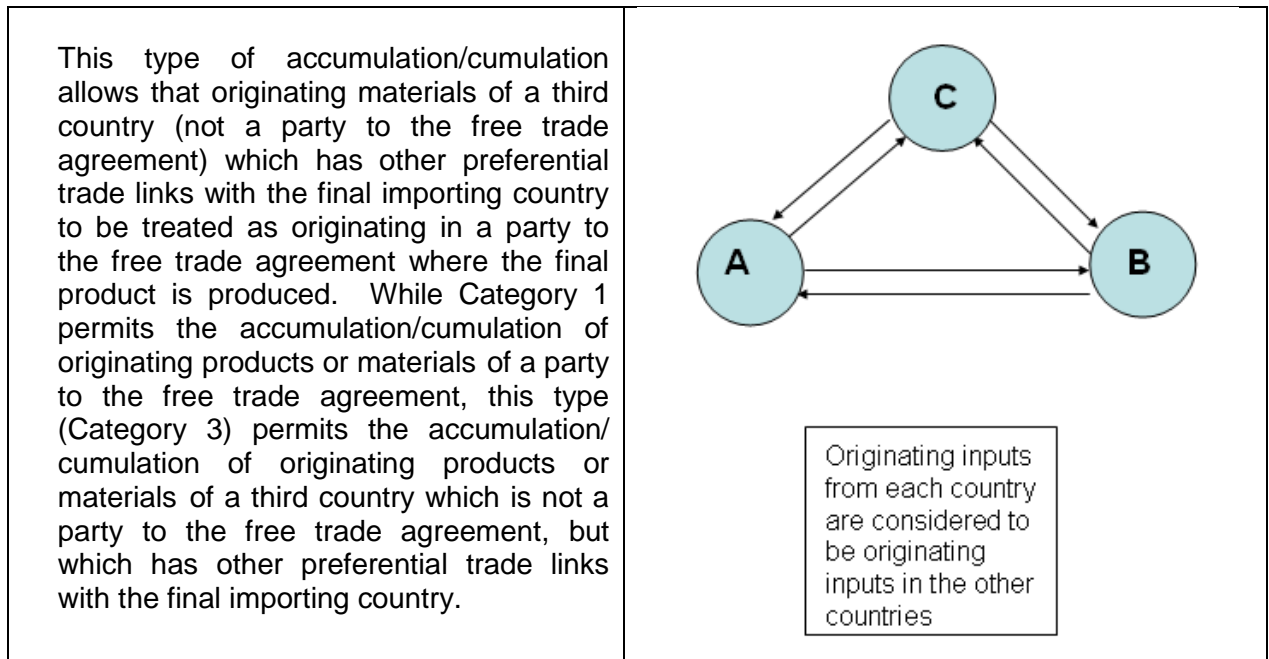
Manufacture of apparel from carded wool



The above example shows the difference between diagonal and full cumulation. Assuming that the origin rule for the manufacture of pullovers requires a two stage production process, meaning that the manufacturing process must encompass two consequent manufacturing processes to confer origin, i.e. spinning of yarn and weaving the yarn into fabrics or, when the manufacturing process starts with the yarn, the knitting of the fabric and the confection of the pullover by sewing.

In a diagonal cumulation setting, an individual manufacturing step does not confer origin since a two stage production process is required to confer origin. The concept of full cumulation, on the other hand, allows the different manufacturing operations performed in the different countries to be aggregated, with the consequence that the two-stage production requirement is fulfilled in country B, and with application of the full cumulation provision the fabric obtained is considered to be originating in country B.

- **Category 3: Goods (materials) of a third country can benefit from accumulation/cumulation**



This type of accumulation/cumulation is similar to the accumulation/cumulation of Category 1, but operates between more than two countries provided they have concluded preferential trade agreements between each other, or that the country outside of the agreements is specifically mentioned in the origin provisions. Certain countries require that the different free trade agreements connected with origin provisions must contain identical origin provisions before diagonal cumulation can be applied.

Example : A pullover of HS heading 61.10 is manufactured in country A by sewing together knitted fabrics originating in countries B and C. According to the free trade agreements between countries A and B, countries A and C and countries B and C, respectively, the specific rule of origin for pullovers requires the manufacturing from yarn in order for the pullover to be originating. Thus, the simple manufacturing process of sewing together knitted fabrics in country A would not confer origin and the pullover would be considered as non-originating according to the origin legislation of the free trade agreements between countries A, B and C. With this type of accumulation/cumulation (Category 3), the pullover is considered originating in country A since it was manufactured with originating fabrics from countries B and C.

- **Category 4: Production which has taken place in a third country can benefit from accumulation/cumulation**

Under this type of accumulation/cumulation, all stages of production which have taken place in a third country (not a party to the free trade agreement) with other preferential trade links with the final importing country can be counted as qualifying operations in the manufacture of an originating product, regardless of whether the processing is sufficient to confer originating status on the materials themselves. While Category 2 only permits the accumulation/cumulation of production which has taken place in the partner countries, this type (Category 4) allows the accumulation/cumulation of production which has taken place in a third country which is not a party to the free trade agreement but which has other preferential trade links with the final importing country.

Example : A pullover of HS heading 61.10 is manufactured in country A using non-originating materials sourced from countries B and C. According to the free trade agreements between countries A and B, countries A and C and countries B and C, respectively, the applicable product specific origin rule requires manufacturing from fibre in order that preferential origin is conferred to the pullover. The yarn was made from fibre in country C, the yarn was knitted into fabrics and dyed in country B, and the dyed fabric was sewn together in country A. The operations in the individual countries do not confer origin. However, all operations taken together fulfil the origin requirement and the final product is considered originating in country A.

Administration of different types of accumulation/cumulation

Full cumulation requires a sophisticated system to trace back the different manufacturing processes made by the various producers in the different countries. A producer may only be certain of complying with the specific origin rules when he knows what kind of origin conferring contributions were provided by previous manufacturers (the use of originating or non-originating input in the case of cumulation with originating inputs, or the totality of the share of origin contributions in the manufacturing chain for the overall assessment of total or full cumulation).

Traceability for originating inputs is easier to provide in bilateral/diagonal cumulation than in full cumulation. Under bilateral/diagonal cumulation, the origin of a product is indicated in the Customs declaration; the Customs declaration shows whether or not the inputs were imported under preferences and the respective proof of origin submitted for customs clearance is indicated in the import declaration.

Inputs used under full cumulation may be imported without preferences with the consequence that origin relevant inputs for the use of full cumulation must be indicated separately. Therefore, an information system must be established between the economic operators in the preferential area to ensure that the information on previous origin conferring manufacturing operations provided by former producers will be delivered to the subsequent producers in the manufacturing chain (in some free trade agreements there is a special form, a so-called suppliers' declaration - which can be used to forward origin relevant information on previous manufacturing processes, i.e., manufacturing processes and added value inputs made in previous manufacturing stages which may be counted as origin conferring elements).

Accumulation/cumulation systems always need a legal framework in order to trace back the originating status of inputs benefitting from accumulation/cumulation and to administer and control the origin of such inputs.

The legal wording of the provisions for accumulation/cumulation differs widely between the various preferential trade agreements. It is perhaps one of the most heterogeneous of the origin topics in terms of wording used, despite the fact that there are only two distinctive types of accumulation/cumulation possibilities. In certain origin jurisdictions, cumulation/accumulation is stipulated in a specific article (called specifically accumulation/cumulation or cumulative rule of origin or cumulative treatment), whereas in other cases it is paraphrased in a general manner (sometimes found in the definitions or in the general requirements for origin determination, i.e., the wholly obtained requirement and the sufficient transformation requirement).

3.1.6 ABSORPTION OR ROLL-UP PRINCIPLE/INTERMEDIATE MATERIAL

The absorption or roll-up principle allows intermediate products to maintain their originating status when they are used for subsequent manufacturing operations. The part of all non-originating inputs contained in the intermediate product is disregarded when assessing the origin of the final product.

This means that if a material which contains non-originating input(s) satisfies the applicable origin criterion and has acquired originating status, the entire material is treated as originating when assessing the origin of the subsequently produced product:

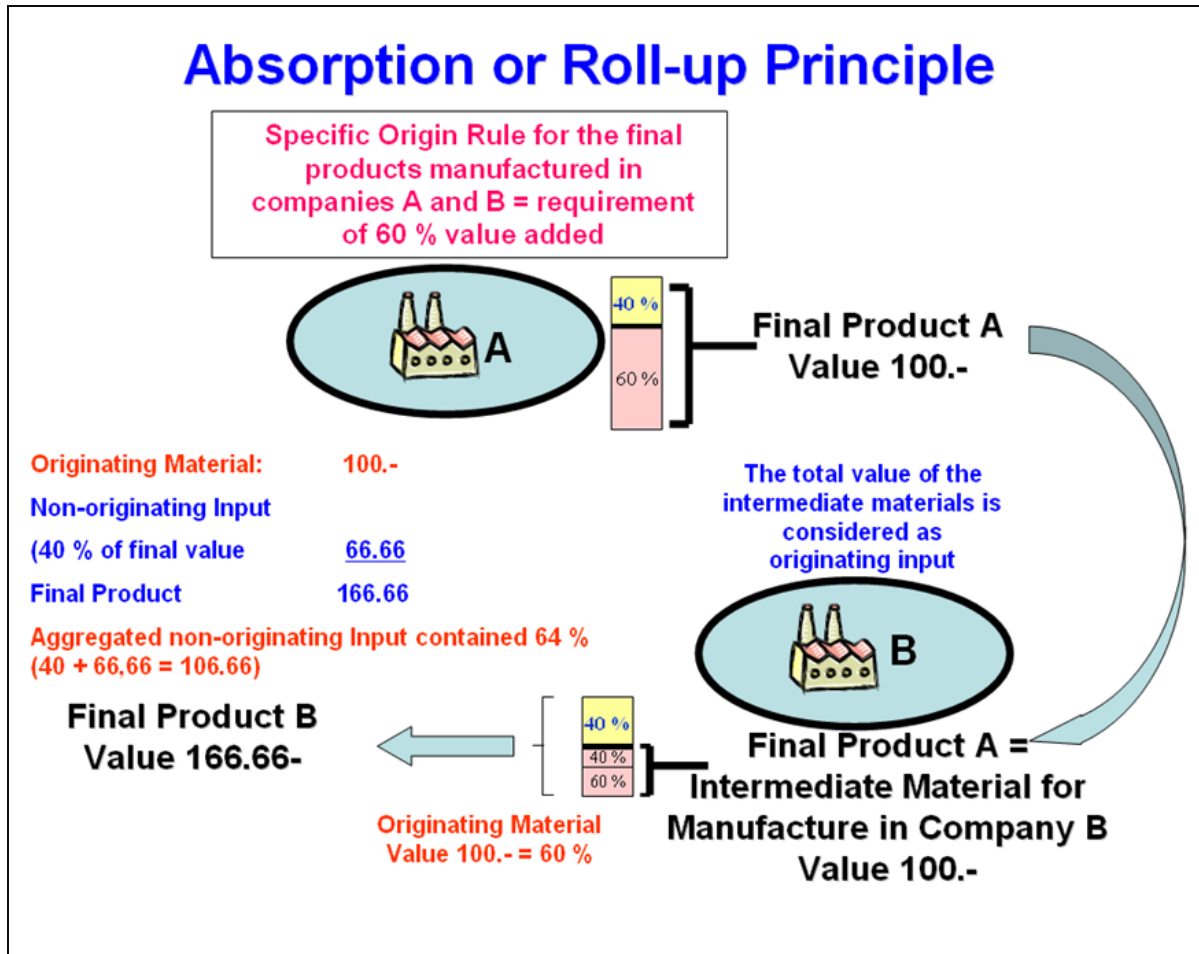
- the value of the non-originating inputs contained in intermediate materials which have acquired originating status is counted as originating content in the calculation of value added criteria;
- the non-originating parts or materials contained in intermediate materials are not considered when assessing whether a product specific rule based on change of tariff classification is fulfilled; or
- the manufacturing processes of non-originating inputs contained in intermediate materials are not taken into account when assessing the specific manufacturing or processing criteria.

The absorption or roll-up principle makes origin rules less restrictive, allowing the use of more non-originating inputs than are permitted in product specific rules.

The absorption or roll-up principle is in fact also contained in cumulation provisions that permit the cumulation of originating products.

Whereas the absorption or roll-up principle attenuates the restrictiveness of rules of origin for manufacturing processes within one contracting party of a free trade area, cumulation offers the same principles to manufacturing processes across contracting parties.

Absorption or Roll-up Principle



The example illustrates how the absorption or roll-up principle works:

A product produced in company A fulfils the origin criterion which requires that 60 % of the value of the product be added in the free trade area (40 % of the value of the final product may be non-originating).

The product is further used as an intermediate material for the subsequent manufacture of another product in company B. The absorption or roll-up principle allows that the entire product (from company A) is considered originating when assessing the originating status of the final product.

Let us assume that the product specific rule for the product manufactured in company B also requires that 60 % of the value of the product be added in the free trade area. The intermediate material is considered to be 100 % originating and it is therefore possible to use 40 % of non-originating materials in the manufacturing of the final product. In this way, the final product may in practice contain non-originating input of 64 % of the value of the final product, despite the fact that the origin rule limits non-originating input to 40 % of the value of the final product.

3.1.7 DE MINIMIS / TOLERANCE

De minimis/tolerance rules are important elements in origin legislations, enabling in certain exceptional cases where the rules are not completely fulfilled, origin acquisition to be reached nonetheless, or the acquired origin status not to be lost.

The de minimis/tolerance rule alleviates the origin criteria in some cases, by offering the possibility to use “prohibited” non-originating inputs/materials to a certain extent (e.g. a certain percentage of the value or weight of the product). In other words, a product that contains non-originating materials that do not satisfy the applicable origin criterion for the product is considered originating if the amount of the non-originating materials is within a specified limitation.

De minimis/tolerances rules that alleviate the origin determination requirement may be applied with different percentages and calculation bases (e.g., ex-works price, FOB price or total cost).

The use of the de minimis/tolerance rule may be based on the value or the weight of the goods; sometimes the rule does not apply for specific product categories, or is only applied under certain restrictions.

3.1.8 INSUFFICIENT TRANSFORMATION / MINIMAL OPERATIONS / NON-QUALIFYING OPERATIONS

In order to ensure that only manufacturing processes that fall within the range of substantial transformation count as origin conferring processes, most origin legislations contain provisions outlining lists of operations which are considered to have only minor effects on the final goods; these minor operations do not confer origin even where the applicable origin rule would have been satisfied by fulfilling of a change of tariff classification rule or an ad valorem rule included in the list of product specific origin rules.

Insufficient operations carried out individually, or even in combination, will never confer origin to a final product. However, if a manufactured product achieves its originating status through the operations that go beyond the insufficient operations, it does not matter if the product is, in addition, subjected to one or more minimal operations.

Most origin provisions offer fairly similar structures for operations which are considered not substantial in terms of conferring origin, based on the recommendation contained in the Kyoto Convention. However, the list of such operations may differ from agreement to agreement, although by and large the same kinds of operations can be found in many origin legislations.

Rules on insufficient transformation/minimal operations are generally outlined in specific articles found in the regime-wide origin provisions. In some origin models, these rules are described under the general origin criteria of the sufficient transformation requirement. Normally, the operations deemed insufficient are listed with more or less precise indications to identify their nature. In certain agreements there is also a definition of the term “simple”, as in “simple mixing”, “simple assembly”, etc.

The Kyoto Convention, Specific Annex K, identifies in Chapter 1, 6th Recommended Practice, certain operations which are not regarded as substantial manufacturing or processing, and thus do not confer originating status.

KYOTO CONVENTION, SPECIFIC ANNEX K, CHAPTER 1
6. RECOMMENDED PRACTICE:

Operations which do not contribute or which contribute to only a small extent to the essential characteristics or properties of the goods, and in particular operations confined to one or more of those listed below, should not be regarded as constituting substantial manufacturing or processing:

- (a) operations necessary for the preservation of goods during transportation or storage;
- (b) operations to improve the packaging or the marketable quality of the goods or to prepare them for shipment, such as breaking bulk, grouping of packages, sorting and grading, repacking;
- (c) simple assembly operations;
- (d) mixing of goods of different origin, provided that the characteristics of the resulting product are not essentially different from the characteristics of the goods which have been mixed.

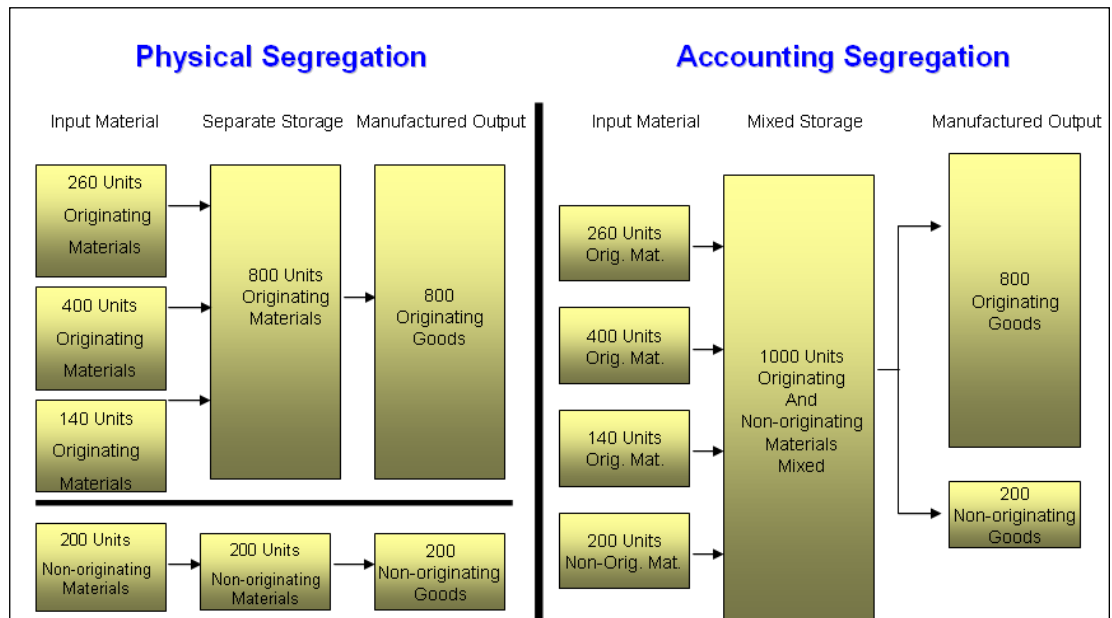
These operations may be called insufficient working or processing, non-qualifying operations, minimal operations and processes or simply operations that do not confer origin, or minor processing treatment.

Some origin legislations contain very comprehensive lists of insufficient transformation/minimal operations, whereas others contain less exhaustive lists, or no list at all. This is due to the fact that in certain legislations many of the product specific rules are based on value added criteria, whereas in other legislations the product specific list rules are more detailed and are adjusted to the individual products, and each specific list rule may describe more precisely the required sufficient transformation requirement in terms of that specific product.

3.1.9 ACCOUNTING SEGREGATION / FUNGIBLE GOODS AND MATERIALS

If manufacturers use originating and non-originating materials - even if these are identical and interchangeable - under normal circumstances, they are required to stock those materials separately to allow a tracing back of the different origins of materials used in the production of goods. This ensures that only originating input is used for the manufacturing of originating goods intended for export under preferences.

The requirement to stock originating and non-originating input material separately may represent a huge financial burden for the manufactures. Therefore, provisions on accounting segregation/ fungible goods and materials offer the possibility to use accounting methods to determine the different origins of input materials or goods which are identical and interchangeable, without any obligation to physically segregate stocks of non-originating and originating materials or goods.



Reference to this method may use the term identical and interchangeable materials, accounting segregation or fungible goods and materials.

In most origin legislations, the physical mixing of non-originating and originating input materials is limited to fungible commodities, i.e., commodities which are identical and interchangeable. Thus, the application of this method is limited to materials and is not permitted for finished products. However, in some origin legislations there is no such distinction.

3.1.10 SETS

Goods put up in sets, consisting of two or more separate constituents that are classified in one single HS heading in accordance with Rule 3 of the General Rules for the Interpretation (GIRs) of the Harmonized System, often pose problems to customs insofar as such sets are to be classified according to the component which gives the set its essential character.

Where the constituents of a set have various origins, this may also pose problems for the determination of the origin of the set.

Some origin legislations do not mention sets at all, subsuming the origin determination implicitly under the issue of classification according with the Harmonized System GIRs, whereas other origin legislations deal with this topic in a separate article.

3.1.11 INDIRECT MATERIALS / NEUTRAL ELEMENTS

Factors or means of production such as energy, fuel, tools, machinery, equipment and plant that are used in the process of manufacture of a product, but not incorporated/included into the final product, are called indirect materials or neutral elements.

The Kyoto Convention excludes the following production factors from origin determination:

**KYOTO CONVENTION
SPECIFIC ANNEX K
CHAPTER 1**

11. Standard

For the purpose of determining the origin of goods, no account shall be taken of the origin of the energy, plant, machinery and tools used in the manufacturing or processing of the goods.

Despite the different approach to the origin rule for neutral elements and indirect materials in different origin legislations, it is considered that there is no difference in the practical application of these rules.

3.1.12 ACCESSORIES, SPARE PARTS AND TOOLS

Products such as machinery, equipment, vehicles or other products are often sold with accessories, spare parts, tools or illustration materials, e.g. manuals (illustration materials are generally subsumed under the term accessories, but they are listed separately in certain origin provisions) which are needed for their operation or maintenance.

Most origin provisions contain guidelines on how to deal, for origin determination purposes, with such accessories, spare parts or tools which are dispatched with the machinery, equipment, vehicles etc..

The specific origin rule for accessories, spare parts and tools has to be viewed in conjunction with the definition of the unit of reference for which origin provisions are deemed to be applied (see "Basis for Origin Determination/Unit of Qualification" in paragraph 3.1.3).

Tariff classification is the basis for the application of origin rules in all origin legislation systems. The identification of a product through tariff classification allows the product specific origin rule to be specified for a given product. Thus, tariff classification is a core requirement for the correct application of origin rules.

The Kyoto Convention offers a Recommended Practice for determining the origin of accessories, spare parts and tools (Recommended Practice 7 in Annex K Chapter 1).

**KYOTO CONVENTION, ANNEX K CHAPTER 1
7. RECOMMENDED PRACTICE**

Accessories, spare parts and tools for use with a machine, appliance, apparatus or vehicle should be deemed to have the same origin as the machine, appliance, apparatus or vehicle, provided that they are imported and normally sold therewith and correspond, in kind and number, to the normal equipment thereof.

With regard to origin determination based on ad valorem rules, most origin legislations take the value of accessories, spare parts or tools into account in the origin conferring calculation.

This means that accessories, spare parts and tools which are dispatched with an apparatus, a machine or a vehicle are considered as part of the consignment, and origin determination is made on the basis of the whole consignment for the ad valorem calculation.

Accessories, spare parts and tools can be either :

- disregarded in the examination of a change of tariff classification requirement; or
- disregarded in the examination of a specific manufacturing or processing operation requirement; or
- disregarded in determining whether a product is wholly obtained.

Example :

The remote control of a TV receiver with third country origin, which is invoiced and packed with the TV receiver, is considered to be originating where the TV receiver originates, and the fulfilment of a change in tariff classification requirement for the remote control shall be disregarded. The value of the remote control must, however, be counted as non-originating for any calculation of a regional value-content requirement.

3.1.13 PACKING / PACKAGING MATERIALS AND CONTAINERS

Most origin legislations follow the recommendation made by the Kyoto Convention with regard to packaging materials, namely that they should be deemed to have the same origin as the goods they contain unless the national legislation of the country of importation requires them to be declared separately for tariff purposes, in which case their origin should be determined separately from that of the goods.

The way to handle packing/packaging materials and containers for origin determination purposes is related to the application of the Harmonized System.

The Harmonized System coding of a product also constitutes the basis for origin determination.

The Kyoto Convention offers a Recommended Practice clarifying the origin determination for packing (Recommended Practice 9 in Annex K, Chapter 1):

**KYOTO CONVENTION, ANNEX K, CHAPTER 1
9. RECOMMENDED PRACTICE**

For the purpose of determining origin, packing should be deemed to have the same origin as the goods they contain unless the national legislation of the country of importation requires them to be declared separately for tariff purposes, in which case their origin should be determined separately from that of the goods.

Most origin legislations follow the recommendation of the Kyoto Convention with regard to packing. Nevertheless, the interpretation of this Recommended Practice may be slightly different.

Sometimes the treatment of packaging materials for origin purposes is directly linked to the issue of classification, meaning that when packaging is included with the product for classification purposes, it is also included for origin determination purposes.

Whereas in other origin legislations, packing materials for shipment are explicitly disregarded in the determination of origin. Furthermore, there are also provisions in which packaging materials for retail sale are disregarded for certain types of origin determination (depending on the exact provision).

3.1.14 TREATMENT OF RECOVERED MATERIALS USED IN PRODUCTION OF REMANUFACTURED GOODS

The remanufacturing of goods has received considerable attention in recent years, in terms of reducing stress on the environment. Certain origin legislations contain provisions for the treatment of recovered materials.

In other origin legislations, the article for “Wholly Obtained Products” includes used products or waste and scrap; however, these only include goods which fit solely for the recovery of raw materials.

3.2 CONSIGNMENT CRITERIA

3.2.1 DIRECT TRANSPORT / TRANS-SHIPMENT

Preferential treatment provided for under a free trade agreement is in principle accorded to goods which

- satisfy the origin requirements set out in the origin provisions; and which
- are transported directly between the contracting parties (goods may, however, under certain circumstances, be transhipped through non-contracting parties without losing the originating status).

In many free trade agreements, direct transport/trans-shipment rules ensure that the goods arriving in the country of importation are identical to those that left the country of exportation. The objective of this rule is to reduce the risk of goods eligible for preferences under a free trade agreement from being manipulated or mixed with non-eligible goods during transportation. The direct transport rule is, thus, not an origin rule per se, but an administrative requirement to prevent circumvention and abusive manipulations of originating goods during transportation.

Almost all rules require that the goods be under customs control during transit. Certain rules require direct transportation of originating goods between the contracting parties of a free trade agreement, but also allow transportation through the territories of other countries under such conditions as prohibition of operations during transit and warehousing (other than unloading, reloading or any operation designed to preserve the consignment in good condition), and the requirement of surveillance by Customs authorities of the transit country. Certain rules allow splitting of consignments in a transit country.

Due to changes in transportation methods and routes, an emerging trend on a global level is to move away from very strict requirements in relation to direct transportation or direct consignment.

The Kyoto Convention explicitly allows derogations from the direct transport rule for geographical reasons, as well for exhibitions or warehousing in third countries when the goods remain under Customs control:

**KYOTO CONVENTION, SPECIFIC ANNEX K, CHAPTER 1
6. RECOMMENDED PRACTICE:**

Special cases of qualification for origin

Direct transport rule

12. Recommended Practice

Where provisions requiring the direct transport of goods from the country of origin are laid down, derogations therefrom should be allowed, in particular for geographical reasons (for example, in the case of landlocked countries) and in the case of goods which remain under Customs control in third countries (for example, in the case of goods displayed at fairs or exhibitions or placed in Customs warehouses)

3.2.2 EXHIBITIONS

Originating goods may be sent to trade, industrial and crafts exhibitions in non-contracting parties (third countries) where they can be sold to contracting parties. Such goods should in principle be sent back to the exporting country in order to fulfil the requirement of the direct transport rule.

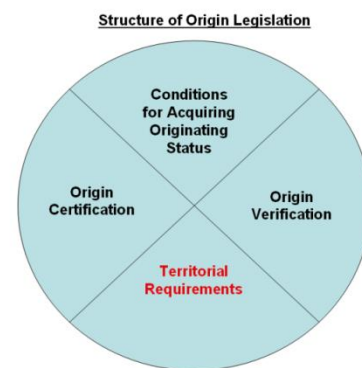
To avoid such re-exportation, many agreements contain specific provisions dealing with goods sent to a non-contracting party (third-country) for exhibitions. This constitutes a derogation from the direct transport requirement.

The exhibition rule permits the direct shipment of exhibits sold at an exhibition which are considered to be originating, from the place of the exhibition in a third country to the contracting party of the purchaser, without losing the benefits from a preferential treatment at importation.

3.2.3 PRINCIPLE OF TERRITORIALITY

Preferential rules of origin determine the economic nationality of products manufactured in the contracting parties of free trade areas in order to distinguish between products which are considered to be originating from a free trade partner country and products from outside the free trade area.

Besides the conditions describing the general requirements for acquiring the originating status, and the provisions on Customs procedures relating to origin certification and origin verification, the assumption of territoriality is one of the three core principles for origin determination.

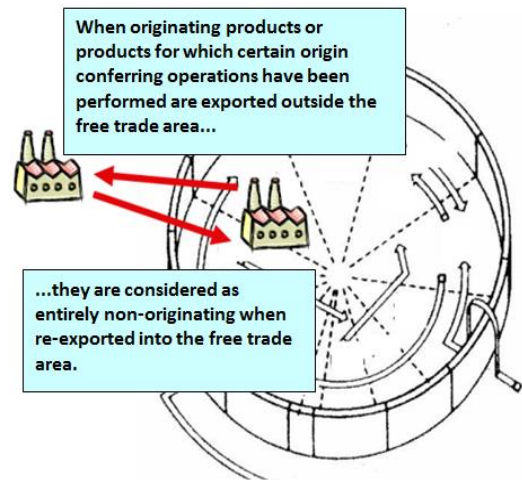


The principle of territoriality requires that the production process must be carried out without interruption in the free trade area, and the conditions for obtaining an originating status must be fulfilled without interruption in the territory of the free trade area.

Each manipulation which is performed outside the free trade area has the consequence that the product loses its originating status, or that the origin conferring part initially acquired by the intermediate product in the free trade area should not be taken into consideration.

Thus, the principle of territoriality is a prerequisite for receiving preferences. Goods which were exported during the manufacturing operation to countries outside the territory of the preferential area must be considered entirely as non-originating when they return. The part of the manufacture which was initially carried out in the territory of the free trade area prior to the exportation of the product cannot be taken into consideration for the purposes of origin determination.

The rationale for the territorial requirement is found in the fact that such rules help to control origin conferring manufacturing processes in the free trade area and thus to simplify the determination of origin and render it transparent. Providing proof of origin would otherwise require a manufacturer to keep track of different manufacturing stages within and outside the territory of the free trade area. The task of verifying the accuracy of the claim of origin would become more difficult for authorities, due to the need to evaluate production processes in different territories (need for assistance from foreign authorities for the control of manufacturing processes performed abroad).



Thus, the principle of territoriality is found in virtually all origin legislations. Whereas in some legislations a specific part of the origin protocol deals with issues of territoriality, in other legislations the territorial requirement is simply stated in the article which sets out the origin conferring requirements.

3.2.4 DEROGATION OF THE PRINCIPLE OF TERRITORIALITY

All free trade agreements impose geographical restrictions insofar as they require that goods which are considered to be originating according to the agreement must be either wholly obtained in the free trade area or undergo substantial transformation/sufficient manufacturing or processing in the free trade area.

The production process must be done without interruption in the territory of a country or in the territories of the countries of the free trade area.

Goods exported outside the free trade area and afterwards re-imported into the free trade area are treated as entirely non-originating, and the part of manufacturing/operations which was carried out in the free trade area prior to their exportation should not be taken into consideration (see “Principle of Territoriality” in Section 3.2.3).

Some origin legislations provide exceptions to the rigid principle of territoriality, allowing, under certain circumstances, limited manufacturing processes outside the free trade area with the possibility to take the initial originating conferring processes into consideration, or to keep the originating status of a product sent outside the territories of the free trade area. A precondition for this exception is that it can be demonstrated to the customs authorities that the same goods are returning as were exported, and that the goods have not undergone any operation other than those needed to preserve them in good condition. Moreover, limited working or processing of exported products outside the territories of the free trade area may be allowed when the added value acquired outside the territories of the free trade area does not exceed a certain threshold. These exceptions are called “Derogation to the Principle of Territoriality”.

3.3 PROCEDURAL ASPECTS

3.3.1 CERTIFICATION OF ORIGIN / PROOFS OF ORIGIN

All preferential origin legislations contain provisions on how the origin of a product can be proven and certified. In general, a claim for preferential tariff treatment is required to be supported by proof of origin, which must be presented to the Customs authority of the importing country upon request. There are various ways to certify the preferential origin of goods with different approaches for certification of the preferential origin.

The WTO Agreement on Rules of Origin does not deal with documentary evidence of origin. The Kyoto Convention in Chapter 2 of Annex K, provides commonly accepted definitions used for origin certification and offers Recommended Practices regarding the use of documentary evidence of origin and the application and form of the types of documentary evidence of origin, as well as the control of documentary evidence, as follows:

KYOTO CONVENTION, SPECIFIC ANNEX K, CHAPTER 2 Documentary evidence of origin

Definitions

For the purposes of this Chapter:

E1./ F2.

"certificate of origin" means a specific form identifying the goods, in which the authority or body empowered to issue it certifies expressly that the goods to which the certificate relates originate in a specific country. This certificate may also include a declaration by the manufacturer, producer, supplier, exporter or other competent person;

E2./ F3.

"certified declaration of origin" means a "declaration of origin" certified by an authority or body empowered to do so;

E3./ F4.

"declaration of origin" means an appropriate statement as to the origin of the goods made, in connection with their exportation, by the manufacturer, producer, supplier, exporter or other competent person on the commercial invoice or any other document relating to the goods;

E4./ F5.

"documentary evidence of origin" means a certificate of origin, a certified declaration of origin or a declaration of origin;

E5./ F1.

"regional appellation certificate" means a certificate drawn up in accordance with the rules laid down by an authority or approved body, certifying that the goods described therein qualify

for a designation specific to the given region (e.g. Champagne, Port wine, Parmesan cheese).

Principle

1. Standard

The requirement, establishment and issue of documentary evidence relating to the origin of goods shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.

Requirement of documentary evidence of origin

2. Recommended Practice

Documentary evidence of origin should be required only when it is necessary for the application of preferential Customs duties, of economic or trade measures adopted unilaterally or under bilateral or multilateral agreements or of measures adopted for reasons of health or public order.

3. Recommended Practice

Documentary evidence of origin should not be required in the following cases:

- a. goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$100;
- b. commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$60;
- c. goods granted temporary admission;
- d. goods carried in Customs transit;
- e. goods accompanied by a regional appellation certificate as well as certain specific goods, where the conditions to be met by the supplying countries under bilateral or multilateral agreements relating to those goods are such that documentary evidence need not be required.

Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.

4. Recommended Practice

When rules relating to the requirement of documentary evidence of origin have been laid down unilaterally, they should be reviewed at least every three years to ascertain whether they are still appropriate in the light of changes in the economic and commercial conditions under which they were imposed.

5. Recommended Practice

Documentary evidence from the competent authorities of the country of origin should be required only in cases where the Customs of the country of importation have reason to suspect fraud.

Applications and form of the various types of documentary evidence of origin

(a) Certificate of origin

Form and content

6. Recommended Practice

When revising present forms or preparing new forms of certificates of origin, Contracting Parties should use the model form in Appendix I to this Chapter, in accordance with the Notes in Appendix II, and having regard to the Rules in Appendix III.

Contracting Parties which have aligned their forms of certificate of origin on the model form in Appendix I to this Chapter should notify the Secretary General of the Council accordingly.

Languages to be used

7. Recommended Practice

Certificate of origin forms should be printed in the language(s) selected by the country of exportation and, if these languages are neither English nor French, also in English or French.

8. Recommended Practice

Where the certificate of origin is made out in a language that is not a language of the country of importation, the Customs of that country should not require, as a matter of course, a translation of the particulars given in the certificate of origin.

Authorities and other bodies empowered to issue certificates of origin

9. Standard

Contracting Parties accepting this Chapter shall indicate, either in their notification of acceptance or subsequently, the authorities or bodies empowered to issue certificates of origin.

10. Recommended Practice

Where goods are not imported directly from the country of origin but are forwarded through the territory of a third country, certificates of origin should be allowed to be drawn up by the authorities or bodies empowered to issue such certificates in that third country, on the basis of a certificate of origin previously issued in the country of origin of the goods.

11. Recommended Practice

Authorities or bodies empowered to issue certificates of origin should retain for not less than two years the applications for, or control copies of, the certificates of origin issued by them.

(b) Documentary evidence other than certificates of origin

12. Recommended Practice

Where documentary evidence of origin is required, a declaration of origin should be accepted in the following cases:

- a. goods sent in small consignments addressed to private individuals or carried in travellers' baggage, provided that such importations are of a non-commercial nature and the aggregate value of the importation does not exceed an amount which shall not be less than US\$500;
- b. commercial consignments the aggregate value of which does not exceed an amount which shall not be less than US\$300.


Where several consignments of the kind referred to in (a) or (b) are sent at the same time, by the same means, to the same consignee, by the same consignor, the aggregate value shall be taken to be the total value of those consignments.

Sanctions

13. Standard

Provision shall be made for sanctions against any person who prepares, or causes to be prepared, a document containing false information with a view to obtaining documentary evidence of origin.

APPENDIX I

<p>1. Exporter (name, address, country) Exportateur (nom, adresse, pays)</p>	<p>2. Number – Numéro</p> <p>CERTIFICATE OF ORIGIN CERTIFICAT D'ORIGINE</p>		
<p>3. Consignee (name, address, country) Destinataire (nom, adresse, pays)</p>			
<p>4. Particulars of transport (where required) Renseignements relatifs au transport (le cas échéant)</p>			
<p>5. Marks & Numbers : Number and kind of packages : Description of the goods Marques et numéros : Nombre et nature des colis : Désignation des marchandises</p>	<p>6. Gross weight Poids brut</p>	<p>7.</p>	
<p>8. Other information – Autres renseignements</p>	<p>It is hereby certified that the above-mentioned goods originate in : Il est certifié par la présente que les marchandises mentionnées ci-dessus sont originaires de :</p> <p>-----</p> <p>CERTIFYING BODY ORGANISME AYANT DELIVRE LE CERTIFICAT.</p> <p>-----</p> <p style="text-align: center;">Place and date of issue – Lieu et date de délivrance</p> <p>-----</p> <p style="text-align: center;">Authorised signature – Signature autorisée</p>		
<p>Stamp – Timbre</p> 			

APPENDIX II

Notes

1. The size of the certificate should be the international ISO size A4 (210 x 297 mm, 8.27 x 11.69 inches). The form should be provided with a 10 mm top margin and a 20 mm left-hand filing margin. Line spacing should be based on multiples of 4.24 mm (1/6 inch) and width-spacing on multiples of 2.54 mm (1/10 inch). The layout should be in conformity with the ECE layout key, as illustrated in Appendix I. Minor deviations in the exact size of boxes, etc., should be permissible if required for particular reasons in the issuing country, such as the existence of systems other than metric measurement, features of national aligned systems of documents, etc.
2. Where it is necessary to provide for applications for certificates of origin, the form of application and the form of certificate should be compatible to permit completion in one run.
3. Countries may determine standards concerning the weight per m² of the paper, and the use of a machine-turned background to prevent falsification.
4. For the guidance of users, rules for the establishment of the certificate of origin may be printed on the back of the certificate.
5. Where requests for post-facto control may be submitted under a mutual administrative assistance agreement, a space may be provided for that purpose on the back of the certificate.
6. The following comments refer to the boxes in the model form :

Box No. 1:

"Consignor", "producer", "supplier", etc. may be substituted for "exporter".

Box No. 2:

There should be only one original certificate of origin, identified by the word "Original" adjacent to the document title. If a certificate of origin is issued in replacement of an original certificate that has been lost, the replacement certificate shall be identified by the word "Duplicate" adjacent to the document title. Copies of an original or of a duplicate certificate shall bear the word "copy" adjacent to the title. This box is also intended for the name (logotype, emblem, etc.) of the issuing authority and should leave space for other official purposes.

Box No. 3:

The particulars provided for in this box may be replaced by "to order" and, possibly, the country of destination.

Box No. 4:

This box can be used for additional information on means of transport, route, etc., which can be inserted if so desired by, for example, the issuing authority.

Box No. 5:

If an indication of "Item No." is required this can be inserted, preferably in the margin to this box or at the beginning of each line in the box. "Marks and Nos." can be separated from "Number and kind of packages" and "Description of the goods" by a vertical line. If a line is not used, these particulars should be distinguished by adequate spacing. The description of the goods can be supported by adding the number of the applicable Harmonized System heading, preferably in the right-hand part of the column. Particulars of the origin criteria, if required, should be given in this box and should be separated from the other information by a vertical line.

Box No. 6:

Normally, gross weight should suffice for the identification of the goods.

Box No. 7:

This column is left blank for any additional details that might be required, such as measurements, or for reference to other documents (e.g., commercial invoices).

Boxes Nos. 6 and 7:

Other quantities which the exporter may state in order to facilitate identification can be entered in either box 6 or box 7, as appropriate.

Box No. 8:

This area is reserved for the details of the certification by the competent body (certification legend, stamps, signatures, date and place of issue, etc.). The precise wording of texts, etc., is left to the discretion of the issuing authority, the wording used in the model form serving only as an example. This box may also be used for a signed declaration by the exporter (or the supplier or manufacturer).

APPENDIX III

Rules for the establishment of certificates of origin

The rules for the establishment of certificates of origin (and where applicable, of applications for such certificates) are left to the discretion of national authorities, due account being taken of the Notes set out above. However, it may be necessary to ensure compliance with, inter alia, the following provisions:

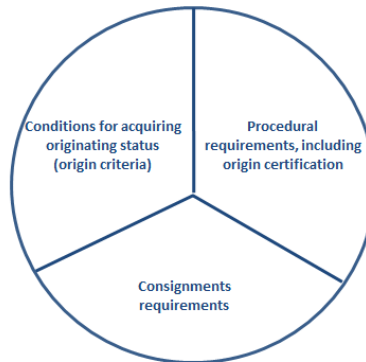
1. The forms may be completed by any process, provided that the entries are indelible and legible.
2. Neither erasures nor superimpositions should be allowed on the certificates (or applications). Any alterations should be made by striking out the erroneous material and making any additions required. Such alterations should be approved by the person who made them and certificated by the appropriate authority or body.
3. Any unused spaces should be crossed out to prevent any subsequent addition.
4. If warranted by export trade requirements, one or more copies may be drawn up in addition to the original.

With a view to facilitating trade through the streamlining and simplification of customs procedures, the WCO in cooperation with its Members elaborated non-binding guidelines on certification of origin. The Guidelines aim to provide useful guidance for the Members to design, develop and achieve robust management of origin-related procedures.

Certification of Origin

The preferences granted under a free trade agreement are limited to products fulfilling the origin rules of the respective agreement. In order to be eligible for preferential tariff treatment, a product shall not only satisfy the applicable origin criteria and consignment criteria, but also the procedural requirements stipulated under the respective preferential schemes.

Thus, the three core elements have to be fulfilled:



- the origin criteria which determines if the product is originating according to the free trade agreement;

- the requirements linked to territoriality, including where the goods have to be manufactured and how the goods have to be transported to the importing country (mostly for preferential rules of origin); and
- procedural requirements to support a claim for preferential treatment, i.e. the provisions on customs procedures stipulating the provisions for origin certification.

There are various ways to certify the origin with different approaches for certification of the origin.

Key Players involved in Certification of Origin

First and foremost, the Customs authority in the importing country may require a proof of origin in order to determine whether or not to apply certain trade measures at the border. If there are any trade measures applicable for export, then the Customs authority in the exporting country would need a proof of origin as well.

Secondly, the importer may need a proof of origin. The importer bears the responsibility to provide to the Customs authority all required documents for the appropriate processing of imports. Thus, if a proof of origin is required by the Customs authority of the importing country for a claim of preferential tariff treatment or for a non-preferential origin purpose, the importer needs a proof of origin.

Thirdly, the exporter may need a proof of origin to provide to the importer who will submit it to the Customs authority of the importing country, when requested by that authority. The exporter may also need a proof of origin if the Customs authority in the exporting country requires it.

Who issues a Proof of Origin

The issuer of a proof of origin varies depending on the type of procedures applicable. As identified in the definitions (see below), a certificate of origin is issued by a competent authority of the exporting country. In some countries the task of issuing certificates of origin is shared between an issuing authority and a competent authority. Self-issued certificates of origin and declarations of origin may be issued by the producer, manufacturer, exporter or importer himself.

Definitions

The following definitions are provided to set the basis of terms:

“rules of origin” means the specific provisions established by national legislation or international agreements, applied by a country to determine the origin of goods to be used for the granting of tariff preferences (preferential origin) or other WTO trade policy measures (non-preferential origin);

“certification of origin” means a series of procedures to establish the originating status of the goods through the presentation of a proof of origin;

“self-certification of origin” means a type of certification of origin which utilizes a declaration of origin or a self-issued certificate of origin as a means to declare or affirm the originating status of goods;

“proof of origin” means a document or statement (either in paper or electronic format) which serves as a prima facie evidence to support that the goods to which it relates satisfy the origin criteria under applicable rules of origin. It includes a certificate of origin, a self-issued certificate of origin, or a declaration of origin;

“certificate of origin” means a specific form, whether on paper or electronic, in which the government authority or body empowered to issue it expressly certifies that the goods to which the certificate relates are considered originating according to the applicable rules of origin;

“self-issued certificate of origin” means a specific form in which the producer, manufacturer, exporter or importer expressly certifies that the goods to which the certificate relates are considered originating according to the applicable rules of origin;

“declaration of origin” means a statement as to the originating status of goods made by the producer, manufacturer, exporter or importer on the commercial invoice or any other document relating to the goods;

“indication of origin” means a simple manifestation of the name of the country of origin or the corresponding code on a customs declaration or any other document relating to the goods;

“origin criteria” means conditions regarding the production of goods which must be fulfilled for the goods to be considered as originating under applicable rules of origin;

“consignment criteria” means requirements the goods have to fulfil in order to claim preferential tariff treatment on importation, such as the condition of direct transport from exporting to importing country, or the procedure showing that the goods have not undergone any manipulation affecting its origin in an intermediate country;

“GSP” or Generalised System of Preferences” means the scheme of autonomous trade preferences accorded by some preference-giving Members to developing countries;

“FTA” or free trade agreement means an international trade agreement involving two or more contracting parties which set forth the reciprocal granting of preferential tariff treatment among the contracting parties (tariff concessions going beyond the Most-Favoured-Nation Treatment of GATT Article I).

Preferential Origin

When is a Proof of Origin needed for Preferential Purposes

The preferences granted under a free trade agreement (FTA) or under the General System of Preferences (GSP) are limited to products fulfilling the origin rules of the respective arrangements.

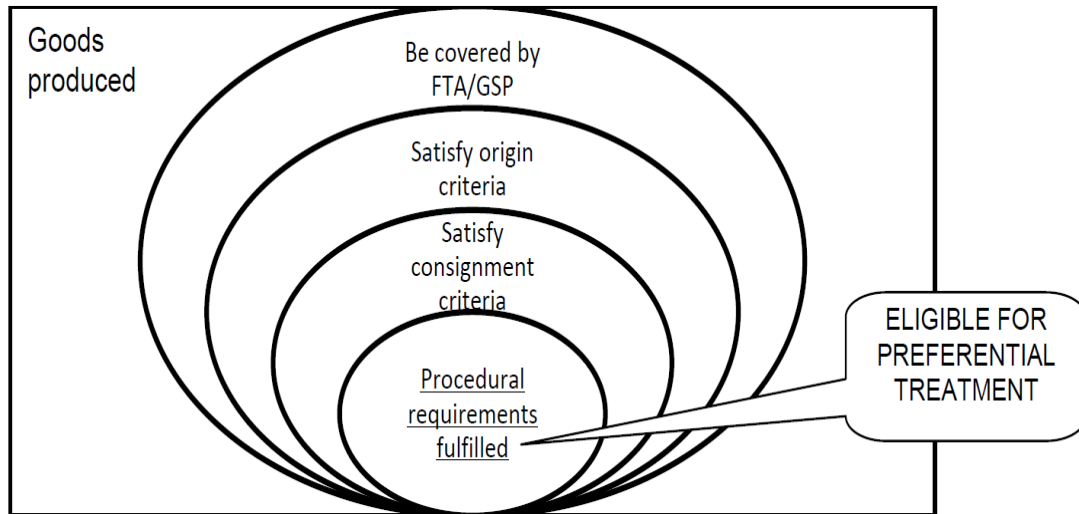
Thus, all origin legislations of free trade agreements contain provisions on how the preferential origin of a product can be proven and certified.

In other words, the preferences granted under a FTA or GSP are limited to products fulfilling the origin rules of the respective arrangements. In order to be eligible for preferential tariff treatment, a product shall not only satisfy the applicable origin criteria and consignment criteria, but also the procedural requirements stipulated under the respective preferential schemes.

The following questions have to be answered when ascertaining whether a product may be eligible for preferential treatment in a given free trade setting (in the strict sequential order):

- In which preferential trade context are the exported goods traded? (does a FTA exist between the exporting and importing countries?)
- Are the goods concerned covered under the scope of the preferential trade agreement (free trade agreement or GSP arrangement) and does the goods benefit from preferences?

- Does the production of the goods in the exporting country satisfy the origin criteria in the preferential trade arrangement for these goods?
- Are the consignment/transport/non-manipulation criteria fulfilled for the transport of the goods?
- Are the procedural requirements stipulated in the arrangement fulfilled in order to ask for the preferences foreseen?



In general, a claim for preferential tariff treatment under a certain FTA or GSP is required to be supported by a proof of origin, which must be presented to the Customs authority of the importing country upon request. However, in many FTAs, the requirement to present a proof of origin is exempted under a certain threshold. In addition, some agreements provide exemptions for travellers' luggage and small packages.

Issuer of proof of origin for preferential purposes

The issuer of proofs of origin is stipulated in each FTA or GSP legislation. Some FTAs do not expressly state the name of the competent authority in the text of the agreement, even if a certificate of origin issued by a competent authority of the exporting country is used as the only type of proof of origin. In such cases an FTA normally requires the parties to the agreement to notify each other of the details of the competent authority for the purpose of issuing certificate of origin under the particular FTA. Under the GSP provisions, the beneficiary countries are required to designate a competent authority and inform the GSP-granting country accordingly.

Characteristics of different systems for the certification of origin

There are various systems for the issuance of a proof of origin, including the certification of origin by a competent authority of the exporting country and the systems of self-certification of origin by an approved exporter, by a registered exporter, by any exporter, and the importer-based system.

Types of preferential origin certification systems

Type of system	Key features
1. Authority issued certification, incl. e-certificates	Government authorities or delegated bodies issue the certificate of origin in a prescribed form
2. Approved Exporter system	Exporters with prior approval may make origin declaration on commercial documents
3. Fully exporter-based certification	Any exporters can sign and issue a certificate of origin of a prescribed form
4. Importer-based certification	Importers certify the origin of goods

Self-certification = issuing authorities not involved in every single issuance of proof of origin

Certification of origin involving the competent authority of the exporting country

In order to have a certificate of origin issued by a competent authority, the exporter must submit an application along with the necessary information to substantiate the originating status of the goods. Then, in principle, the competent authority verifies the information to check if the goods actually satisfy the origin criteria of the applicable rules of origin. This may include a visit to the premises of the production.

A certificate of origin issued by a competent authority has been the most traditional and commonly utilized type of proof of origin.

Advantages

The advantage of a certificate of origin issued by a competent authority is that the quality of the certificate of origin is deemed to be assured, if the competent authority verified the originating status of the goods before issuing the certificate of origin. As the certificate of origin is issued by a competent authority which is considered as a trusted entity, in principle the content of the proof can be regarded as trustworthy.

Disadvantages

On the other hand, this conventional method is disadvantaged from an economic perspective, compared to the self-certification of origin. The issuance of a certificate of origin may be subject to certain fees, which will increase the cost of doing business. Also, it requires time to apply and to pass by the office of the competent authority in order to have a certificate of origin issued.

Furthermore, the increase in trade volume is worth noting. The increase of world's trade volume in general coupled with an increased number of FTAs in force has led to an increase in the issuance of certificates of origin worldwide.

With a view to ensuring that a certificate of origin issued by a competent authority of the exporting country maintains its advantages and continues to be considered as a useful and trustworthy type of proof of origin, the following guidelines are provided:

General Guidelines:

(SCRUTINY BY THE COMPETENT AUTHORITY IN ISSUING A PREFERENTIAL CERTIFICATE OF ORIGIN)

The competent authority in the exporting country shall appropriately examine the originating status of the goods before issuing a preferential certificate of origin. This includes collecting necessary information from the producer, manufacturer or exporter in order to examine whether the applicable origin criteria is satisfied, such as the list of materials with HS codes, calculation of value-added percentage and/or the specific production process of the goods in question. Where appropriate, the competent authority may also conduct a visit to the production sites to confirm the information provided before issuing a certificate of origin.

The competent authority in the exporting country shall keep the record of information used for the determination of originating status for a certain period of time in accordance with applicable laws and regulations.

Self-certification of origin

The number of FTAs in force continues to increase. Evolving from the conventional system for the issuance of a proof of origin involving the competent authority of the exporting country, various types of self-certification of origin have been introduced in the FTAs around the world.

In line with the spirit of the Kyoto Convention, facilitation measures should be encouraged while ensuring compliance with the necessary requirements for Customs purpose.

Self-certification should be recognized as a primary concept for facilitating the origin related procedures. In this context, the following guideline is therefore suggested.

General Guidelines:

(Fostering the use of self-certification of origin)

Considering the increasing volume of preferential trade and recognizing the need for the facilitation of origin-related procedures, self-certification of origin by a producer, manufacturer, exporter and/or importer should be utilized to the maximum extent possible while recognizing the specificities of domestic business environment.

Each country has to strike a balance between trade facilitation and customs control requirements. Also countries need to take national capacity and the specific features of their domestic business sector into consideration in order to find the right proportion of liberalisation and control for a smooth and secure way to handle self-certification.

Approved exporter system

Under the approved exporter system, an exporter approved by the competent authority will be able to make out a declaration of origin on an invoice or other commercial document. In a vast majority of the FTAs using such system, the principal proof of origin is a certificate of origin issued by the competent authority of the exporting country.

The approved exporter status is provided as an exception or special privilege for an exporter that has gone through an approval process with the competent authority. The exporter that wishes to be granted the approved exporter status must provide sufficient information to the competent

authority in order to ascertain that he knows the rules and procedures and is actually in a position to determine the origin of the goods. The information on the exporters granted approved exporter status may be shared among the parties to the FTA.

Due to the fact that it requires prior scrutiny by the competent authority, the approved exporter system can be considered as a less liberal procedure compared to the other systems of self-certification.

Registered exporter system

The registered exporter system goes a step further in facilitation compared to the approved exporter system. In order to become a registered exporter, an exporter would only be required to provide certain prescribed information. Basically the registration process is a mere manifestation of the required information and there is no evaluation of the information at the time of registration. The information on the registered exporter will be shared with the Customs of the importing country who will use the information for the risk assessment process.

Fully exporter-based system

Certain FTAs allow a proof of origin to be issued directly by the exporter/producer. Authorities are not at all involved in the issuance of proofs of origin under such a system, and therefore no authorities in the exporting country have supervision over proofs of origin issued. In this connection, it is generally understood to be coupled with a verification system which allows for a direct enquiry by the Customs authority of the importing country to the exporter/producer who issued the proof of origin.

Importer-based system

The most liberalised procedure for certification of origin is the importer-based system. Under this particular system, importers are allowed to make origin declarations or merely give an indication of the origin based on their own knowledge about the imported goods when claiming for a preferential tariff treatment.

In order to highlight this ultimately liberal procedure, the following guideline is provided.

General Guidelines:

(Importer with sufficient knowledge)

An indication of origin may be regarded as sufficient by the Customs authority of the importing country for the claim of a preferential tariff treatment, if the importer has sufficient knowledge as to the originating status of the imported goods according to the applicable preferential rules of origin. In such cases, the responsibilities of the importers and the related persons involved in the transaction shall be clearly defined.

Requirement to issue proofs of origin

The goods for which a preferential treatment is claimed must fulfil not only the production process but also the procedural requirements provided in the respective preferential rules of origin. The following subparagraphs review the typical characteristics of various requirements to be fulfilled.

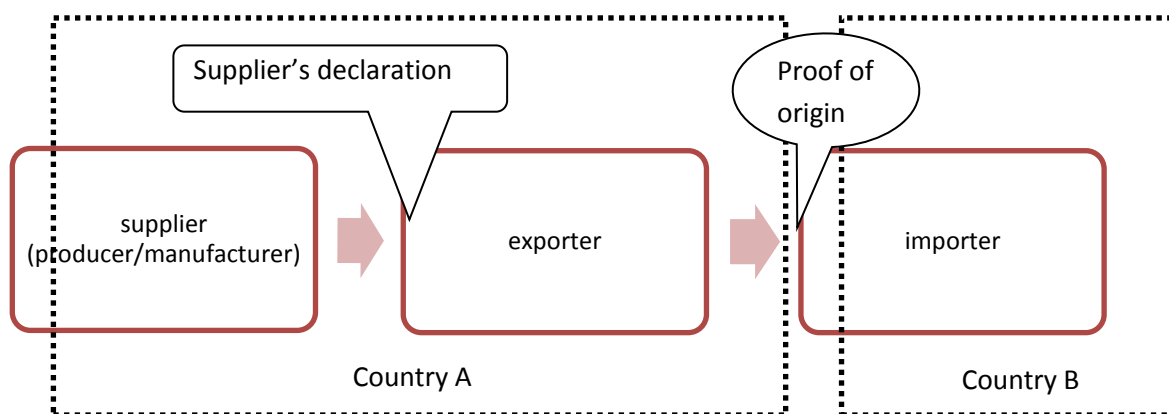
Substantive requirement – fulfillment of origin criteria

Preferential rules of origin are provided in the respective FTAs or in the domestic laws and regulations of a GSP granting country. The goods must satisfy the origin criteria set forth in the applicable preferential rules of origin in order to have a proof of origin issued.

Formality requirement to issue proofs of origin

Supplier's declaration

The exporter is not always the producer of the exported goods. Often the exported goods or inputs used in the production of the final goods are supplied from a local producer. In such cases, an exporter would need to obtain information from the supplier, which is generally referred to as a supplier's declaration, so that it would be possible to ascertain whether or not the goods satisfy the applicable origin criteria.



Recognising the need for the origin procedures to be correctly applied and utilised, the following guideline is provided.

General Guidelines:

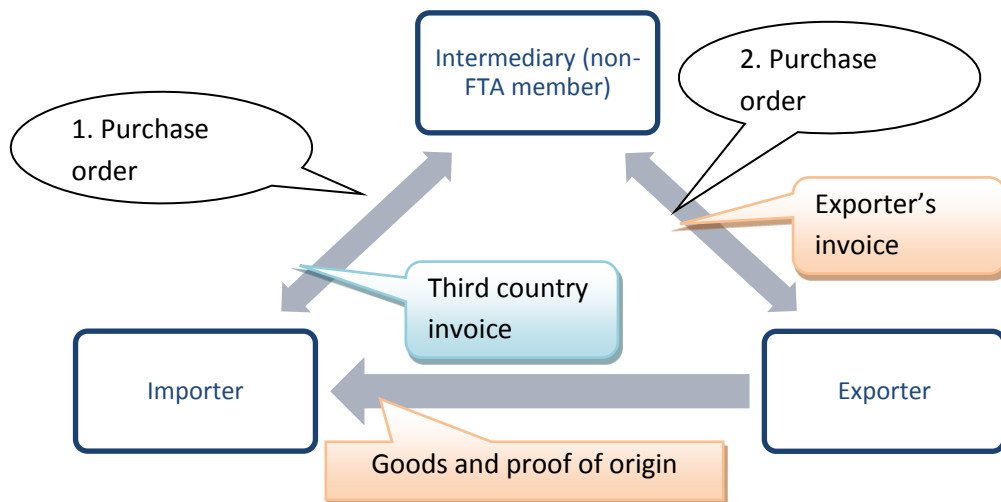
(Proof of origin used by non-producing exporter)

Where a competent authority of the exporting country issues a certificate of origin, exporters who are not the producer of the goods shall be allowed to apply for the issuance of a certificate of origin to the competent authority, provided that the non-producing exporter is in possession of or has access to the necessary information to substantiate that the origin criteria are satisfied.

When a producer or manufacturer is allowed to use self-certification under the applicable preferential scheme, exporters who are not the producer of the goods shall be equally allowed to make self-certification, provided that the non-producing exporter is in possession of or has access to the necessary information to substantiate that the origin criteria are satisfied.

Third country invoice (intermediary trade)

It is a common practice in today's international trade to involve an intermediary between the importer and the exporter. This practice must be recognised and the related procedures must be in place. In trade involving an intermediary residing in a third country, the invoice issued in the third country (a third country invoice) would be submitted to the Customs of the importing country to support the import declaration.



In the case where third country invoicing is involved, the following guidelines are provided to ensure the appropriate processing of intermediary trade.

General Guidelines:

(Intermediary trade)

Recognising the current practices of trade, a proof of origin issued in the country of origin should be accepted in cases where the commercial invoice is issued in a third country, as long as it is discernible that the goods referred to in the proof of origin and the invoice corresponds to each other and that the goods satisfy the applicable rules of origin.

When a declaration of origin is issued by an approved exporter for goods which are traded via an intermediary business based in a third country, the declaration of origin should be made out on a commercial document other than an invoice² which the approved exporter issues on his/her own responsibility and which clearly identified the goods it accompanies.

What are the obligations and the liability of the players?

Many players involved in the flow of preferential trade could be accountable for the originating status of goods. The following subparagraphs explain the obligations and liability of these players.

² It does not preclude such commercial documents which may be referred to as a "special purpose invoice" issued by the approved exporter and used for the purpose of identifying the shipment of goods from the exporter to the importer.

Importer

No matter what system is applicable for the issuance of a proof of origin, the importer bears the general responsibility to be accountable for the imported goods, since the preferential origin of goods constitutes an element for determining the amount of customs duty payable and it is the importer who claims the preferential tariff treatment in the importing country. Therefore, the importer shall faithfully respond to the queries from the Customs authority of the importing country to the maximum extent possible. This may include providing appropriate supporting documents to the Customs authority of the importing country regarding the originating status of the goods in question. However, under the verification process laid down in certain FTAs only the exporter has the obligation to provide appropriate supporting documents regarding the originating status of the goods.

When an importer-based system is applicable, the accountability for the originating status of goods shall be the obligation of the importer.

In this context, the following guideline is provided.

General Guidelines:

(Importer's responsibility under importer-based system)

When a proof of origin is allowed to be issued by an importer, the importer shall bear full responsibility to provide appropriate evidence substantiating the originating status of the goods in question, if requested by the Customs authority of the importing country.

Exporter

The responsibility of the exporter may vary depending on the system for the issuance of a proof of origin. When a certificate of origin is issued by a competent authority, the exporter would be liable for the accuracy of the information provided to the competent authority when applying for the issuance of a certificate of origin. If there is a change in the information initially submitted, the exporter has to notify the new facts regarding the production to the competent authority. In a similar manner, when the exporter notices that the initial application for the issuance of certificate of origin contained incorrect information, the exporter is required to faithfully inform the competent authority. With regard to a verification requested subsequently by the Customs authority of the importing country, the first contact point may be the competent authority that issued the certificate of origin. Thus, the exporter's responsibility may be regarded as relatively limited once the certificate of origin has been issued³.

The approved exporter system is based on the authorisation by a competent authority. Thus, the responsibility of the exporter is very similar. An approved exporter will be held accountable for the accuracy of the information provided in the application to become an approved exporter as well as for the information contained in every origin declaration issued by him. Also there will be an obligation of record-keeping of such information.

When any exporter is allowed to issue a certificate of origin on his/her own under a FTA, the exporter using such FTA and providing the self-issued certificate of origin or declaration of origin

³ Depending on the particular FTAs, the exporter may still be fully involved in the verification process despite the certificate of origin is issued by a competent authority.

would have to bear the responsibility on the content stated in the document. In case of verification in such a system, it is often allowed for the Customs in the importing country to send a questionnaire directly to the exporter. The exporter shall respond to such verification request sent directly by the Customs authority of the importing country. There are also agreements where the verification request needs to be sent to the Customs authority or competent authority of the country in which the exporter is located.

Competent authority

The competent authority plays an important role in a system utilising a certificate of origin issued by a competent authority as well as in an approved exporter system. It is commonly accepted that the issuer of a certificate of origin being a competent authority has the responsibility to establish and disseminate the related information:

General Guidelines:

(Availability of information)

Customs and/or the competent authority shall establish detailed requirements and procedures for the issuance of a preferential proof of origin for respective preferential schemes, where appropriate and if such requirements and procedures do not already exist under the applicable legislative framework. Information on such requirements and procedures shall be made easily accessible to the public, preferably by electronic means, including via internet.

When self-certification is only allowed for approved exporters, the relevant authority shall develop and disclose the detailed procedures and requirements for the approval as well as the responsibilities imposed on the approved exporters.

If self-certification is open to any producer, manufacturer, exporter and/or importer, the responsibilities of making out the self-certification shall be clearly defined and made available to the public.

The competent authority plays an important role for the verification as well. In the majority of the existing trade agreements where a certificate of origin is issued by a competent authority, the competent authority is the contact point to receive the verification request from the importing country. The recommended code of conduct in such origin verification procedures utilizing administrative cooperation is detailed in the WCO Guidelines on Preferential Origin Verification which can be retrieved from the WCO Members' Website:

(<http://www.wcoomd.org/en/topics/origin/instrument-and-tools.aspx>)

Non-Preferential Origin

When is a proof of origin needed for non-preferential purposes?

The scope of non-preferential origin includes different commercial policy instruments. Article 1(2) of the WTO Agreement on Rules of Origin refers to the following as the possible coverage of non-preferential rules of origin: most-favoured-nation (MFN) treatment, anti-dumping and countervailing duties, safeguard measures, origin marking, quantitative restrictions, tariff quotas, government procurement and trade statistics.

In principle, a non-discriminatory measure shall not require a proof of origin. For example, between the WTO Members the MFN rate is applicable in situations where the origin of goods, as

defined by the importing Member's non-preferential rules of origin, lies within another WTO Member. Of course this also applies to cases where a WTO Member grants the MFN rate to countries who are not Members of the WTO and vice versa. When consideration is needed to substantiate the origin of goods, it should not be unnecessarily burdensome unless there is a specific need to make a distinction between MFN applicable countries and non-MFN applicable countries.

The other measures mentioned in Article 1(2) of the WTO Agreement on Rules of Origin are applied, in most cases, to specified goods depending on the policy objectives. Thus, possession or presentation of a proof of origin is generally only required when the Customs authority of the importing country requires it, for instance, for origin marking purposes. It is therefore recommended to only require a non-preferential proof of origin when deemed necessary, on a case-by-case basis, by the Customs authorities of the importing country and when no other – more trade facilitative – method is available.

In addition, through a survey conducted by the WCO, it has been revealed that some countries require the presentation of a non-preferential proof of origin for the purpose of determining the Customs value. However, the Customs value shall be determined primarily on the basis of the transaction value, which is defined under the WTO Customs Valuation Agreements as the “price actually paid or payable” for merchandise when sold for exportation to the importing country. A non-preferential proof of origin does not provide any assurance on the “price actually paid or payable”, thus it should not be required by the Customs authority of an importing country solely for this particular purpose.

General Guidelines:

(Requirement of proof of origin for non-preferential purposes)

As a general rule, non-preferential proofs of origin should not be required for the importation of goods on which no specific trade policy measures are applicable.

A non-preferential proof of origin may be required only for the measures provided for in Article 1(2) of the WTO Agreement on Rules of Origin.

A proof of origin shall not be required solely for the purpose of determining the Customs value of the goods.

Where the origin is indicated in the Customs declaration of goods for which trade policy measures referred to in Article 1(2) of the WTO Agreement on Rules of Origin apply, a proof of the origin shall only be required where the origin of the goods needs to be determined with increased certainty.

Framework for issuance of proof of origin for non-preferential purposes

There are no internationally recognised standards stipulating who shall issue a proof of origin for non-preferential purposes. In light of that fact, the issuer of a non-preferential proof of origin varies from country to country, and in a like manner, a proof of origin recognised by the Customs of the importing country also varies in each country. This means that a non-preferential origin certificate merely serves as an indication for the importing country.

Requirement to issue non-preferential proofs of origin

Non-preferential rules of origin are generally prescribed in domestic laws and regulations. During the transition period until the Harmonization Work Programme (HWP) under the WTO Agreement on Rules of Origin is completed, the rules have to be consistent with the basic principles provided in the WTO Agreement on Rules of Origin for the period. When the HWP is finalized, then WTO

Members shall apply the Harmonized Non-preferential Rules of Origin for all non-preferential origin purposes.

In this context, until the HWP is completed, the non-preferential rules of origin in the exporting country and the destination country may vary. This means that there is asymmetry between the exporting and importing sides in the determination of country of origin. Therefore, during the transition period, a proof of origin issued in the exporting country based on the non-preferential rules of origin of the exporting country may not ensure that the goods are treated as originating in the same manner by the Customs authority of the importing country. Generally speaking, a non-preferential proof of origin can merely serve as an indication on the origin of the goods according to the rules applicable in the exporting country.

It may be presumed that the problem arising from such asymmetry was not recognized when non-preferential certificates of origin began to appear in international trade. It can be assumed that at that point in time most goods traded were raw materials wholly obtained in a country or even in the case of manufactured goods the materials used in the production of the final goods were sourced within the country. Such cases do not need much attention regarding the origin of the goods. The simple fact that the businesses were physically situated in the local area and were manufacturing the product in question might have been regarded as sufficient to prove the non-preferential origin. However, in today's globalised world, the situation is completely different.

As a result of this asymmetry, it is not likely that a proof of origin issued in the country of exportation is sufficient in order to establish the non-preferential origin for the purpose of applying trade policy measures by the country of importation. The evidence of the non-preferential origin of the goods should therefore be provided by other means than a certificate of origin. Such other evidence should be preferably based on concrete information provided by the manufacturer on the exact processing operations having taken place on imported materials, as well as the description, tariff classification, value and origin of those materials. In comparison with the classification and value of the finished product, this should allow the Customs authorities in the importing country to ascertain whether its own non-preferential rules of origin have been fulfilled.

However, it should be noted that a considerable number of WTO Members have not yet notified their non-preferential rules of origin to the WTO Secretariat, and not all WTO Members have established non-preferential rules of origin in their domestic laws and regulations. Under the circumstances, the issuer may not always be able to issue a proof of origin which would satisfy the requirements of the importing country.

Considering the asymmetry during the transition period, the following **guideline** is provided:

(Non-preferential rules of origin in destination countries)

Where it is necessary to provide evidence on the non-preferential origin of the goods to the customs authority of the importing country, it should preferably be provided by other means than the presentation of a certificate of origin.

When a non-preferential proof of origin is required by the Customs authority of the importing country, the issuer shall endeavour to apply the non-preferential rules of origin of the destination countries during the transition period until the Harmonization Work Programme under the WTO Agreement on Rules of Origin is completed.

Responsibility of the issuing authorities of non-preferential certificates of origin

It is commonly accepted that the issuer of certificates of origin being a competent authority has the responsibility to establish and disseminate the related information.

The following **guidelines** are provided in this context:

(Availability of Information)

Customs and/or the competent authority shall establish and make available to the public the detailed requirements and procedures regarding the issuance of a proof of origin for non-preferential trade, both for import and export purposes.

The issuer of non-preferential certificates of origin shall endeavour to provide necessary advice to the applicant.

The WCO provides several tools on certification of origin:

WORLD TRENDS IN PREFERENTIAL ORIGIN CERTIFICATION AND VERIFICATION (NOVEMBER 2011)

The purpose of this study is to assist Members in their development and review of the implementation of preferential rules of origin by providing a snapshot on the trends in certification and verification.

The full text of the study:

http://www.wcoomd.org/~media/wco/public/global/pdf/topics/research/research-paper-series/20_preforigin_worldtrends_tanaka_en.pdf?db=web

COMPARATIVE STUDY ON CERTIFICATION OF ORIGIN (JANUARY 2014)

With a view to highlighting the current situation regarding the certification procedures of preferential origin in force around the world, this study focuses on the free trade agreements (FTA) entered into force in the last two decades, from 1994 to 2013. The Secretariat mainly used the WCO Origin Database to collect the necessary information.

The full text of the study:

<http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/instruments-and-tools/comparative-study/related-documents/comparative-study-on-certification-of-origin-final-en.pdf?db=web>

GUIDELINES ON CERTIFICATION OF ORIGIN (JULY 2014)

The Guidelines on Certification of Origin offer practical explanations and aim to provide useful guidance for the Members to design, develop and achieve robust management of origin-related procedures.

The full text of the guidelines:

<http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/instruments-and-tools/guidelines/guidelines-on-certification-endorsed-july-2014-en.pdf?db=web>

3.3.2 EXEMPTION FROM / EXCEPTIONS TO PROVIDING A PROOF OF ORIGIN / CERTIFICATE OF ORIGIN

Most rules of origin provisions include exemption/exceptions from providing a proof of origin/ certificate of origin in specific cases when the submission of a proof of origin is deemed to be disproportionate.

Exemptions from the submission of a proof of origin are foreseen for small consignments sent from private persons to private persons, or for goods forming parts of travellers' personal luggage when such goods are not imported by way of trade (for commercial reasons).

Goods imported by means of such consignments are admitted as originating goods without requiring the submission of a proof of origin when there is no doubt as to the originating status of the goods.

In addition to the above-mentioned cases where no submission of a proof of origin/ certificate of origin is requested, there are exceptions to the provision of a certificate of origin, with the possibility of providing an invoice declaration for small commercial importations which do not exceed a certain threshold.

3.3.3 ORIGIN VERIFICATIONS

Overview of the Verification Process

The enforcement of preferential systems requires control elements to check that the benefits (preferences) are not accorded unduly to imports of goods which do not conform to the origin requirements, i.e., there must be a system in place for verifying that the origin related information given at the importation of goods is accurate.

A potential pitfall of origin control systems is that only the manufacturer/exporter has the necessary information as to whether or not a given product fulfils the contractual origin requirements established under a given preferential trade relationship. Thus, administrative systems are required to ensure the proper application of rules of origin.

The Kyoto Convention contains in Chapter 2 definitions and Recommended Practices for the control of documentary evidence of both preferential and non-preferential origin:

KYOTO CONVENTION, SPECIFIC ANNEX K, CHAPTER 3

Control of documentary evidence of origin

Definitions

For the purposes of this Chapter:

E1./ F1.

"certificate of origin" means a specific form identifying the goods, in which the authority or body empowered to issue it certifies expressly that the goods to which the certificate relates originate in a specific country. This certificate may also include a declaration by the manufacturer, producer, supplier, exporter or other competent person;

E2./ F2.

"certified declaration of origin" means a "declaration of origin" certified by an authority or body empowered to do so;

E3./ F3.

"declaration of origin" means an appropriate statement as to the origin of the goods made, in connection with their exportation, by the manufacturer, producer, supplier, exporter or other competent person on the commercial invoice or any other document relating to the goods;

E4./ F4.

"documentary evidence of origin" means a certificate of origin, a certified declaration of origin or a declaration of origin.

Principle

1. Standard

Administrative assistance for the control of documentary evidence of origin shall be governed by the provisions of this Chapter and, insofar as applicable, by the provisions of the General Annex.

Reciprocity

2. Standard

The competent authority of the Contracting Party which has received a request for control need not comply with it if the competent authority of the requesting Contracting Party would be unable to furnish that assistance if the positions were reversed.

Requests for control

3. Recommended Practice

The Customs administration of a Contracting Party which has accepted this Chapter may request the competent authority of a Contracting Party which has accepted this Chapter and in whose territory

documentary evidence of origin has been established to carry out control of such evidence :

- a. where there are reasonable grounds to doubt the authenticity of the document;
- b. where there are reasonable grounds to doubt the accuracy of the particulars given therein;
- c. on a random basis.

4. Standard

Requests for control on a random basis, as provided for in Recommended Practice 3 (c) above, shall be identified as such and be kept to the minimum necessary to ensure adequate control.

5. Standard

Requests for control shall :

- a. specify the reasons for the requesting Customs administration's doubts about the authenticity of the document produced or the accuracy of the particulars given therein, unless the control is requested on a random basis;
- b. specify, where appropriate, the rules of origin applicable to the goods in the country of importation and any additional information requested by that country;
- c. be accompanied by the documentary evidence of origin to be checked, or a photocopy thereof, and where appropriate any other documents such as invoices, correspondence, etc. that might facilitate control.

6. Standard

Any competent authority receiving a request for control from a Contracting Party having accepted this Chapter shall reply to the request after having carried out the necessary controls itself or having had the necessary investigations made by other administrative authorities or by bodies authorized for the purpose.

7. Standard

An authority receiving a request for control shall answer the questions put by the requesting Customs administration and furnish any other information it may consider relevant.

8. Standard

Replies to requests for control shall be furnished within a prescribed period not exceeding six months. If the authority receiving the request cannot reply within six months, it shall so inform the requesting Customs administration.

9. Standard

Requests for control shall be made within a prescribed period which, except in special circumstances, should not exceed one year, commencing with the date on which the document was produced to the Customs office of the Contracting Party making the request.

Release of the goods

10. Standard

A request for control shall not prevent the release of the goods, provided that they are not held to be subject to import prohibitions or restrictions and there is no suspicion of fraud.

Miscellaneous provisions

11. Standard

Any information communicated in accordance with the provisions of this Chapter shall be treated as confidential and used for Customs purposes only.

12. Standard

The documents needed for control of documentary evidence of origin issued by the competent authorities or authorized bodies shall be retained by them for an adequate period which should not be less than two years following the date on which the documentary evidence was issued.

13. Standard

The Contracting Parties that accept this Chapter shall specify the authorities which are competent to receive requests for control and communicate their address to the Secretary General of the Council who will transmit such information to the other Contracting Parties having accepted this Chapter.

With a view to facilitating trade through the streamlining and simplification of customs procedures, the WCO, in cooperation with its Members, has drawn up non-binding guidelines on preferential origin verification which provide concrete ideas for effective and efficient verification management for Customs administrations.

3.3.4 WCO GUIDELINES ON PREFERENTIAL ORIGIN VERIFICATION

(JUNE 2012, UPDATED JULY 2015)

Definitions

- (1) Verification of preferential origin means a course of administrative action carried out by the competent authorities to check the authenticity and/or accuracy of the proof of origin or the originating status of the goods applicable for the claim of preferential tariff treatment;
- (2) Proof of origin means documentary evidence (either in paper or electronic format) to certify expressly that the goods to which the document relates satisfy the origin criteria under a certain FTA;
- (3) FTA includes any international agreements such as free trade agreements, regional trade arrangements, economic partnership agreements, etc. involving two or more contracting parties which set forth the reciprocal granting of preferential tariff treatment among the contracting parties.

A free trade agreement (FTA) stipulates the methods and procedures for the verification of preferential origin. The practical verification process must be carried out in accordance with the provisions of the FTA. The Customs administrations must refer to the specific texts of the FTA they take part in. The requirement for proofs of origin must also be confirmed in conjunction with the verification methods.

Although the methods may vary depending on the FTA, in general, the practical verification process would be in the following sequence:

- (1) Identification of possible verification targets;
- (2) Selection of goods for verification;
- (3) Carrying out the verification;

(4) Feedback of the result of verification.

These verification procedures may be undertaken at the phase of import clearance or through post-clearance audit.

In principle, the official post-clearance verification process under an FTA should be carried out after an initial inquiry to the importer claiming preferential treatment, provided that the authenticity and/or the accuracy of the proof of origin or the originating status of the goods in question had not been made clear through the initial inquiry.

Verification methods

The methods of verification are stipulated in the FTA. Broadly, the verification methods are categorized into the following four types:

- (1) Administrative cooperation: the Customs authority of the importing country requests the competent authority of the partner country to provide administrative assistance. Upon request from the importing side, the competent authority of the exporting country would take the appropriate measures to confirm (or not) the authenticity of the proofs of origin or the originating status of the goods in question.
- (2) Direct inquiry: the Customs authority of the importing country directly requests information from the exporter or producer in the exporting country.
- (3) On-site visit: verification is conducted by visiting the premises of the exporter or producer in the exporting country. This may be conducted by the competent authority of the exporting country or importing country, or jointly.
- (4) Importer based inquiry: the Customs authority of the importing country directs the inquiry for verification only to the importer.

Under certain FTAs it is allowed to use only one type of verification method, while under other FTAs it may be allowed to use plural methods whether applied in sequence or not.

Infrastructure and Coordination

Organisation of the origin verification office

An office responsible for the overall coordination of the verification system should be created within the national Customs administration.

The system for the verification of preferential origin requires a high level of contact and coordination between the parties to an FTA and/or with the importers, exporters, producers or other relevant persons.

The creation of a central management office may not always be necessary – the role may be disseminated to the regional or local level. However, having a central office is useful to have an overview of how verification controls are managed within a national Customs administration and to ensure efficient and effective cooperation at international level.

Functions of the office

The office may be responsible for the following areas (not exhaustive):

- (1) Management of specimen signatures, specimen of official seals and information on approved exporters communicated between the partner countries, if verification could be conducted via administrative cooperation;
- (2) Contact between the national Customs administrations and the competent authorities of the partner countries regarding verification issues, if verification could be conducted via administrative cooperation;
- (3) Exchange of results and information, to the extent permitted by the national laws and regulations governing the use and disclosure of information to support risk management in the selection for verification, including the development of origin-specific risk criteria;
- (4) Management of time limits for verification requests;
- (5) Collection of statistics on verification;
- (6) Coordination of training to support the local or regional offices;
- (7) Support for the trade and industry in correctly understanding and applying the rules of origin.

Qualification of officials

The officials responsible for verification should have professional knowledge about the following areas (not exhaustive):

- (1) Rules of origin under FTAs;
- (2) Customs legislation, foreign trade law and any other relevant regulations;
- (3) Tariff classification;
- (4) Customs Valuation;
- (5) Accounting according to generally accepted accounting principles (GAAP) or other established principles;
- (6) Risk analysis;
- (7) Other related areas.

The officials responsible for verification should be kept free from any irrelevant personal and/or external pressure when carrying out the verification.

Recordkeeping

The office responsible for origin verification should keep all records of the verification activities. It allows the proper management as well as statistics for feedback on risk management.

Identification of contact points

The contact points of the administrative office must be identified and always kept up-to-date between the contracting parties of the FTA if verification could be conducted via administrative cooperation.

These are the name and position of the officer in charge, postal addresses, phone numbers, fax numbers and email addresses of the competent authority of the exporting side as well as the Customs authority of the importing side. It may be useful to agree, possibly through a Memorandum of Understanding, on a detailed procedure for the identification of contact points between the competent authorities of the contracting parties.

Power of the competent authority in the exporting country

If it is allowed under the applicable FTA to conduct verification through administrative cooperation, the competent authority of the exporting country should be equipped with the necessary power under the national legislation to appropriately process the verification request from the importing country.

Identification of Potential Verification Targets

Application of risk management

The selection of potential verification targets should be made on the basis of risk management.

Where appropriate and/or possible, the initial screening should be conducted through the use of an automated import clearance system.

Some FTAs specifically stipulate that the verification may be carried out on a random basis.

Examples of risk indicators for identification of potential verification targets

The following risk indicators may be applied when identifying the potential verification targets (not exhaustive):

- (1) Combination of certain goods from certain partner countries, based on past cases of noncompliance;
- (2) The capability of the declared country of origin to produce the particular goods;

- (3) Traders' history (including whether they are new or non-frequent traders or have had a record of irregularities);
- (4) The amount of duty involved (the value of the consignment and the goods which have significant difference between the MFN rate and the preferential duty rate, tariff rate quotas, seasonal tariff rates or other special tariff schemes);
- (5) Country through which the goods were transshipped;
- (6) The length of time the shipment has been kept in a third country;
- (7) Unusual increase or decrease in the import volume of certain product within a certain period of time.

Sharing of information on non-compliance

The information on non-compliance to the preferential origin requirements may be shared between the contracting parties to the respective FTAs so as to be used as one of the risk indicators, to the extent permitted by the national laws and regulations governing the use and disclosure of information.

Documentary examination of proof of origin

The documentary examination of the proof of origin should be carried out after the initial screening at import clearance or during the post-clearance audit.

Examples of key points to be checked during the documentary examination

The following points may be considered during the documentary examination.

- (1) The technical requirements of proofs of origin:
 - a. Format of the proof of origin, provided that there is a prescribed format under the FTA;
 - b. Signature and/or impression of the stamp on proofs of origin – cross-check with registered information where appropriate;
 - c. Date of issuance;
 - d. If there are modifications, whether the modifications are endorsed by a competent person;
- (2) The consistency of proof of origin with the commercial invoice and with the import cargo declaration submitted to Customs, including the names of the exporter and importer, invoice number and date of issuance, description and quantity of the goods, price of the goods and delivery terms, and the tariff classification code;
- (3) The origin criteria of the goods;
- (4) The consignment criteria.

Minor errors in proof of origin to be disregarded

Where the originating status of the goods is not in doubt, the discovery of minor discrepancies between the statements made in the proof of origin and those made in the documents submitted to the Customs authority of the importing country should not ipso facto invalidate the proof of origin, provided that the documents evidently correspond to the products physically presented.

Minor errors could include slight discrepancies or omissions, typing errors or, in the case of a prescribed format, protruding from the designated field, provided that these minor errors may not affect the authenticity of the proof of origin or the accuracy of the information included in the proof of origin.

Standards should be established for the use of field Customs officers which provide concrete examples to what extent the minor errors could be disregarded. They can be created internally within the national Customs authority or in cooperation with the partner country of the FTA.

Physical examination of the goods

Customs may, to the best of their competence and capability, carry out proper examination on the import goods to confirm that the goods qualify as originating under applicable FTA. The description of the goods, quantity and weight, marks and numbers on the packages, etc. should be cross-checked with the proof of origin.

Selection of Goods for Verification

Gathering information on a suspicious shipment before selection for verification

Information on a suspicious shipment should be gathered from as many sources as possible before a selection is made.

The following sources of information could be consulted (not exhaustive):

- (1) Information on the basis of results of previous verification checks;
- (2) Accessible databases operated by other government departments – e.g. tax administration, trade ministry, food administration, according to the type of goods;
- (3) Company websites, company annual reports, information on the competitors;
- (4) External audit services;
- (5) Information on production capacities of targeted goods from specific countries.

Reasons for selection – specific reasons to doubt the authenticity of proof of origin/originating status

The following is a non-exhaustive list of reasons why a proof of origin could be selected for verification regarding the authenticity of the proof of origin:

- (1) Crossing out, irregular corrections and other inauthentic interventions on proof of origin;
- (2) Formality errors have been detected, however such errors are insufficient to refuse preferential treatment without verification;
- (3) The stamp used is illegible;
- (4) The stamp or signature used does not correspond to the specimens transmitted from the competent authority of the exporting country;
- (5) The issuance number of the proof of origin is not consistent with the number structure;
- (6) The data provided on the proof of origin does not correspond to those of the supporting documents submitted (e.g. import cargo declaration), including the names of exporter and importer, description and quantity of goods, and the tariff classification code;
- (7) Value declared in the proof of origin is suspiciously higher or lower than similar import.

The following is a non-exhaustive list of reasons why goods could be selected for verification regarding the originating status of the product:

- (1) Reasonable doubt that the goods are merely going through non-qualifying operation (insufficient working or processing);
- (2) Suspicion if the requirements for sufficient working or processing have been met;
- (3) Origin marking mentioned on products or packaging differs from the country of origin declared on proof of origin;⁴
- (4) Irrational transport routing;
- (5) Suspicion that the goods are not produced in the declared country of origin, considering the industrial structure of the exporting country and the characteristics of the goods in question.

Commencement of the Verification Procedure

Notification to the importer

At the commencement of the verification procedure, the importer should be notified that verification is being undertaken.

⁴ The rules of origin applied to determine the origin marking are the non-preferential rules of origin which are significantly different from the preferential rules of origin.

The importer may not be notified in the cases where notifying the importer could possibly interfere with the integrity of the verification.

Suspension of granting preferential treatment

If the verification is conducted at the import clearance of the goods, the granting of preferential tariff treatment may be suspended when the goods are subject to verification. Any suspended preferential tariff treatment should be reinstated upon the determination that the goods qualify as originating goods.

Release of goods

The commencement of the verification procedure should not prevent the release of the goods, subject to any administrative measures deemed necessary such as the requirement of a deposit equivalent to the duties payable at the non-preferential applied duty rate, provided that the goods are not subject to import prohibitions or restrictions and there is no suspicion of fraud.

Transmission of a Verification Request to the Competent Authority of the Exporting Country (if Verification is conducted via Administrative Cooperation)

Information to be communicated

A formal letter requesting a verification check should be sent to the competent authority of the exporting country, preferably by registered mail.

The letter should, at a minimum, contain the following information:

- (1) A reference to the legal grounds for the request for verification;
- (2) The specific reasons for the verification;
- (3) The consequences of a failure to reply or the provision of insufficient information;
- (4) A request that the reply be provided within the prescribed deadline.

Use of electronic means to exchange information

If allowed under the applicable FTA, the transmission of the verification request should be carried out by electronic means.

Nominated contact points in the competent authorities involved could agree, possibly through Memorandum of Understandings, that the request for verification could be sent by electronic means where suitable.

When utilising IT systems for the exchange of information, security and confidentiality of the information should be duly considered.

Where appropriate, it is useful to develop and utilize a secured website which allows the Customs authority of the importing country to cross-check the record of issuance and the details of the proofs of origin issued by the competent authority of the exporting country.

Verification of the Authenticity of Proof of Origin (if acting as the Competent Authority on the Exporting Side)

Acknowledgement of receipt

On receipt of a request for verification from the importing country, the receipt of the request should be noted as soon as possible. An acknowledgement should be sent to the authorities of the importing country, preferably by email.

Confirmation of stamp impressions and signatures, cross-check with the record of issuance

On receipt of a request for verification regarding the authenticity of proof of origin, the competent authority of the exporting country should take the following actions to determine whether the proof of origin in question is genuine and was issued properly:

- (1) Check the format being used;
- (2) Confirm the stamp impressions and signatures;
- (3) Cross-check with the record of issuance.

Verification with the Exporter on the Originating Status of the Goods

Ascertain the precise nature of the verification check

The precise nature of the doubt for verification check should be ascertained, in accordance with the reasons arising from the selection process.

Background check on the exporter

A background check on the exporter should be carried out prior to the contact with the company.

Contact with the exporter by questionnaire

The verification questionnaire should be sent with a formal letter stating the conditions of the verification such as the legal grounds, reasons for selection, consequence of failure to reply or insufficient information, deadline for reply, etc.

On-site verification visit

Close coordination between the authorities should be ensured when the Customs authority of the importing country is present as observer for the verification visits conducted by the competent authority of the exporting country under the applicable FTA.

Prior to conducting a verification visit, the competent authority should, through the appropriate channel specified under the FTA and according to the national legislation:

- (1) Deliver a written notification of its intention to conduct the verification visit to the exporter or producer whose premises are to be visited; and
- (2) Obtain the written consent of the exporter or producer whose premises are to be visited.

The notification above may not be carried out if there is a high probability of destroying or altering of related evidence to be committed by the exporter or producer.

Where an exporter or producer has not given its consent to a proposed verification visit, the preferential tariff treatment may be denied to the relevant goods in accordance with the applicable FTA.

After the conclusion of a verification visit, the competent authority conducting the verification should provide the exporter or producer whose goods were verified with a written determination of whether the goods are eligible for preferential tariff treatment, based on the relevant laws and findings of the fact.

List of elements to be included in a verification questionnaire or to be checked during on-site verification

The following elements should be confirmed using a verification questionnaire or during on-site verification:

- (1) Basic information on the business of the exporter or producer;
- (2) Production capacity, including the types and number of equipment;
- (3) General production process for the goods being verified;
- (4) Description of the non-originating materials and their HS code;
- (5) Description of the originating materials and the basis of their originating status, including information on the supplier;
- (6) Use of tolerance/de minimis provision;
- (7) Inventory management method of interchangeable/fungible goods or materials, if used;
- (8) Estimate of the qualifying percentage and the source of the calculation, if value added rule is applicable;
- (9) Use of cumulation provision;
- (10) Relationship between the seller and buyer of the goods being verified – intra-company transaction or not.

Importer-based verification

Requesting supporting documents from the importer

Under the importer-based verification, the Customs administration of the importing country may request the importer to submit any necessary documents to support the preferential claims in question.

The information received from the importer should be used to analyse the validity of the proof of origin and whether the goods in question satisfy the origin criteria under the applicable FTA.

Treatment of confidential information

When importer-based verification is applicable, the importer should be permitted to arrange for the foreign supplier to provide sales information directly to the Customs authority of the importing country in order to protect the confidential information.

Consequences of Negative Response or Lacking Reply

Possible denial of preferential treatment

The Customs administration of the importing country should determine whether to deny the preferential treatment for the product verified considering the result of the verification and in accordance with the provisions of the applicable FTA.

Inform the importer about the result of verification

The Customs administrations of the importing country should inform the importer of the result of the verification and the decision according to the result.

Review and appeal

The importer should be ensured the right to lodge an appeal regarding the verification process and its consequence in accordance with the applicable FTA and domestic laws and regulations where appropriate.

CATEGORIZATION AND ANALYSIS ON PREFERENTIAL RULES OF ORIGIN (OCTOBER 2014)

Guidelines on Preferential Origin Verification (June 2012) [See web-site \(Member only\)](#)

Full text of the Guidelines:

http://www.wcoomd.org/~media/wco/member/global/pdf/topics/key-issues/revenue-package/origin/guidelines_preferential_origin_verification.pdf?db=web

GUIDE TO COUNTER ORIGIN IRREGULARITIES (EXCLUDING FRAUD)

Within the framework of the Revenue Package Action Plan Phase II, the WCO conducted an analysis of origin irregularities based on the inputs provided by WCO Members (Origin Irregularity Typology Study¹, published in July 2013). This addresses all origin irregularity cases except fraud², which is covered by other WCO tools³.

The Origin Irregularity Typology Study was the first step taken in relation to origin irregularities under the Revenue Package Action Plan Phase II. The second step is to provide advice to Customs authorities on ways to confront origin irregularities in practice.

To this end the Secretariat, in cooperation with a number of Member Customs administrations, has developed the Guide to Counter Origin Irregularities.

This Guide provides a short overview of the Origin Irregularity Typology Study, and an introduction to the case studies presented, which are the central focus of the document.

The case studies were collected from Australia, Japan, Kenya, Korea and Mexico (June 2015). In June 2016 a case study from Nigeria was added. The Secretariat drafted a list of questions to help the Customs administrations collect information on origin irregularity cases and a document on the structural framework of the case studies, to streamline the cases as much as possible and facilitate the use of the tool. However, as practice varies in every country, the structure of the case studies also follows the examples specific to the specific country.

The purpose of this Guide is to give examples of origin irregularities occurring in practice and, based on those examples, to provide ways solving them. It constitutes a useful practical tool, assisting Customs administrations in their endeavors and in their daily work.

See link to the web-site (Member only) under Section 4.

Part C – Origin Work

1. Introduction

Rules of origin have become a very prominent feature of today's trading system and various regional trade agreements are being negotiated across the globe.

The Agreement on Rules of Origin aims at harmonizing the non-preferential rules of origin, outlines general principles for the making of rules of origin and established two committees, the Committee on Rules of Origin (CRO) and the Technical Committee on Rules of Origin (TCRO). The WTO Members have agreed on the overall Agreement and on the exclusion of preferential origin from the harmonization.

The process of the Harmonization Work Programme concerning non-preferential rules of origin has been ongoing since 1995.

While negotiations are going on to harmonize the non-preferential rules of origin, the proliferation of preferential trade agreements represents an important concern in terms of Customs revenues.

The rules of origin enable the preferential agreements to be correctly implemented, which promotes the development of trade and encourages investment.

Correct and uniform application of the rules of origin facilitates international trade and promotes investment. Furthermore, objective, predictable and transparent practices for determination of origin encourage voluntary compliance by the business community and help to reduce revenue losses caused by misapplication of the rules of origin, origin disputes and delays in Customs clearance, etc. To achieve these objectives, it is necessary to establish well-defined and effective origin determination practices and a well-organised infrastructure.

The application of rules of origin should not create new administrative burdens neither for international trade operators nor for Customs administrations. On the contrary, simplification measures should be investigated. In respect of the spirit of the Kyoto Convention a balance should be struck between the needs of Customs administrations and the measures to facilitate trade.

An effective Origin infrastructure should take into account everything required for carrying out origin work. It includes availability of up-to-date national legislation, preferential arrangements, if applicable (e.g. Free Trade Agreements (FTA), Generalized System of Preference (GSP)), proper guidelines, WCO tools and instruments on origin, efficient communication systems, adequate training and sound origin management.

2. Main elements of a modern origin work model

A good origin work model is essential in promoting the correct and uniform origin determination of goods. Such a model facilitates international trade and investment and promotes compliance with fiscal and trade rules or regulations as well as consistent treatment for all members of the trade community. This should result in, among other things, a reduction in losses to the revenue and benefits to business.

⁵ Excerpt from the "Guidelines on Customs Infrastructure for Tariff Classification, Valuation and Origin (pages C1 – C10).

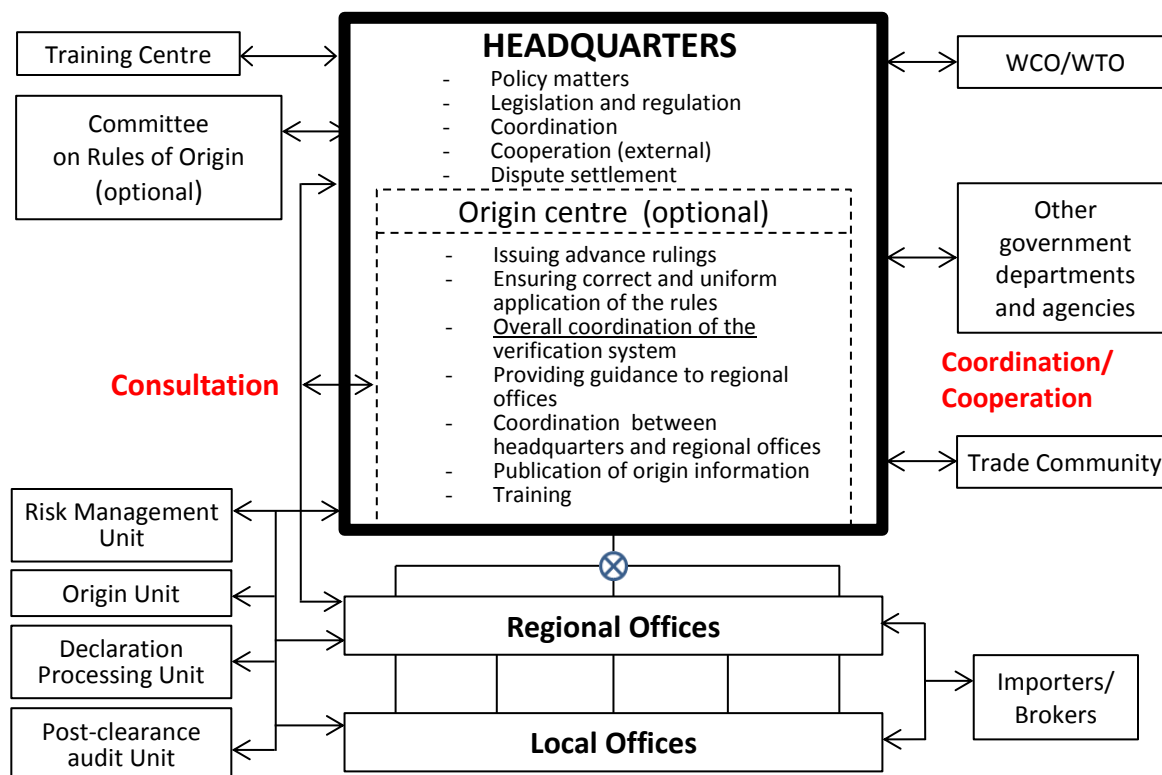
Good origin infrastructure is normally expected to achieve the following on a day-to-day basis:

- Ensure the uniform application of the rules of origin;
- Develop and establish a consistent policy in respect of key origin issues;
- A balanced origin control programme at pre-entry, clearance and post-clearance stages;
- Strong communication channels between relevant departments;
- Provide accurate, timeous and up-to-date advice to origin queries from the public and other parts of Customs;
- Deal with origin enquiries from business and disputes expediently in accordance with agreed procedures and time frames. An ad hoc origin committee may be established for dispute settlement purposes;
- Identify fraudulent practices efficiently and effectively;
- Facilitate the origin determination and clearance of goods;
- Keep records and obtain quick access thereto;
- Effective origin risk management;
- Respond to training needs in an objective manner;
- Update national legislation and relevant provisions on origin according to the Agreement on Rules of Origin and/or preferential arrangements as required;

It should be noted that the above list is not exhaustive. Other functions with relevance to origin work could also be added to this list.

The diagram below provides an illustrative example of a good origin infrastructure. The infrastructure pillars have been grouped around the concept of “headquarters” where objectives and policies are determined, as these are the driving forces for the work concerning the establishment or improvement of good origin infrastructure.

Main Elements of a Good Origin Infrastructure



The above diagram provides just one example of a good origin infrastructure; however all the individual elements included should be taken into account when formulating a new or updated organizational structure.

3. Origin infrastructure

3.1. General

Origin infrastructure consists of the offices or departments within a Customs administration or a Customs or economic union, responsible for the policy and operational control of the origin of goods.

Such an infrastructure should be supported by an adequate number of origin experts with clearly defined functions and responsibilities. An origin expert is a Customs officer who has special origin skills and knowledge and experience, both practical and theoretical, in respect of origin work. He or she can interpret not only the legislation on origin but also other policies that affect origin work.

Origin experts should be provided with all necessary reference materials. First of all, up to date national legislation on origin should be available to all origin officers. National legislation, preferential arrangements, if applicable (e.g. Free Trade Agreements (FTA), Generalized System of Preference (GSP)), proper guidelines, WCO tools and instruments on origin, efficient

communication systems, adequate training and sound origin management should also be regarded as essential elements for carrying out origin work.

3.2. Headquarters: Origin Committee and Origin Centre

Origin work should be coordinated by headquarters in a Customs administration.

This coordination function may be performed, for example, by an origin department in the headquarters supported by an origin centre. The latter is optional, established by Customs administrations depending on their size, organisational policy, priorities and workload. The origin centre, a specialized body of the administration on origin issues, is established to monitor, coordinate pursuant to its terms of reference, and provide assistance and uniform guidance on technical origin issues. Origin policy, legislation, management, control and coordination issues are the responsibility of the origin department in the headquarters.

At the headquarters level, the following functions should be performed:

- Ensuring implementation and application of the rules of origin;
- Establishing and managing origin policy to ensure uniform origin work in the administration;
- Issuing origin rulings or directives for uniform application throughout the country or Customs or economic union;
- Examining origin questions referred by the regional or local offices and pre-entry origin requests from the trade community;
- Updating national legislation and regulations on origin;
- Preparing and updating centralised information (including a database) on origin matters and disseminating this information to field offices;
- Publishing legislation, regulations and other origin information for the information of the public and the trade community;
- Coordinating the verification system within the national Customs administration;
- Serving as a liaison with the WCO and the TCRO as well as WTO/CRO, if appropriate, and facilitating the origin work;
- Maintaining contacts with other Customs administrations and Customs or economic unions on origin matters;
- Coordinating with other government departments and agencies on origin and other related matters;
- Maintaining contacts with private sector to discuss their concerns and changes in patterns of international trade;
- Coordinating training activities on origin.

Some administrations have established an origin committee, or other body, e.g. a review team, to address difficult origin questions that arise out of origin disputes and that cannot be resolved by local or regional offices or by the origin centre. The origin committee can be composed of origin

experts from headquarters, origin centre and regional offices. The committee may invite comments from the trade community and government departments interested in origin matters. It may hold periodic or ad hoc meetings to discuss origin questions.

The WCO Secretariat is aware that not many administrations have established origin committees. In many administrations, this idea does not exist. In others, the idea exists only on paper. It is to be noted that origin committees provide a platform for solving origin disputes within the administration without recourse to the courts. They also provide a good learning environment for those involved. They promote dialogue between traders and Customs and within the Customs administration itself. They promote the uniform origin determination of goods and can act as a source of technical advice to management.

An origin centre may also be established at headquarters or elsewhere to ensure the correct and uniform origin determination of merchandise throughout the importing country or the Customs or economic union. The centre should, among its other duties, provide useful guidance to officers in the field. It should also act as a technical advisory body to higher-level management (and, if appropriate, to the origin committee) on origin matters, particularly on the settlement of origin disputes. An origin centre should be made up of origin specialists or experts. In addition, it may also be responsible for the overall coordination of the verification system within the national Customs administration.

The system for the verification of preferential origin requires a high level of contact and coordination between the parties to an FTA and/or with the importers, exporters, producers or other relevant persons. The creation of a central management office may not always be necessary – the role may be disseminated to the regional or local level. However, having a central office is useful to have an overview of how verification controls are managed within a national Customs administration and to ensure efficient and effective cooperation at international level.

In a Customs or economic union, regional origin centres may be established at the headquarters of individual members in order to coordinate origin work between the field offices and the headquarters of the union.

At headquarters, centralised information (such as a database) on suspected or known origin fraud, or on goods for which misapplication of the rules of origin frequently occurs, should be kept to assist field officers with risk management. In many administrations, however, the responsibility for gathering, analysing and disseminating intelligence and information to field units is carried out by an independent department (unit) at the headquarters' level. Such a department (unit) has overall responsibility for collecting intelligence and conducting investigations on suspected or alleged Customs offenses (including commercial fraud) and consulting with other Customs administrations and regional or international organisations on these matters.

It should be noted that a lack of good origin facilities such as specialised units, an origin centre, experts, risk analysis and intelligence capabilities may lead to non-uniform origin determination of goods, losses of revenue in cases of misapplication of the rules of origin, uncoordinated origin determinations, conflict within the administration, etc. It also results in origin disputes, delays in Customs clearance, unnecessary costs to the administration and the private sector, and revenue losses to the government.

3.3. Regional or local origin offices

At the regional level of the Customs organisation, or at least at major Customs offices, with responsibility for origin controls, the following units should be established:

- **An origin unit** composed of origin experts to give advice to declaration-processing units as well as importers, to issue binding origin information at the request of the trade community, and to serve as a liaison with headquarters or the origin centre. The number of specialists at the regional/local level will depend on the size and geography of a country.
- **Declaration-processing units** which handle routine origin work. In major Customs offices, such units may be organised on the basis of industry sectors or HS chapters. Where origin disputes or problems occur, the declaration-processing units should refer the matter to an origin unit for advice or a ruling (which may, in turn, decide to refer the matter to headquarters or the origin centre).
- **Post-clearance audit units** which check origin determinations on the basis of risk assessment and random selection. Audits are more effectively performed at an importer's or exporter's premises because the records and operations of the company can be more easily and comprehensively examined. These audits may include checking and comparing the origin of a company's imported goods cleared by any Customs office. More basic audit controls may also be carried out in Customs offices via written or phone communication.

3.4. Risk assessment units

Risk assessment units help target suspect or high-risk declarations and operators with regard to origin fraud or help target goods for which misapplication of the rules of origin frequently occurs. This might be achieved by, for example, identifying high-risk commodity categories, screening cargo manifests, gathering intelligence, maintaining surveillance, maintaining importers' profiles, etc. and alerting the declaration-processing units or post-clearance audit units. The risk assessment function may be centralised at headquarters for higher efficiency.

4. Origin procedure

4.1. General

It should be borne in mind that the organisation of origin work and procedures differs from country to country and from one FTA to another, including the roles and responsibilities that the Customs and other competent authorities play. In certain countries, determining the correct origin of goods is the responsibility of the importer. Customs, however, retains the right to review and determine the final origin of the goods. In other administrations, the importer or his representative is only allowed to complete entry forms, and Customs retains the responsibility for determining the correct origin of goods so entered. Whichever form of organisation an administration may use, the basic work remains the same (i.e., to check declarations and other relevant documents, examine goods, etc.).

In addition, where a certification of origin is issued by a competent authority of the exporting country, it is recommended that the competent authority appropriately examine the originating status of the goods at a pre-issuance stage. For more information on this point, see the WCO Guidelines on Certification of Origin⁶.

⁶ WCO Members' website: "Topics/ Origin/ Instruments and Tools"

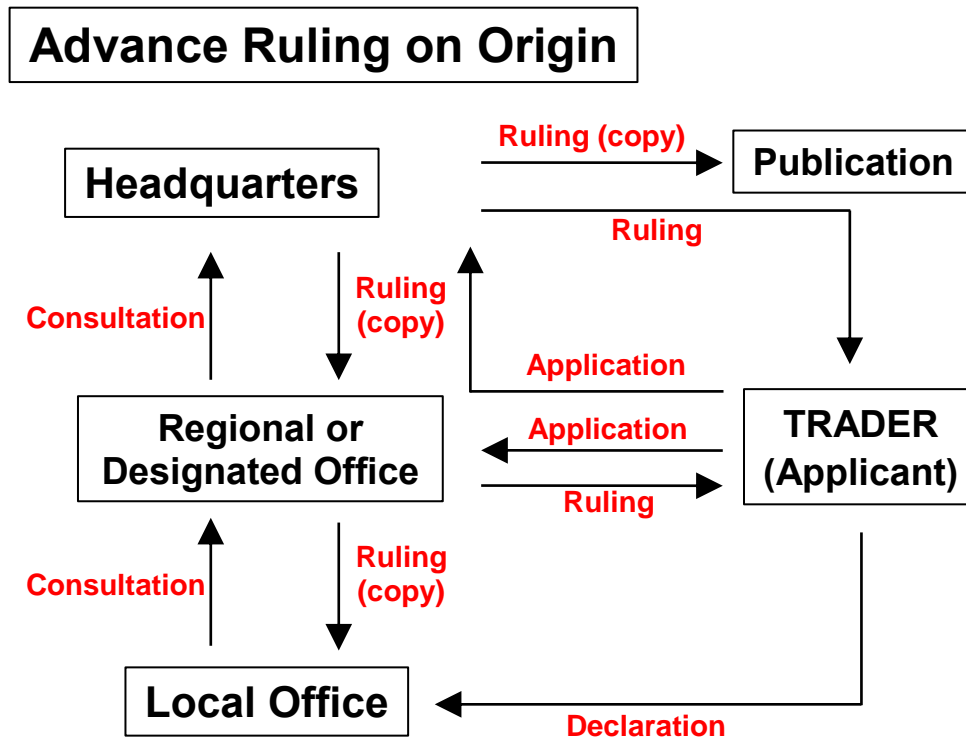
4.2. Pre-entry stage origin work

According to the Agreement on Rules of Origin and the WTO TFA (Article 3.9 (a) (ii)), all WTO Members have the obligation to issue advance rulings on origin. In this connection, the WCO strongly recommends its Members establish advance ruling procedures. The number of offices having the ability to issue advance rulings should be limited to ensure uniform origin determination. Nevertheless, advance rulings work may be centralised (i.e., handled by one approved centre or unit in the country) or decentralised (handled by various approved centres or units throughout the country) taking into account the advantages and the efficiency of such procedures for certain administrations. If regional offices are entitled to issue advance rulings on origin, there should be a procedure of centralised monitoring, reviewing, approving and registering in a database by the origin centre or department of the headquarters for the uniformity of the advance ruling procedure.

Details of advance rulings on origin issued should be included in a centralised database so as to enable checking by Customs officers (headquarters, origin centre or regional/local offices) and thus avoid issuance of conflicting information on the same product by different offices. This database should be easily accessible and searchable by Customs officers.

It is highly desirable that advance rulings issued on origin, especially those which set a precedent, should also be published in order to provide guidance to the general public on the origin determination of similar or related merchandise. Advance rulings on origin shall be published with censoring of sensitive and confidential information.

A diagrammatic summary of advance ruling structure is shown below:



Some Customs administrations issue advance rulings as non-binding and in some cases as binding in respect to the applicant. As mentioned above, the WCO Technical Guidelines on Advance Rulings for Classification, Origin and Valuation state that advance rulings on origin shall be binding, in accordance with the terms set out therein, on the Customs that issued the advance

ruling in respect of the applicant that sought it (par. 19). Advance rulings may be binding on the person to whom the advance ruling was issued (par.20).

In developed systems, the procedures for advance rulings are well organized. In some countries, information is issued by several designated offices located around the country. When an importer makes an application in writing to request information, the application is sent (by electronic system, post, fax or physically taken) to one of those designated offices depending on its area of activity.

Each request is assigned to a specialist who examines the description of the goods and samples, and then prepares the advance ruling. If needed, the matter is referred to the headquarters/central office for consideration before a decision is taken. When an advance ruling is issued to the applicant, it is entered into the database and thereby disseminated to all Customs offices in the country.

The procedure relating to advance rulings must, for the sake of legal certainty, rest on a basis guaranteed by law. Therefore, the advance ruling procedure is typically governed by the national Customs Code, generally published in the form of a law or act having the force of law, in most cases accompanied by implementing regulations.

These various laws establish the principle according to which anyone can obtain from the Customs authorities information concerning the application of the rules of origin, on written request and in accordance with the procedures laid down.

Creating the respective provisions in the national legislation to introduce an advance ruling programme may be challenging for some Members. Therefore, in an attempt to provide the relevant bodies with assistance in the practical implementation and application of advance ruling programmes, in line with the principles provided by the Agreement on Rules of Origin, technical guidelines have been drafted. The technical guidelines are not binding, nor do they seek to challenge procedures already established or to be established by some Members.

Further information on advance ruling procedures for origin, is available in the WCO Technical Guidelines on Advance Rulings for Classification, Origin and Valuation.

4.3. Declaration-processing stage origin work

In order to ensure trade facilitation, Customs control policies increasingly rely on facilitated measures based on risk management. If no risks have been detected at the pre and clearance stages, then most detailed checks are left to the post-clearance stage, where Customs officers have the opportunity to access more documentation.

The WCO therefore recommends to its Members to:

- Introduce selectivity on the basis of risk management and/or the random selection method;
- Refer origin doubts or problems to origin experts (headquarters, origin centre or regional/local origin units);
- Consult the declarant for confirmation of details of goods in cases where there are reasons to doubt the truth or accuracy of the declared origin;
- Allow the declarant to amend origin mistakes.

4.4. Post-clearance stage origin work

As noted in the Common Part, post-clearance audit is widely seen as the optimum way to conduct Customs controls and to assess and improve compliance.

Such audits may be carried out to:

- On a risk-selection basis, check origin where origin control at the declaration-processing stage was incomplete;
- Identify and correct any origin mistakes made at the declaration-processing stage;
- Assist and encourage the importer to accurately determine the origin of his goods.

PCA controls are particularly important for effective origin controls. In particular, it provides access to documentation which supports the origin declaration, depending on the origin certification and verification system.

4.5. Verification of preferential origin

Verification of preferential origin is a course of administrative action carried out to check the authenticity and/or accuracy of the proof of origin or the originating status of the goods applicable for the claim of preferential tariff treatment. The verification procedures and the methods available differ from one FTA to another including the roles and responsibilities that the Customs and other competent authorities play.

Moreover, the focus of the verification may vary considerably depending on the FTA. Under some FTAs, greater emphasis may be placed on the verification of documentary aspect, i.e. the verification of authenticity of the proof of origin. While under other FTAs, greater focus could be placed on the originating status of the goods themselves, with the verification often carried out at the phase of post clearance audit.

Detailed information on the verification of preferential origin is available in the WCO Guidelines on Preferential Origin Verification⁷.

5. Training and Capacity Building

Training programmes on origin should be developed to meet the identified needs. Many Customs administrations include basic training on origin in their induction programmes for new staff. Alternatively, an introduction to origin can be provided as a standalone course.

More advanced training can be developed to meet specific needs. This would be more appropriate for officers working in origin policy, specialist origin units and audit teams.

The content of training should include:

- the key principles of the WTO Agreement on Rules of Origin;
- the key principles of the Preferential Agreements in place;
- the principles of the rules of origin;

⁷ WCO Members' website: "Topics/ Origin/ Instruments and Tools"

- Infrastructure for origin control;
- Case studies on origin;
- Possible areas of origin fraud.

Specialized training can be organised to address specific sectors and/or agreements which of particular importance to the country.

It is also important to consider related training needs in such areas as risk management and post-clearance audit.

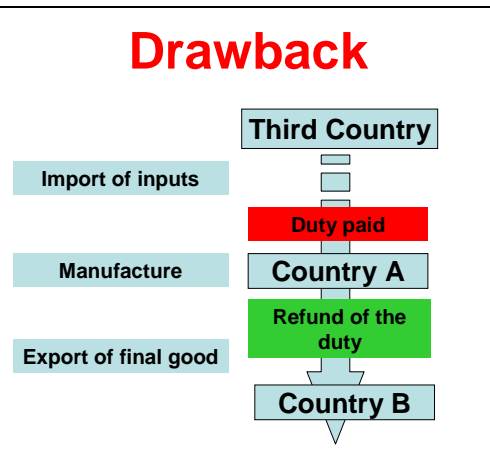
To support administrations with national training programmes, the WCO has developed a series of interactive e-learning modules that cover a variety of Customs topics, including origin. These modules are available free of charge to WCO Members as part of the CLiKC! programme. More information can be found at the WCO Public website.⁸

3.4 OTHER ORIGIN RELATED PROVISIONS

3.4.1 DRAWBACK

The term drawback in commercial law signifies the practice of paying back or refunding duties (Customs, sales or excise duties) on re-exported goods (goods may be re-exported either unprocessed, processed or incorporated in other products) which have been previously taxed at importation. Drawback may also be termed “border tax adjustments”.

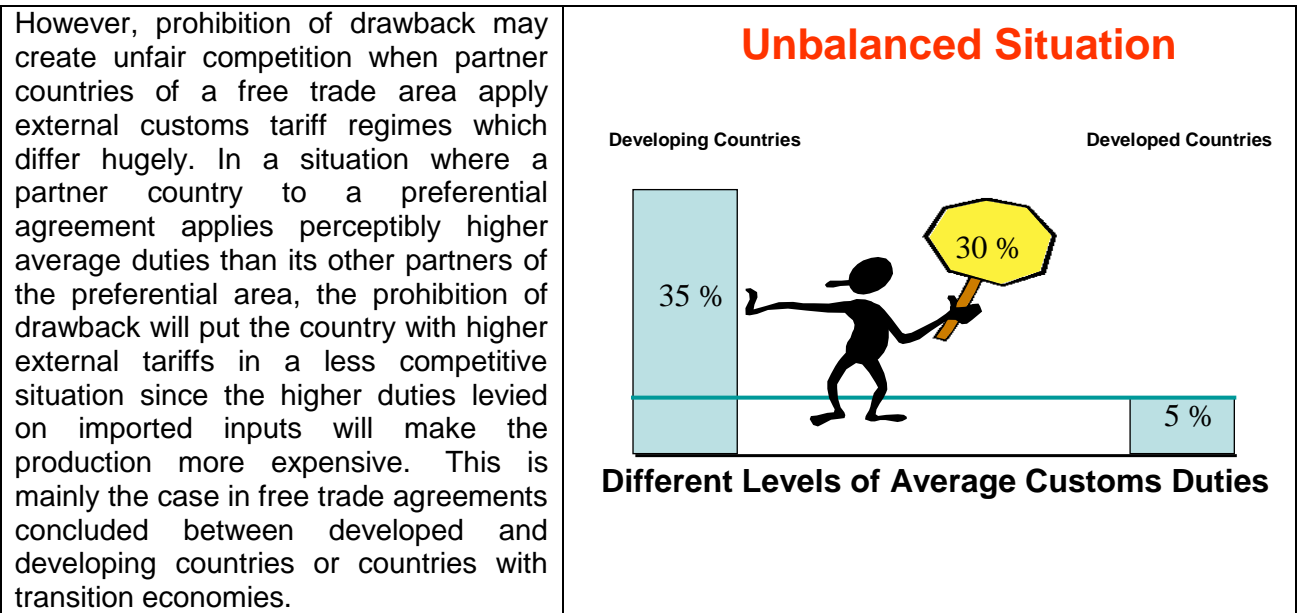
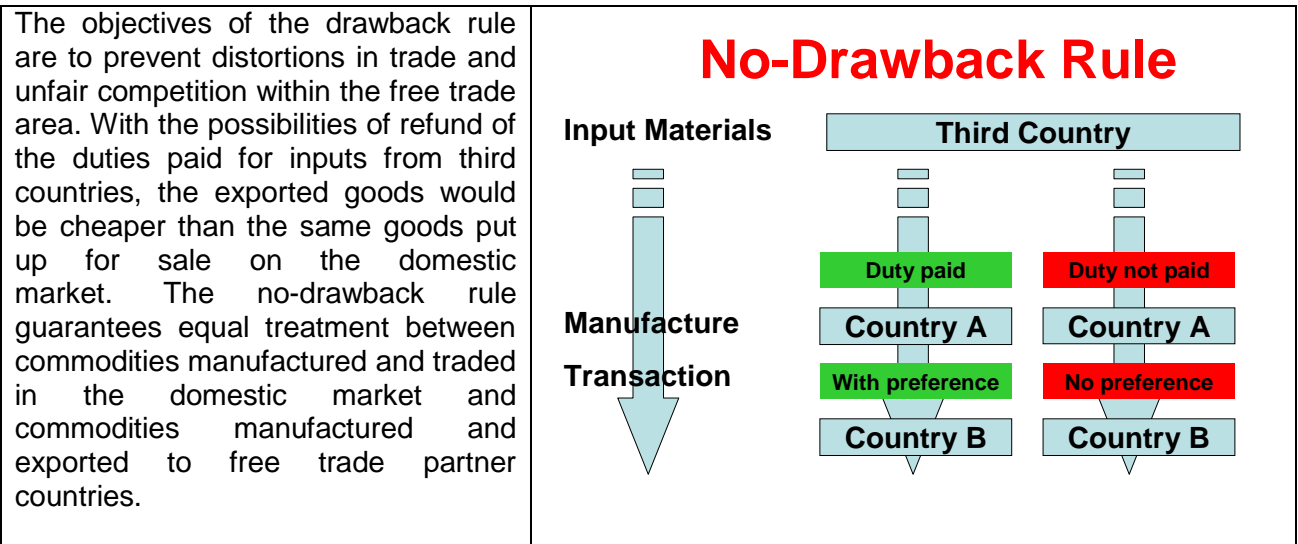
The reason why countries may grant drawback of previously levied duties at re-exportation, is to allow commodities which are subject to taxation on the domestic market to be exported and sold in a foreign country on the same terms as goods from countries where they are untaxed. In this way, manufactured goods can be sold on foreign markets without distortion of competition.



However, many free trade agreements prohibit drawback of duties when goods are traded within the preferential area with so-called no-drawback provisions.

⁸ WCO Public website: "Online Services"

The no-drawback rule stipulates that there is no refund of duties paid for input materials from third countries which are used in the manufacture of the final product. Thus, the application of the no-drawback principle ensures that the duties of third-country inputs have been or are going to be paid when an originating product in which inputs from third countries had been incorporated is exported with preferences under an agreement.



Here, the possibility to refund duties may help to create a level playing field between economic operators throughout a free trade area.

3.4.2 ADVANCE RULINGS / BINDING ORIGIN INFORMATION (BOI)

Advance rulings are considered to be one of the most effective trade facilitation tools to ensure proper implementation and application of administrative procedures and thus ensure proper implementation of trade policy measures. Hence, in the preamble of the WTO Agreement on Rules of Origin it is recognized that clear and predictable rules of origin facilitate the flow of international trade. Also, in December 2013 the WTO Members concluded negotiations on the Agreement on Trade Facilitation that further regulates advance rulings (Article 3).

More precisely, in its efforts to provide transparency in the laws, regulation and practices regarding rules of origin and to ensure that rules of origin are applied in a predictable manner, the WTO Agreement on Rules of Origin and the WTO Agreement on Trade Facilitation stipulate in Article 3 (d) of Annex II (Common Declaration with regard to preferential rules of origin) and Article 3.1 respectively, that origin assessments shall be given upon the request of an exporter, importer or any person with a justifiable cause:

**WTO AGREEMENT ON RULES OF ORIGIN
ANNEX II
COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN**

3. The Members agree to ensure that:

/.../

d) upon request of an exporter, importer or any person with a justifiable cause, assessments of the preferential origin they would accord to a good are issued as soon as possible but no later than 150 days⁷ after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the preferential rules of origin, under which they have been made, remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (f). Such assessments shall be made publicly available subject to the provisions of subparagraph (g).

⁷ In respect of requests made during the first year from entry into force of the WTO Agreement, Members shall only be required to issue these assessments as soon as possible.

**WTO AGREEMENT ON TRADE FACILITATION
SECTION I
ARTICLE 3: ADVANCE RULINGS**

1. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
2. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:

- (a) is already pending in the applicant's case before any governmental agency, appellate tribunal, or court; or
 - (b) has already been decided by any appellate tribunal or court.
3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.
4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.
5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.
6. Each Member shall publish, at a minimum:
 - (a) the requirements for the application for an advance ruling, including the information to be provided and the format;
 - (b) the time period by which it will issue an advance ruling; and
 - (c) the length of time for which the advance ruling is valid.
7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.⁹
8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.
9. Definitions and scope:
 - (a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
 - (i) the good's tariff classification; and
 - (ii) the origin of the good.¹⁰
 - (b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:
 - (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
 - (ii) the applicability of the Member's requirements for relief or exemption from customs duties;
 - (iii) the application of the Member's requirements for quotas, including tariff quotas; and
 - (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.

(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

(d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

⁹ Under this paragraph: (a) a review may, either before or after the ruling has been acted upon, be provided by the official, office, or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and (b) a Member is not required to provide the applicant with recourse to paragraph 1 of Article 4.

¹⁰ It is understood that an advance ruling on the origin of a product may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a product for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Agreement on Rules of Origin in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

With the aim of providing assistance to the relevant bodies in the practical implementation and application of advance ruling programmes, the WCO has drawn up non-binding guidelines which do not seek to challenge procedures already established or to be established by Members:

3.4.3 WCO TECHNICAL GUIDELINES ON ADVANCE RULINGS FOR CLASSIFICATION, ORIGIN AND VALUATION

(June 2015)

Introduction

1. Recognizing the need to promote trade facilitation and uniform interpretation and application of the Harmonized System, Rules of Origin and the WTO Valuation Agreement, the WCO has provided various tools for Member administrations to assist the work of Customs, including Guidelines and Recommendations on advance rulings.
2. The current tools are, in the case of classification, the Council Recommendation on the Introduction of Programmes for Binding Pre-entry Classification Information (1996) and a comprehensive Recommendation on the Improvement of Tariff Classification Work and Related Infrastructure (1998); in the case of valuation, the Practical Guidelines for Valuation Control (2012); and, in the case of origin, Technical Guidelines on Binding Origin Information (2011). Additionally, the Agreement on Rules of Origin sets ground rules for assessments of origin, which apply to advance rulings and are referred to in these Guidelines.
3. In order to harmonize and modernize the guidance on advance rulings in the three areas, and taking into account Article 3 (Advance rulings) of the Bali Ministerial decision on the Agreement on Trade Facilitation (TFA), the WCO has developed a single document covering

procedures for issuing advance rulings on the classification of goods, rules of origin and Customs valuation.¹¹

4. The key objective of pre-entry advance ruling programmes is to provide decisions on the classification, origin and valuation of commodities prior to their importation or exportation, thus adding certainty and predictability to international trade and helping traders to make informed business decisions based on legally binding rulings. Customs administrations also benefit from having advance knowledge of future importations which is useful for risk management purposes.
5. The technical guidelines below are aimed at providing assistance to the relevant bodies in the practical implementation and application of advance ruling programmes. The guidelines are not binding and do not seek to challenge procedures already established or to be established by Members.

Definitions and scope

6. For the purposes of these technical guidelines :
 - (a) an advance ruling on classification, origin or valuation is an official written decision issued by a competent authority which provides the applicant with an assessment of (i) the classification of goods in the Customs tariff nomenclature of the respective country or Customs territory; (ii) origin¹², or (iii) the treatment which should be applied on a certain element of the Customs value, prior to an import or export transaction, for a specified period;
 - (b) the competent authority is the Customs administration or designated body responsible for the issuance of advance rulings;
 - (c) the applicant is an importer, exporter, producer or any person with a justifiable cause or a representative thereof who has applied to a competent authority for an advance ruling on classification, origin or valuation.¹³

Application for advance rulings on classification, origin and valuation

7. An application for advance ruling on classification, origin or valuation shall be made in writing to a competent authority and relate to only one good. It may be made by means of a standardized form. For reference, see the examples shown in the Appendixes.
8. The requirements for the application of an advance ruling shall be published, including (i) the information to be provided and the format, (ii) the time period by which the competent authority will issue an advance ruling, and (iii) the length of time for which the advance ruling is valid.

¹¹ Article 3 of the WTO TFA requires Members to issue advance rulings regarding the tariff classification and the preferential and non-preferential origin of goods in accordance with the provisions of that article. Members are also encouraged to issue advance rulings for other areas such as Customs valuation, requirements for relief or exemption from Customs duties, requirements for quotas and any additional matters where a Member considers it appropriate to issue an advance ruling.

¹² Advance rulings apply to preferential and non-preferential origin.

¹³ Article 3.9 (d) of the TFA, establishes that a Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

9. An application for an advance ruling for classification and origin shall contain all necessary information reasonably required to process a request for assessment of the classification or origin of the product, including:

- (a) the name and address of the applicant;
- (b) a detailed description of the goods;
- (c) in the case of classification, the classification of goods envisaged;
- (d) in the case of classification, the basis for the classification of the goods;
- (e) in the case of origin, the country of origin envisaged for the goods;
- (f) in the case of origin, the applicable legal basis, i.e., stating whether the advance ruling required is for preferential or non-preferential purposes;
- (g) the composition of the goods and any methods of examination used to determine this, as needed;
- (h) any samples, photographs, plans, catalogues, copies of technical literature, photographs, brochures, laboratory analysis results, or other documents available on the composition of the goods and their component materials which may assist in describing the manufacturing process or the processing undergone by the materials or any other documents that may assist the competent authority in determining the correct classification, or origin of the goods;
- (i) in the case of origin, the conditions enabling origin to be determined, the materials used and their origin, tariff classification, corresponding values and a description of the circumstances (rules on change of tariff heading, value added, description of the operation or process, or any other specific rule) enabling the conditions in question to be met; in particular the exact rule of origin applied shall be mentioned;
- (j) whether the goods in question are the subject of a classification or origin verification process, or any instance of review or appeal before any governmental agency, appellate tribunal or court;
- (k) any information to be treated as confidential, whether in relation to the public or the administrations;
- (l) an indication by the applicant whether, to his knowledge, advance rulings for goods or materials identical or similar to those referred to under subparagraphs (b) together with (c) or (i) above have already been applied for or issued.

10. In the case of valuation, an application for advance ruling shall include a complete statement of all relevant facts relating to the transaction(s), including:

- (a) the name and address of the applicant;
- (b) description of the nature of the transaction(s), (contract, terms of sale, etc.);

- (c) any relationship between the parties;
- (d) specific information, depending on the issue in question. For example, if the issue is whether the commission paid by the buyer is a buying or selling commission (or whether an agency relationship exists), all details and documentation pertaining to the roles of the parties and the payment of the commission would need to be submitted. If the issue concerns a royalty payment potentially includable under Article 8.1 (c) of the WTO Valuation Agreement, the license/royalty agreement and sales contract should be presented along with other relevant information;
- (e) if the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document(s) should be submitted with the request;
- (f) a statement that there are, to the best of the importer's knowledge, no issues concerning the transaction(s) for which a ruling is sought pending before any Customs offices or ports of entry or before any governmental agency, appellate tribunal or court;
- (g) whether advice has been previously sought from Customs concerning the transaction(s) for which a ruling is sought, and if so, then from whom and what advice was given, if any;
- (h) the applicant may also state their own opinion or position in the ruling request;
- (i) any information to be treated as confidential, whether in relation to the public or the administrations; and
- (j) any other information relevant to determine the value under the Agreement.

11. On receipt of the application for advance ruling, the competent authority shall:

- (a) notify the applicant that the request has been received; and
- (b) ask the applicant to supply additional information where the competent authority considers that the application does not contain all the information required to give an informed opinion.

12. Any application for advance ruling may be withdrawn by the applicant submitting it at any time before the issuance of advance ruling by a competent authority.

Issuance of advance rulings on classification, origin and valuation

13. Advance rulings shall be issued in a reasonable, time bound manner after receipt of an application for advance ruling, provided that all necessary information have been submitted. In the case of an advance ruling on origin, as required in the Agreement on Rules of Origin, a decision must be issued as soon as possible but no later than 150 days.

14. Advance rulings on classification, origin and valuation shall be issued in writing to the applicant with:

- (a) an indication of what particulars will be treated as confidential; and
- (b) a notification of the right of review and appeal of the advance ruling.

Declining and postponing issuance of advance rulings on classification, origin and valuation

15. If the issuance of an advance ruling on classification, origin or valuation is declined or postponed, the competent authority shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.
16. The issuance of an advance ruling may be declined or postponed where the applicant fails to provide additional information requested under paragraph 11(b) within the period specified.
17. The issuance of an advance ruling may be declined where a product is the subject of a classification or origin verification process or where a transaction is the subject of a valuation verification process, or any instance of review or appeal before any governmental agency, appellate tribunal or court.
18. The issuance of an advance ruling may be declined where the classification, origin or valuation of a product has already been decided by an appellate tribunal or court.

Effect of advance rulings on classification, origin and valuation

19. Advance rulings on classification, origin and valuation shall be binding, in accordance with the terms set out therein, on the authority that issued the advance ruling in respect of the applicant that sought it.
20. Advance rulings may be binding on the applicant to whom the advance ruling was issued.
21. Advance rulings shall be effective from the date on which they were issued. Advance rulings shall specify the date until which they remain valid.
22. The decision shall remain valid for at least one year from the date of issuance of the advance ruling, subject to paragraph 25 or 28. In the case of origin, as per the Agreement on Rules of Origin, the advance ruling shall remain valid for three years provided that the facts and conditions, including rules of origin, under which they have been made remain comparable.
23. Advance rulings shall be applied only with respect to goods that are imported or exported on or after the effective date of the advance ruling and are the subject of the advance ruling.
24. Advance rulings may be used in respect of a particular product only where it is established to the satisfaction of the authority that the product in question and the circumstances determining its classification and its origin conform in all respects to those described in the advance ruling.

Annulment of advance rulings on classification, origin and valuation

25. An advance ruling may be annulled if it was given on the basis of incomplete, incorrect, false or misleading information provided by the applicant.
26. Where, pursuant to paragraph 25, an advance ruling is annulled, the applicant to whom the advance ruling was issued shall be notified of the annulment in writing. This notification shall set out the relevant facts and basis for the decision.

27. An annulment of an advance ruling takes effect from the date on which the advance ruling was issued.

Modification, revocation or invalidation of advance rulings on classification, origin and valuation

28. Where an advance ruling is modified, revoked or invalidated, the applicant to whom the advance ruling was issued shall be notified in writing of :

(a) any modification, revocation or invalidation of the advance ruling;

(b) the effective date of the modification, revocation or invalidation;

(c) the relevant facts; and

(d) the basis for the modification, revocation or invalidation.

Effect of modification, revocation or invalidation

29. A modification, revocation or invalidation of an advance ruling on classification, origin or valuation shall be effective:

(a) from the date on which the modification, revocation or invalidation is issued; and

(b) in the case of modification and revocation, until such date as may be specified in the notice given.

30. Subject to paragraph 31, a modification or revocation of an advance ruling shall be applied only with respect to goods that are imported or exported on or after the effective date of modification or revocation and are the subject of the advance ruling.

Retroactive application of modification, revocation or invalidation

31. A modification, revocation or invalidation of an advance ruling on classification, origin or valuation may be applied with retroactive effect only where the advance ruling was based on incomplete, incorrect, false or misleading information.

Postponed application of modification or revocation

32. The effective date of a modification or revocation of an advance ruling shall be postponed if the person to whom the advance ruling was issued demonstrates that he has relied on that advance ruling in good faith and that the modification or revocation is to his detriment.

33. Postponement made under paragraph 32 shall be notified in writing to the person to whom the advance ruling was issued.

Right of Review

34. A Member administration shall provide that any applicant who has received an advance ruling from a competent authority may request, in writing, a review regarding that advance ruling, including any modification, revocation, annulment or invalidation of it.
35. A Member administration shall¹⁴ provide that an applicant may request a review of a competent authority's decision to decline the issuance of an advance ruling.
36. A Member administration shall provide that a review referred to in paragraph 34 may, either before or after the ruling has been acted upon, be provided by (i) the official, office, or authority that issued the ruling; (ii) a higher or independent administrative authority; or (iii) a judicial authority.¹⁵

Right of Appeal

37. A Member administration shall establish a right of appeal for declination of the competent authority to issue an advance ruling to the applicant and shall establish a right of appeal for applicants who have received advance rulings.¹⁶ The right of appeal may include access to an administrative appeal by an administrative authority higher than or independent of the official or office that issued the decision and/or a judicial appeal of the advance ruling.

Publication and confidentiality

38. Subject to paragraph 39, all endeavors shall be made to make any information on advance rulings on classification, origin and valuation, which may be of significant interest to other parties publicly available, including via the Internet.
39. All information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of advance rulings shall be treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that may be required to be disclosed in the context of judicial proceedings.

¹⁴ The word "shall" applies to decisions with a legal effect that affects rights and obligations of a specific person in individual cases in accordance with Article 4.1 of the TFA.

¹⁵ See also Article 3.7 footnote 2(b) of the TFA

¹⁶ The word "shall" applies to decisions with a legal effect that affects rights and obligations of a specific person in individual cases in accordance with Article 4.1 of the TFA.

APPENDIX B : APPLICATION FOR ADVANCE RULING (ORIGIN)

1. Applicant (name, address)					For Official Use Date of receipt : Date of issue :				
2. Importer, exporter, producer, and the agent (name, address) (if known)									
3. Legal framework (preferential/non-preferential)									
4. Description of Goods					5. Tariff Classification of Goods				
6. Description of materials used in manufacture					7. Rule considered to be satisfied				
Materials	HS	Origin	Value	Other					
8. Country of Origin envisaged by applicant Country of Origin Country of export (where different) Country of import									
9. Enclosures being submitted to assist with determining the origin of the goods Samples <input type="checkbox"/> Photographs <input type="checkbox"/> Plans <input type="checkbox"/> Catalogues <input type="checkbox"/> Other <input type="checkbox"/>									
10. Commercial designation and additional information									
11. Have you previously applied for an advance ruling for identical or similar goods ? If yes, please give details									
12. Are you aware of existence of an advance ruling for identical or similar goods ? If yes, please give details									
13. Are the goods subject to origin verification process or any instance of review or appeal before any governmental agency, appellate tribunal or court ? If yes, please give details									
I declare that all information and statements on this form and any attachment is true, accurate and complete to the best of my knowledge and belief. Applicant's Signature: Date: Telephone: Fax: E-Mail Address:									

* Please attach an additional sheet if you need more space

Notes on the Completion of the Application Form

The following explanatory notes provide specific guidance on the completion of the Application for Advance Ruling (Origin). Please read them carefully before completing your application.

Box 1. Applicant (name and address)

For the purpose of an advance ruling, an applicant means a person who has applied to the customs authorities for an advance ruling.

Box 2. Importer, exporter, producer, and the agent (name, address) (if known)

Name and address of importer, exporter, producer, and the agent, if applicable, should be provided.

Box 3. Legal framework (preferential/non-preferential)

Applicant should state whether the advance ruling required is for preferential or non-preferential purposes. If an advance ruling is required for preferential origin purposes, applicant should indicate which regime applies.

Box 4. Description of Goods

A description of the goods in question should be sufficiently detailed to enable the goods to be identified (and classified in the Customs nomenclature). Also, detailed information about the composition of the goods and the methods used to determine their composition should be provided.

Box 5. Tariff Classification of Goods

The full commodity code for the goods concerned should be provided.

Box 6. Description of Materials used in manufacture

A detailed description of the goods should be provided. Using the columns and headings provided, applicant should list all the materials/components/parts used in manufacture, together with their country of origin, tariff heading, and value.

Box 7. Rule considered to be satisfied

The preferential or non-preferential origin rule which is considered to be appropriate to the product concerned should be explained. In addition, applicant should explain how that rule has been met in the country of manufacture/origin by providing a full and detailed description of all stages of any manufacturing process.

Box 8. Country of Origin envisaged by applicant

The applicant is invited to express a view as to the country of origin envisaged.

Box 9. Enclosures being submitted to assist with determining the origin of the goods

Any samples, photographs, plans, catalogues or other documents available relative to the composition of the goods or their constituent materials which may illustrate the working or manufacturing process which those materials have undergone should be attached as annexes, if necessary.

Box 10. Commercial designation and additional information

Any information which applicant wishes to be treated as confidential including the trademark and model number of the goods should be indicated.

Box 11. Have you previously applied for an advance ruling for identical or similar goods?

An indication as to whether the applicant has previously applied for advance ruling for identical or similar goods should be given here. Details with regard to that application should also be included.

Box 12. Are you aware of existence of an advance ruling for identical or similar goods?

Any knowledge on the part of the applicant of the existence of earlier advance ruling in respect of goods of the same kind should be indicated, quoting references.

Box 13. Are the goods subject to origin verification process or any instance of review or appeal before any governmental agency, appellate tribunal or court?

The applicant should inform the competent authority responsible for the issuance of advance rulings, if the goods are subject to origin verification or any instance of review or appeal before any governmental agency, appellate tribunal or court.

3.4.4 REVIEW AND APPEAL OF ORIGIN DETERMINATION

In legal terms, an appeal is a process for requesting a formal change to an official decision. Decisions taken by authorities shall be challengeable by filing an appeal to an independent appellate body.

Whereas certain origin legislations contain provisions on review and appeal, there are no such provisions in other systems who deal with this subject under the general customs law.

The WTO Agreement on Rules of Origin foresees that any administrative action taken in relation to the origin determination in the field of preferential origin shall be reviewable by judicial, arbitral or administrative tribunals or procedures:

- WTO disciplines for review and appeal of origin determination for non-preferential origin:

**WTO AGREEMENT ON RULES OF ORIGIN
PART II**

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2
Disciplines During the Transition Period

Until the work programme for the harmonization of rules of origin set out in Part IV is completed, Members shall ensure that:

(j) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

- WTO disciplines for review and appeal of origin determination for preferential origin:

**WTO AGREEMENT ON RULES OF ORIGIN
ANNEX II**

COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN

3. The Members agree to ensure that:

(f) any administrative action which they take in relation to the determination of preferential origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination.

3.4.5 WORKING GROUP AND CUSTOMS SUB-GROUP

Free trade agreements contain institutional frameworks for monitoring the functioning of the agreement. The institutions provide fora for monitoring, on different levels, the implementation and administration of different parts of the agreement.

3.4.6 COOPERATION / MUTUAL ASSISTANCE

The application of origin provisions always involves two or more countries, i.e.:

- The exporting country where the product is manufactured and from which the product is sent. This is also the country where the origin determination is done;
- The importing country which grants the preferences to imported goods that originate from a free trade partner country. This country has an interest in having the origin provisions correctly applied in the exporting country;
- The countries providing originating input through cumulation/accumulation.

Thus, no country acts alone with regard to the management of the origin provisions. The manner in which origin determination and its correct application are handled may differ considerably. Nonetheless, all origin legislations contain provisions for the administration of the rules of origin, co-operation with and assistance to the other authorities.

Further information can be found under the “Origin Verification” in paragraph 3.3.3 and the “Guidelines on Customs Infrastructure for Origin” in paragraph 3.3.5.

3.4.7 DISPUTES

Problems can arise in the interpretation and implementation of different free trade provisions, including, amongst others, rules of origin. Preferential trade agreements have incorporated different models of dispute settlement provisions, under which such conflicts can be discussed and resolved multilaterally in Commissions, Association Councils or Committees established under those preferential trade agreements.

The dispute settlement provisions are generally contained in the main provisions of preferential trade agreements, and are applied to all kinds of disputes concerning the interpretation or application of the trade agreement.

3.4.8 PENALTIES

The enforcement of origin legislation must include the imposition of penalties/sanctions against any person who prepares, or causes to be prepared, a document containing false information with a view to obtaining documentary evidence of origin.

The Kyoto Convention explicitly recommends sanctions:

**KYOTO CONVENTION, ANNEX K / CHAPTER 2
13. RECOMMENDED PRACTICE**

Provision shall be made for sanctions against any person who prepares, or causes to be prepared, a document containing false information with a view to obtaining documentary evidence of origin.

3.4.9 CONFIDENTIALITY

The determination of the origin by the competent authorities requires that companies disclose confidential information regarding the manufacturing process, the calculation, the suppliers, etc. The authorities may also need to verify the origin determined in order to check the accuracy of the originating status of exported or imported goods. It is obvious that such information must be treated by the authorities in a confidential way.

Whereas in some origin legislation there are specific articles dealing with confidentiality”, there are also origin legislations which make not reference to confidentiality in their origin provisions.

But it is evident that the authorities involved in origin determination must treat all information which is by nature confidential, or which was provided to them on a confidential basis for the purpose of origin determination, as strictly confidential and must not disclose this information.

The WTO Agreement on Rules of Origin stipulates that all information given to authorities for origin purposes shall be confidential.

- WTO disciplines for confidentiality in the context of non-preferential rules of origin:

**WTO AGREEMENT ON RULES OF ORIGIN
PART II**

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2
Disciplines During the Transition Period

Until the work programme for the harmonization of rules of origin set out in Part IV is completed, Members shall ensure that:

- (k) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

- WTO disciplines for confidentiality in the context of preferential rules of origin:

**WTO AGREEMENT ON RULES OF ORIGIN
ANNEX II**

COMMON DECLARATION WITH REGARD TO PREFERENTIAL RULES OF ORIGIN

3. The Members agree to ensure that:

- (g) all information that is by nature confidential or that is provided on a confidential basis for the purpose of the application of preferential rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

CHAPTER 4: ORIGIN IRREGULARITIES

Origin irregularities can arise at different stages in the determination of the origin of the product. Whilst the types of origin irregularities are different, the reasons why they arise can often be the same. Notably, origin irregularities frequently occur due to a lack of experience and competence. The problems might occur at the level of the exporter, Customs in the exporting country, of the importer, or of Customs in the importing country. A Customs administration has to take many factors into consideration, and because every step is not under their control, Customs needs to work collaboratively with all the parties involved.

GUIDE TO ORIGIN IRREGULARITIES (EXCLUDING FRAUD) (JUNE 2015) MEMBERS ONLY

This Guide provides a short overview of the Origin Irregularity Typology Study, and an introduction to the case studies presented, which are the central focus of the document. The purpose of the Guide is to give examples of origin irregularities occurring in practice and, based on those examples, to provide ways solving them. It constitutes a useful practical tool, assisting Customs administrations in their endeavors and in their daily work.

The full text of the guide:

<http://www.wcoomd.org/~media/wco/member/global/pdf/topics/key-issues/revenue-package/plan-i/8--guide-to-counter-origin-irregularities-final-en.pdf?db=web>

ORIGIN IRREGULARITY TYPOLOGY STUDY (JULY 2013) MEMBERS ONLY

Based on the inputs provided by WCO Member Customs administrations, this study focuses on the irregularity cases related to rules of origin, which are the non-compliant cases regarding rules of origin except the “fraud” cases committed with deliberate intention.

The full text of the study:

<http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/instruments-and-tools/comparative-study/related-documents/origin-irregularity-typology-study-final-en.pdf?db=web>

CHAPTER 5: GUIDE FOR TECHNICAL UPDATE OF PREFERENTIAL RULES OF ORIGIN

How to update the existing Preferential Rules of Origin in relation to changes in the Harmonized System

December 2015 (Annex updated in January 2017)

1. Introduction

Preferential Rules of Origin are used to determine whether imported products shall receive preferential treatment, which promotes the development of trade and encourages investment. However, the increasing proliferation of preferential trade agreements containing many different Rules of Origin is a source of concern for WCO Members and economic operators. In this connection, every effort needs to be made to mitigate the complexity involved in the implementation of Preferential Rules of Origin. Customs administrations, which occupy a central role in the implementation of preferential agreements, should play an important part to that end.

Typically, the requirements for origin determination specified for individual products or product categories are contained in highly fragmented lists of products (Product Specific Rules (PSRs)) based on the Harmonized System (HS). Accordingly, classification is of the utmost importance in order to establish the relevant Rules of Origin for a product. Moreover, the assessment of Rules of Origin is, in many cases, based on the change in tariff classification (CTC) criterion which requires correct classification of the final manufactured product and the input materials used in its production.

According to a study¹⁷ conducted by the Secretariat, in the 20 largest free trade agreements (FTAs) selected according to trade volume the average proportion of “CTC-based rules” is 73 % based on the number of HS subheadings. Additionally, in more than half of them, the proportion exceeds 95 %. The results of the study revealed that HS classification plays a pivotal role in determining the origin of goods.

In cases where, as a consequence of HS amendments, different editions of the HS are used for the purposes of HS classification and origin determination, respectively, determination of the origin becomes complicated and time-consuming. In order to avoid misapplication of the Rules of Origin and to facilitate origin determination, thereby ensuring efficient and effective collection of revenue, it is critically important to update the Rules of Origin (i.e. PSRs) to ensure consistency between HS classification and origin determination.

¹⁷ The study is available on the WCO website under > Topics > Origin > Instruments and Tools > Comparative Study on Preferential Rules of Origin.

2. Objectives

The WCO Guide for Technical Update of Preferential Rules of Origin (hereinafter referred to as the Guide) provides practical information on how to conduct a technical update of Rules of Origin in relation to changes in the Harmonized System.¹⁸ The Guide has been prepared for Members who wish to update their existing Rules of Origin based on an older edition of the HS to ones based on the latest edition of the HS. The technically updated Rules of Origin may replace the existing ones or be used as a basis for reviewing and amending the former, according to the procedures set out in the applicable FTA. Carrying out a technical update may also help Members to identify items requiring adjustment to the PSRs of FTAs already in place.

Given that the technical update of the Rules of Origin requires detailed information on the related HS amendment and knowledge of the HS, it is highly recommended that this exercise be carried out in administrations at the same time as preparations for implementation of the new edition of the HS, preferably with assistance from officials responsible for the HS.

The Guide may also be used as training material to explain the mechanism for updating the Rules of Origin relating to amendments to the HS. The Guide is not binding and does not intend to challenge any existing trade policy, preferential agreement or legislation of any Member.

In order to improve the usability of the Guide, tables correlating different editions of the HS are included in the Annexes to the Guide. They were prepared by the WCO Secretariat based on the Tables correlating different editions of the HS (hereinafter referred to as the Correlation Tables)¹⁹ for ease of reference by users and have no legal status. They also indicate the necessity of and applicable methods for technical updating, according to origin criteria, and should help users who actually deal with the technical update of Rules of Origin in their own administration.

Consistency in the structure of the HS and Preferential Rules of Origin would help to ensure accurate revenue collection by reducing the administrative burden on traders and avoiding misapplication of the relevant rules. It would also allow Customs to conduct more efficient and effective risk assessments of origin.

¹⁸ The WCO Secretariat prepared a guidance tool for a technical rectification exercise in 2002 (TCRO Non-paper), which focused on technical rectifications of the draft Harmonized Non-Preferential Rules of Origin relating to the HS 2002 Amendments.

¹⁹ The Tables correlating different editions of the HS are drawn up by the WCO Secretariat in accordance with instructions received from the Harmonized System Committee. They constitute a guide published by the Secretariat whose sole purpose is to facilitate implementation of new editions of the HS. They do not have legal status. These Tables are available on the WCO website under > Topics > Nomenclature and classification of goods > Instruments and Tools.

3. Need for an Update of Rules of Origin

As mentioned above, when different editions of the HS are used, respectively, for HS classification and origin determination, the operations required to determine the origin become complicated and time-consuming, especially where “CTC-based rules” are applied. For example, if the latest edition of the HS is applied for HS classification while an older edition is used for origin determination, the goods need to be classified twice: once using the latest edition of the HS for classification purposes and the other using an older edition for origin determination.

The following are two actual examples taken from the HS 2012 Amendments.

Example 1: Creation of subheading 0603.15

Subheading 0603.15 was created for lilies (*Lilium* spp.) through the HS 2012 Amendments. According to the Correlation Tables between the 2007 edition and the 2012 edition of the HS, lilies of the genus *Lilium* spp. were transferred from subheading 0603.19 (HS 2007) to new subheading 0603.15 (HS 2012) as a result of this amendment.

HS 2007	HS 2012
0603.19	0603.15
	0603.19

When lilies of the genus *Lilium* spp. are imported into a country in which the HS 2012 is implemented, they are classified in subheading 0603.15. Additionally, if the product is subject to preferential tariff treatment under an FTA which uses the HS 2007, the applicable origin criterion needs to be determined by re-classifying the same product using the 2007 edition of the HS (HS 2007 Nomenclature).

Example 2: Deletion of subheading 2914.21

Subheading 2914.21 (camphor) was deleted through the HS 2012 Amendments because of its low volume of trade. According to the Correlation Tables, camphor was transferred from subheading 2914.21 (HS 2007) to subheading 2914.29 (HS 2012).

HS 2007	HS 2012
2914.21	2914.29
2914.29	

Thus, when camphor is imported into a country in which the HS 2012 is implemented, it is classified in subheading 2914.29. If the product is also subject to preferential tariff treatment under an FTA which uses the HS 2007, the applicable origin criterion needs to be determined by re-classifying the same product using the 2007 edition of the HS.

Especially in cases where the related HS amendments are complicated, there could be a risk of misclassification in the older edition of the HS. For instance, heading 28.52 has been expanded to include non-chemically defined inorganic or organic compounds of mercury through the HS 2012 Amendments. This amendment entails the transfer of non-chemically defined compounds of mercury (e.g. albuminates of mercury of heading 35.02 (HS 2007)) to new subheading 2852.90. Therefore, users of the HS 2012 tend to acknowledge that any kind of mercury compound is classified in heading 28.52 and may not be familiar with the background to the above-mentioned

HS amendment. Such users could potentially make a mistake when classifying non-chemically defined mercury compounds.

Moreover, if a CTC rule is applied to a product, all the non-originating materials used in the production of the product need to be classified using the older edition of the HS, which could increase the possibility of misclassification.

As noted above, classifying a product using two different editions of the HS could result in misclassification as well as increasing the administrative burden. In contrast, if the applicable PSRs are updated to the latest edition of the HS, then the important factor of the origin of the product can be determined immediately once its classification has been determined. This would allow Customs to enhance their risk assessment and management of origin, avoid misapplication of the rules and facilitate origin determination.

There are various ways of updating the Preferential Rules of Origin according to the procedures set out in the applicable FTAs. It should also be noted that several FTAs in place have a provision which requires the review and/or modification of the Rules of Origin to align changes with the HS. In addition, some FTAs allow simplified amendment procedures for the Product Specific Rules, taking into account the fact that the HS has been regularly updated (i.e. every five to six years).

In some FTAs, the technically updated Rules of Origin may replace the existing ones, and in others they may be used as a basis for reviewing and amending the existing ones. Even in cases where the update is associated with substantial adjustments of the rules, the technically updated Rules of Origin could be useful as a basis for the adjustments and help save time and avoid problems during such work. If the technically updated rules are very complex, this is a good indication that the rule should be simplified in order to facilitate the origin determination.

To sum up, the technical updating of the Rules of Origin may prove a very important step in ensuring consistency between the HS and Rules of Origin, thus avoiding misapplication of the relevant rules, regardless of the updating procedure.

4. Method for the Technical Update

The need for and importance of the technical update of the Rules of Origin were already discussed in Part 3. In this part, the methods for the technical update are explained.

HS amendments can be categorized into three types: (i) creation of new headings or subheadings, (ii) deletion of headings or subheadings and (iii) change of the scope of a heading or subheading without creating or deleting the heading or subheading.

4.1. Basic Method for the Technical Update

Methods for the technical update of Rules of Origin in some simple cases are explained below.

Example 1: Simple transfer of goods from one subheading to two or more subheadings (division of subheadings)

The simplest case of this type is when an existing subheading is divided into two.

Let us assume that, in an older edition of the HS, subheading X1 covers goods of categories A1 and A2, and that this subheading has been divided into new subheadings Y1 and Y2 which cover goods of categories A1 and A2, respectively, in the revised edition of the HS. Let us also assume that the origin criterion applied to goods of subheading X1 is CTC1 (criterion of “change in tariff classification”).

As shown in Table 1-1, the updated origin criteria for goods of new subheadings Y1 and Y2 can be described as “CTC1 except from A2” and “CTC1 except from A1”, respectively.

Table 1-1: Technical update where a subheading is divided into two subheadings

Origin criterion (original)	Category of product	HS code (older edition)	HS code (later edition)	Category of product	Origin criteria (updated)
CTC ₁	A ₁ , A ₂	X ₁	→ Y ₁	A ₁	CTC ₁ <u>except from A₂</u>
			→ Y ₂	A ₂	CTC ₁ <u>except from A₁</u>

Because both goods of categories A1 and A2 belonged to subheading X1 (the same category in the HS) in the older edition of the HS, manufacture of A1 from A2 and manufacture of A2 from A1 do not involve any change in tariff classification (Chapter, heading or subheading level) and are not considered as origin conferring transformations. Therefore, in order to maintain those original requirements, exclusions from A2 and A1 need to be added to the updated origin criteria for new subheadings Y1 and Y2, respectively.

Likewise, where a subheading is divided into N-number of subheadings, the updated origin criteria for new subheadings Y1, Y2, ..., YN can be described as “CTC1 except from A2 through AN”, “CTC1 except from A1 or A3 through AN”, ..., “CTC1 except from A1 through AN-1”, respectively (Table 1-2).

Table 1-2: Technical update where a subheading is divided into N-number of subheadings

Origin criterion (original)	Category of product	HS code (older edition)	HS code (later edition)	Category of product	Origin criteria (updated)
CTC ₁	A ₁ , A ₂ , ..., A _N	X ₁	→ Y ₁	A ₁	CTC ₁ <u>except from A₂ through A_N</u>
			→ Y ₂	A ₂	CTC ₁ <u>except from A₁ or A₃ through A_N</u>
			→
			→ Y _N	A _N	CTC ₁ <u>except from A₁ through A_{N-1}</u>

It should be noted that where the extent of transposition caused by an HS amendment is less than that of the changes required by the original origin criteria, the exclusions (underlined parts) are not necessary. In other words, the exclusions make no sense. For example, in the case of Table 1-1, if new subheadings Y1 and Y2 belong to the same heading and the origin criterion CTC1 is “change in Chapter” or “change in heading”, the exclusions are not required.

Example 2: Simple transfer of goods from two or more subheadings to one common subheading (merging of subheadings)

The simplest case of this type is where two subheadings are merged into one.

Let us assume that, in an older edition of the HS, subheadings X1 and X2 cover goods of categories A and B, respectively, and those subheadings have been merged into subheading Y1 which covers goods of categories A and B in the later edition of the HS. Let us also assume that the origin criteria applied to goods of subheadings X1 and X2 are CTC1 and CTC2 (both are “change in tariff classification” criteria), respectively.

As shown in Table 2-1, the updated origin criteria for goods of new subheading Y1 can be described as “CTC1; or change from B” for goods of category A and “CTC2; or change from A” for goods of category B.

Table 2-1: Technical update where two subheadings are merged into one subheading

Origin criteria (original)	Category of product	HS code (older edition)	HS code (later edition)	Category of product	Origin criteria (updated)
CTC ₁	A	X ₁	→ Y ₁	A, B	(A) CTC ₁ ; <u>or change from B</u>
CTC ₂	B	X ₂			

Because the goods of categories A and B belonged to different subheadings (different categories in the HS) in the older edition of the HS, manufacture of A from B and manufacture of B from A involve a certain change in tariff classification (Chapter, heading or subheading level) and can be considered as origin conferring transformations according to the applicable origin criterion. Therefore, in order to maintain the original conditions, goods of categories A and B need to have different origin criteria and the change from the other category is allowed as an origin conferring transformation, as the case may be.

Likewise, where N-number of subheadings are merged into one, the updated origin criterion for new subheading Y1 can be described as “CTC1; or change from B through N” for goods of

category A, “CTC₂; or change from A or C through N” for goods of category B, ..., “CTC_N; or change from A through (N-1)” for goods of category N (Table 2-2).

Table 2-2: Technical update where N-number of subheadings are merged into one subheading

Origin criteria (original)	Category of product	HS code (older edition)	HS code (later edition)	Category of product	Origin criteria (updated)
CTC ₁	A	X ₁	Y ₁	A, B ...,N	(A) CTC ₁ ; <u>or change from B through N</u> (B) CTC ₂ ; <u>or change from A or C through N</u> ... (N) CTC _N ; <u>or change from A through (N-1)</u>
CTC ₂	B	X ₂			
...			
CTC _N	N	X _N			

Where the extent of transposition caused by an HS amendment is less than that of changes required by the original origin criteria, the additional descriptions (underlined parts) need to be deleted. For example, in the case of Table 2-1, if subheading Y₁ belongs to the same heading as subheadings X₁ and X₂ and the origin criteria CTC₁ and CTC₂ are “change in Chapter” or “change in heading”, the additional descriptions need to be deleted because those changes are not considered as origin conferring transformations according to the origin criteria.

It should be noted that the technical update of Rules of Origin needs to be made from the original edition of the HS to the following edition of the HS in chronological order (e.g. from the HS 2007 edition to the HS 2012 edition) and cannot be made from the original edition of the HS (used for the FTA) to a later edition of the HS (e.g. from the HS 2002 edition to the HS 2012 edition). Therefore, to carry out the technical update of the Rules of Origin based on the 2002 edition of the HS to the 2012 edition, the original rules need to undergo two consecutive updates (i.e. from the HS 2002 edition to the HS 2007 edition, then from the HS 2007 edition to the HS 2012 edition).

Origin criteria without reference to the HS are not affected by HS amendments; hence they do not require any update in relation to the HS amendments.

4.2. Other Methods for the Technical Update

Methods for technical updates in simple cases of HS amendments were dealt with in Part 4.1. They can be used in most cases of HS amendments. For more complicated HS amendments, however, the descriptions of updated origin criteria tend to be longer and more complicated. Therefore, the technical update can only be carried out by combining the methods shown in Part 4.1.

In this part, technical update methods for some other cases of the HS 2012 Amendments are explained.

Example 1: Expansion of the scope of subheadings

This type of HS amendment involves the expansion of the scope of subheadings, which typically entails a partial transposition from a residual subheading “other” to an expanded subheading. In the HS 2012 Amendments, subheadings 0210.92, 0302.35, 0303.45, 8466.93 and 9504.50 fall under this category. The origin criteria of these subheadings can be technically updated in the manner shown in Table 3 below.

Table 3: Technical update associated with the HS amendment of heading 02.10

Origin criteria (original)	Category of product	HS code (older edition)	HS code (later edition)	Category of product	Origin criteria (updated)
CTC ₁	A	0210.9 2	0210.9 2	A,B	(A) CTC ₁ ; <u>or change from B</u> (B) CTC ₂ <u>except from C; or change from A</u>
CTC ₂	B, C	0210.9 9	0210.9 9	C	CTC ₂ <u>except from B</u>

This HS amendment occurs within the range of heading level. Therefore, if all the original origin criteria (i.e. CTC1 and CTC2) are “change in Chapter (CC)” or “change in tariff heading (CTH)”, the updated origin criteria remain the same as the original criteria. In other words, there is no need for a technical update of the origin criteria.

Example 2: Creation of subheadings in addition to the expansion of the scope of subheadings

This type of HS amendment involves the creation of one or more subheadings in addition to the changes indicated in Part 4.2 - Example 1 (expansion of the scope of subheadings). In the HS 2012 Amendments, certain subheadings of headings 01.06, 02.08, 84.56 and 84.79 fall under this category. The origin criteria of these subheadings can be technically updated in the manner shown in Table 4 below.

Table 4: Technical update associated with the HS amendment of heading 01.06

Origin criteria (original)	Category of product	HS code (older edition)	HS code (later edition)	Category of product	Origin criteria (updated)
CTC ₁	A	0106.1 2	0106.1 2	A,B	(A) CTC ₁ ; <u>or change from B</u> (B) CTC ₂ <u>except from C, D or E; or change from A</u>
			0106.1 3	C	CTC ₂ <u>except from B, D or E</u>
			0106.1 4	D	CTC ₂ <u>except from B, C or E</u>
CTC ₂	B, C, D, E	0106.1 9	0106.1 9	E	CTC ₂ <u>except from B, C or D</u>

The HS amendment of heading 01.06 occurs at heading level. Therefore, if all the original origin criteria (i.e. CTC1 and CTC2) are “change in Chapter (CC)” or “change in tariff heading (CTH)”, the updated origin criteria remain the same as the original criteria. That is, there is no need for a technical update of the origin criteria. On the other hand, the HS amendments of headings 84.56 and 84.79 occur beyond the range of Chapter level, which requires a technical update regardless of the type of CTC rules.

Example 3: Deletion and merger of subheadings

In this type of HS amendment, a heading is restructured by the deletion and merger of subheadings. In the HS 2012 Amendments, headings 06.04 and 37.02 fall under this category. The origin criteria of these subheadings can be technically updated in the manner shown in Table 5 below.

Table 5: Technical update associated with the HS amendment of heading 06.04

Origin criteria (original)	Category of product	HS code (older edition)	HS code (later edition)	Category of product	Origin criteria (updated)
CTC ₁	A,B	0604.1 0	0604.2 0	A,C	(A) CTC ₁ <u>except from B; or change from C</u> (C) CTC ₂ ; <u>or change from A</u>
CTC ₂	C	0604.9 1	0604.9 0	B,D	(B) CTC ₁ <u>except from A; or change from D</u>
CTC ₃	D	0604.9 9			(D) CTC ₃ ; <u>or change from B</u>

This HS amendment occurs at heading level. Therefore, if all the original origin criteria (i.e. CTC1, CTC2 and CTC3) are “change in Chapter (CC)” or “change in tariff heading (CTH)”, the updated origin criteria remain the same as the original criteria. That is, there is no need for a technical update of the origin criteria.

Example 4: Renumbering of subheadings

This entails a subheading being renumbered as a different HS code without any change in the scope. In other words, the original HS code is deleted and a new HS code is created for the same category of commodities. In most cases, subheadings of this type do not require a technical update. However, they may require a technical update if a subheading is renumbered as a different HS code under a different heading or Chapter. The method of technical update differs according to the transpositions of the relevant headings or Chapters. In such cases, it might be useful to consider a possible simplification of the updated origin criteria (See Part 6).

5. Procedure Manual (including actual Examples)

In Part 4, theoretical explanations of the technical update of Preferential Rules of Origin were provided. In this part, concrete procedures for conducting the technical update of Rules of Origin are illustrated with some actual examples.

The technical update of Rules of Origin can be conducted through the following two-step procedures.

- (i) Identify the type of technical update according to the correlation between the older and newer editions of the HS.**
(Typical examples are shown in Tables 1 to 5 of Part 4)
- (ii) Apply the original origin criteria and consider the additional descriptions (i.e. exclusions and additional requirements), if appropriate.**

The following are some actual examples of HS 2012 Amendments.

Example 1: Creation of subheadings 0910.11 and 0910.12 (ginger)

- (i) Identify the type of technical update according to the correlation between the older and newer editions of the HS.**

Subheading 0910.10 has been subdivided into two (i.e. subheadings 0910.11 and 0910.12) through the HS 2012 Amendments to provide separate identification of crushed or ground ginger. New subheadings 0910.11 and 0910.12 cover “ginger, neither crushed nor ground” and “ginger, crushed or ground”, respectively. According to the Correlation Tables, the relevant part of the correlation between the 2007 and 2012 editions of the HS is as follows.

HS 2007	HS 2012
0910.10	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: right;">→</div> <div style="text-align: left;">0910.11</div> </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: right;">→</div> <div style="text-align: left;">0910.12</div> </div>

The method shown in Table 1-1 of Part 4 applies to this HS amendment.

- (ii) Apply the original origin criteria and consider the additional descriptions (i.e. exclusions and additional requirements), if appropriate.**

(A) Where the original origin criterion is “change in tariff subheading (CTSH)”:

In accordance with the method shown in Table 1-1 of Part 4, the updated origin criteria are described as follows. The updated origin criteria have exclusions which do not allow change from goods of the other new subheading as origin conferring manufacture in order to maintain the condition of the original origin criterion.

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	0910.10	0910.11	CTSH <u>except from subheading 0910.12</u>
		0910.12	CTSH <u>except from subheading 0910.11</u>

- (B) Where the original origin criterion is “change in tariff heading (CTH)”:

In this case, the extent of transposition is within the range of a heading and is less than that of changes required by the original origin criteria (i.e. change of heading (CTH)). Thus, the exclusions can be deleted. In other words, the exclusions make no sense because the origin criterion requires a change in heading whereas the excluded subheading belongs to the same heading (i.e. heading 09.10). Therefore, the updated origin criteria for new subheadings 0910.11 and 0910.12 (HS 2012) remain the same as the original criterion.

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTH	0910.10	0910.11	CTH
		0910.12	CTH

- (C) Where the original origin criterion is “change in Chapter (CC)”:

For the same reason noted in (B) above in this section, the updated origin criteria for subheadings 0910.11 and 0910.12 (HS 2012) remain the same as the original criterion.

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CC	0910.10	0910.11	CC
		0910.12	CC

Example 2: Creation of subheading 0603.15 (lilies)

- (i) **Identify the type of technical update according to the correlation between the older and newer editions of the HS.**

As shown in Part 3 (Example 1), the relevant part of the correlation between the 2007 and 2012 editions of the HS is as follows.

HS 2007	HS 2012
0603.19	0603.15
	0603.19

The method shown in Table 1-1 of Part 4 applies to this HS amendment.

(ii) Apply the original origin criterion/criteria and consider the additional descriptions (i.e. exclusions and additional requirements), if appropriate.

(A) Where the original origin criterion is “change in tariff subheading (CTSH)”:

In accordance with the method shown in Table 1-1 of Part 4, the updated origin criteria have exclusions which do not allow change from goods of the other subheading as origin conferring manufacture. However, the exclusions may be deleted, considering that the individual plant cannot be altered by processing (See Part 6).

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	0603.1 9	0603.1 5	CTSH <u>except from subheading 0603.19</u>
		0603.1 9	CTSH <u>except from subheading 0603.15</u>

(B) Where the original origin criterion is “change in tariff heading (CTH)”:

In this case, the extent of transposition is within the range of a heading and is less than that of changes required by the original origin criteria (i.e. change of heading (CTH)). Thus, the exclusions can be deleted. In other words, the exclusions make no sense because the origin criterion requires the change in heading while the excluded subheading belongs to the same heading (i.e. heading 06.03). Therefore, the updated origin criteria for new subheadings 0603.15 and 0603.19 (HS 2012) remain the same as the original criterion.

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTH	0603.1 9	0603.1 5	CTH
		0603.1 9	CTH

(C) Where the original origin criterion is “change in Chapter (CC)”:

For the same reason noted in (B) above in this section, the updated origin criteria for subheadings 0603.15 and 0603.19 (HS 2012) remain the same as the original criterion.

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CC	0603.1 9	0603.1 5	CC
		0603.1 9	CC

Example 3: Deletion of subheading 2914.21 (camphor)

- (i) Identify the type of technical update according to the correlation between the older and newer editions of the HS.

As shown in Part 3 (Example 2), the relevant part of the correlation between the HS 2007 and the HS 2012 is as follows.

HS 2007	HS 2012
2914.21	2914.29
2914.29	

The method shown in Table 2-1 of Part 4 applies to this HS amendment.

- (ii) Apply the original origin criteria and consider the additional descriptions (i.e. exclusions and additional requirements), if appropriate.

- (A) Where the original origin criteria are “change in tariff subheading (CTSH)”:

In accordance with the method shown in Table 2-1 of Part 4, the updated origin criteria are described as follows.

Origin criteria (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	2914.21	2914.29	<i>(Camphor): CTSH; or change from goods of subheading 2914.29 (other than camphor)</i>
CTSH	2914.29		
			<i>(Other): CTSH; or change from camphor of subheading 2914.29</i>

- (B) Where the original origin criteria are “change in tariff heading (CTH)”:

In this case, the extent of transposition is within the range of the heading and is less than that of changes required by the original origin criteria (i.e. change of heading (CTH)). Thus, the additional descriptions need to be deleted. Consequently, the updated origin criterion for new subheading 2914.29 remains the same as the original criteria.

Origin criteria (original)	HS code (older edition)	HS code (later edition)	Origin criterion (updated)
CTH	2914.21	2914.29	CTH
CTH	2914.29		

The same applies to cases where the original origin criteria are “change in Chapter (CC)”, for identical reasons.

- (C) Where the original origin criteria are “change in tariff subheading (CTSH)” for subheading 2914.21 and “change in tariff heading (CTH)” for subheading 2914.29:

The extent of transposition is less than that of changes required by the original origin criteria only for goods of subheading 2914.29 (HS 2007). Therefore, only the additional descriptions for goods derived from subheading 2914.29 (HS 2007) are deleted, and the updated origin criteria are described as follows.

Origin criteria (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	2914.2 1	2914.2 9	<i>(Camphor): CTSH; or change from goods of subheading 2914.29 (other than camphor)</i>
CTH	2914.2 9		

Example 4: Subdivision of subheading 0101.10 (horses and asses)

- (i) **Identify the type of technical update according to the correlation between the older and newer editions of the HS.**

According to the Correlation Tables, the relevant parts of the correlation between the 2007 and 2012 editions of the HS are as follows.

HS 2007	HS 2012
0101.10	0101.21
	0101.29
	0101.30
0101.90	0101.90

As a result of these HS amendments, pure-bred breeding horses were transferred from subheading 0101.10 (HS 2007) to subheading 0101.21 (HS 2012), and pure-bred breeding asses were transferred from subheading 0101.10 (HS 2007) to subheading 0101.30 (HS 2012). In addition, non-pure-bred breeding horses were transferred from subheading 0101.90 (HS 2007) to subheading 0101.29 (HS 2012), and non-pure-bred breeding asses were transferred from subheading 0101.90 (HS 2007) to subheading 0101.30 (HS 2012). The other goods (i.e. mules and hinnies) remained in subheading 0101.90.

These amendments do not correspond to any type shown in Tables 1 to 4 of Part 4. However, the relevant origin criteria can be technically updated by the combination of methods shown in Tables 1-1, 1-2 and 2-1 of Part 4.

- (ii) **Apply the original origin criteria and consider the additional descriptions (i.e. exclusions and additional requirements), if appropriate.**

- (A) Where the original origin criteria are “change in tariff subheading (CTSH)”:

In accordance with the combination of methods shown in Tables 1-1, 1-2 and 2-1 of Part 4, the updated origin criteria are described as follows. The updated origin criteria have exclusions which do not allow change from certain goods as origin conferring

manufacture. However, the exclusions may be deleted, considering that the pure-bred breeding animals cannot be manufactured from non pure-bred breeding animals by processing or vice versa (See Part 6).

Origin criteria (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	0101.1 0	0101.2 1	CTSH <u>except from pure-bred breeding animals of subheading 0101.30</u>
		0101.2 9	CTSH <u>except from non-pure-bred breeding animals of subheading 0101.30 or from subheading 0101.90</u>
		0101.3 0	<i>(Pure-bred breeding animals): CTSH except from subheading 0101.21; or change from non-pure-bred breeding animals of this subheading</i> <i>(Other): CTSH except from subheading 0101.29 or 0101.90; or change from pure-bred breeding animals of this subheading</i>
CTSH	0101.9 0	0101.9 0	CTSH <u>except from subheading 0101.29 or non-pure-bred breeding animals of subheading 0101.30</u>

(B) Where the original origin criteria are “change in tariff heading (CTH)”:

In this case, the extent of transposition is within the range of a heading and is less than that of changes required by the original origin criteria (i.e. change of heading (CTH)). Thus, the additional descriptions are deleted. Consequently, the updated origin criteria for the relevant new subheadings remain the same as the original criteria.

Origin criteria (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTH	0101.1 0	0101.2 1	<i>CTH</i>
		0101.2 9	<i>CTH</i>
		0101.3 0	<i>CTH</i>
		0101.9 0	<i>CTH</i>

The same applies to cases where the original origin criteria are “change in Chapter (CC)”, for identical reasons.

- (C) Where the original origin criteria are “change in tariff subheading (CTSH)” for subheading 0101.10 and “change in tariff heading (CTH)” for subheading 0101.90:

The extent of transposition is less than that of changes required by the original origin criteria only for goods of subheading 0101.90 (HS 2007). Therefore, only the additional descriptions for goods derived from subheading 0101.90 (HS 2007) are deleted, and the updated origin criteria are described as follows.

Origin criteria (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	0101.10	0101.21	CTSH <u>except from pure-bred breeding animals of subheading 0101.30</u>
		0101.29	CTH
		0101.30	<i>(Pure-bred breeding animals): CTSH except from subheading 0101.21; or change from non-pure-bred breeding animals of this subheading</i> <i>(Other): CTH</i>
CTH	0101.90	0101.90	CTH

In addition to typical examples shown above, there are more complicated cases of HS amendments such as mercury compounds of subheading 2852.00 (HS 2012) and sanitary towels, etc. of subheading 9619.00 (HS 2012). The technical updates of those cases need to be examined according to the relevant origin criteria and the correlations between the two relevant editions of the HS.

Moreover, if the original origin criteria have descriptions of specific HS codes (e.g. except from Chapter XX), those codes need to be updated, taking into account the extent of the requirement of origin criteria and the correlations between the two relevant editions of the HS.

6. Possibility for Simplification of Rules of Origin

In Parts 4 to 5, the methods of technical update which entail no change in the contents of the original origin criteria were explained. These methods are effective in many cases. However, in some cases, the descriptions of the updated origin criteria can be so lengthy and complicated that they are not user-friendly. In order to solve this problem, it would be helpful to consider simplifications of the updated origin criteria by deleting descriptions about technically or physically impossible changes.

For example, the updated origin criteria for subheadings 0603.15 and 0603.19 are shown as follows (Part 5 - Example 2 - (A)).

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	0603.19	0603.15	CTSH <u>except from subheading 0603.19</u>
		0603.19	CTSH <u>except from subheading 0603.15</u>

Subheading 0603.15 (HS 2012) covers lilies (*Lilium* spp.) and subheading 0603.19 (HS 2012) covers cut flowers, etc. of a kind not included in subheadings 0603.11 through 0603.15. In accordance with the original origin criterion for goods of subheading 0603.19 (HS 2007), the updated origin criterion for subheading 0603.15 excludes changes from “cut flowers etc. of other than lilies” to “cut flowers etc. of lilies”. However, this exclusion should not be necessary as it is evident that the individual plant cannot be altered by processing. The same applies to subheading 0603.19 (HS 2012). Therefore, the updated origin criteria for subheadings 0603.15 and 0603.19 can be described as being the same as the original criterion.

Origin criterion (original)	HS code (older edition)	HS code (later edition)	Origin criteria (updated)
CTSH	0603.19	0603.15	CTSH
		0603.19	CTSH

There are many similar cases in which the updated origin criteria could be simplified by deleting descriptions about technically or physically impossible changes. However, technical knowledge may be required in order to determine whether the processing is technically or physically impossible. This approach would consequently require careful consideration.

**GUIDE FOR TECHNICAL UPDATE OF PREFERENTIAL RULES OF ORIGIN
DECEMBER 2015
ANNEXES UPDATED IN JANUARY 2017**

How to update existing Preferential Rules of Origin in relation to changes in the Harmonized System.

Full text of the Guide with Annexes:

<http://www.wcoomd.org/~media/wco/public/global/pdf/topics/origin/instruments-and-tools/guidelines/guide-for-updating-the-preferential-rules-of-origin-en.pdf?db=web>