Asia-Pacific
Economic Cooperation

Compendium on Rules of Origin, 1997

APEC Committee on Trade and Investment (CTI)

1997

FOREWORD

This compendium is the result of an initiative by the APEC Sub-Committee on Customs Procedures to develop a guide on Rules of Origin within APEC. The emphasis has been on creating a compendium suitable for use within the business community, to better inform importers and exporters of current Rules of Origin trading arrangements.

This compendium has been jointly prepared by Australia and Japan, while APEC member economies themselves have contributed the content for their respective rules. Their input is greatly appreciated in creating what is hoped will be a valuable tool for businesses and other interested parties within the APEC community.

Every attempt has been made to provide readers with topical and accurate information. However, this publication is not designed to serve as a substitute for the relevant statutory provisions. Readers should therefore refer also to the relevant economies' legislative provisions, which may change at any time.

It should be noted that some APEC economies have advised that they do not have either preferential or non-preferential Rules of Origin and therefore they will not be specifically referred to in the body of the compendium.

ASIA-PACIFIC ECONOMIC COOPERATION
COMPENDIUM ON RULES OF ORIGIN

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1.1 LIST OF APEC MEMBERS

Australia

Brunei Darussalam ‡

Canada

Chile‡

People's Republic of China †

Hong Kong †

Indonesia

Japan †

Korea

Malaysia ‡

Mexico

New Zealand ‡

Papua New Guinea ‡

The Republic of the Philippines ‡

Singapore

Chinese Taipei †

Thailand ‡

USA

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† Economy has no preferential ROO
‡ Economy has no non-preferential ROO

1.2 INTRODUCTION TO RULES OF ORIGIN

Rules of Origin

Rules of origin (ROO) are the basis on which the country of origin of goods is determined for international trade purposes. They are used to determine the country in which goods have been produced or manufactured in cases where the production or manufacture took place in more than one country. These rules are necessary to ensure that provisions applying selectively on the basis of origin are not avoided by minimal processing, trade diversion and similar circumvention methods.

There are two types of ROO:

Non-preferential Rules of Origin

Non-preferential rules of origin are important for a number of reasons, including the application of tariffs, quotas, dumping and marketing of goods.

Preferential rules of origin

Preferential rules of origin are used to determine goods which may enter a country under preferential treatment. That is, they are used to establish whether the goods are eligible for special treatment under a trading arrangement between two or more economies. Preferential (or reduced) rates of duty are applied to goods which are found to be the products or manufacture of a country defined as a preference country. The principal objective of preferential rules of origin is to ensure that benefits are restricted to those goods which originate and are traded within the particular preference area.

Substantial Transformation

Annex D1 of the International Kyoto Convention provided the international basis for signatories to determine the origin of goods produced in more than one country. Without being definitive about the process, it indicated that the origin of goods should be determined by the last/final country in which "substantial transformation" of the goods took place. It indicated that "substantial transformation" could be determined by applying one of three different methods:

- percentage of value added;
- change in tariff heading; or
- specified process of manufacture.

Within APEC, some economies use the "value-added" method, others use the "change in tariff heading" method, and some use a combination, as a means of determining substantial transformation and thereby the origin of products.

Value-added

Under this method, a minimum percentage of the value of a good must have been added within the country or preferential area for which origin is being claimed. There are a range of minimum percentages applied under different trade agreements described in this compendium. There may also be other requirements which need to be satisfied.

Change in Tariff Heading

Under this method, "substantial transformation" is said to have occurred if a good is classified to a different tariff heading than that of its component materials after production

In some specific instances, change of tariff heading alone will not necessarily confer origin. In such instances, supplementary criteria must be used to determine whether the change in tariff heading confers origin.

Specified Process of Manufacture

Under this method, the origin is based on the country in which a specified manufacturing or processing operation for a specific product is undertaken.

Generalised System of Preferences

The Generalised System of Preferences (GSP) is a system subscribed to by many countries, which gives preferential treatment to developing countries on certain types of goods. The GSP will not be discussed in this compendium, but a comprehensive account of it may be found in the United Nations Conference on Trade and Development (UNCTAD) volume entitled *Digest of Rules of Origin: Generalized System of Preferences*. In this compendium, some APEC members have chosen to list GSP-based preferential tariff treatments among their trade initiatives. However, this should not be taken as a comprehensive list of APEC members which subscribe to the GSP. For information on which countries subscribe to the GSP, please refer to the above-mentioned volume.

1.3 PREFERENTIAL TRADE INITIATIVES OF APEC MEMBERS

Economy	Trade initiatives	Other economies involved	Method used
Australia	ANZCERTA	New Zealand	Value-added - 50%
	CANATA	Canada	Value-added - 25% or 75%
	PATCRA	Papua New Guinea	Value-added - 50%
	SPARTECA	All Forum Island Countries	Value-added - 50%
	Developing Country Preferential Rates		Value-added - 50%
Canada	NAFTA	USA Mexico	CTH & Value-added*
	CANATA	Australia	Value-added - 50%
	New Zealand Trade Agreement	New Zealand	Value-added - 50%
	CARIBCAN (under GSP)	†	Value-added - 50%
	British Preferential Tariff Treatment	†	Value-added - 50%
	Least Developed Developing Country Rates (under GSP)	†	Value-added - 50%
Chile	LAIA/ALADI	Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Mexico, Peru, Uruguay, Venezuela	CTH & Value-added - 50% **
Korea	Bangkok Agreement under ESCAP	India, Sri Lanka, Bangladesh, etc (5 members) †	CTH
	TNDC	Israel, Romania, Uruguay, etc (13 members) †	CTH
Malaysia	CEPT	ASEAN members - Indonesia, Malaysia, Philippines, Singapore, Thailand	Value-added - 40%
	Malaysia Australia Trade Agreement	Australia	Value-added - 25%
	Malaysia New Zealand Trade Agreement	New Zealand	Value-added - 25%

1.3 PREFERENTIAL TRADE INITIATIVES OF APEC MEMBERS (Cont.)

Economy	Trade initiatives	Other economies involved	Method used
New Zealand	ANZCERTA	Australia	Value-added - 50%
	New Zealand Canada Trade and Economic Agreement	Canada	Value-added - 50%
	SPARTECA	All Forum Island countries	Value-added - 50% or 45%
	New Zealand Malaysian Trade Agreement	Malaysia	Value-added - 50%
	United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands	As described	Value-added - 50%
	Less and Least Developed Countries (under GSP)	†	Value-added - 50%
Papua New Guinea	Trade Agreement among the Melanesian Spearhead Countries	Vanuatu, Solomon Islands, Fiji	CTH
Singapore	CEPT	ASEAN members - Indonesia, Malaysia, Philippines, Singapore, Thailand	Value-added - 40%
Thailand	GSTP	†	Value-added - 50% or 60%
	CEPT	ASEAN members - Indonesia, Malaysia, Philippines, Singapore, Thailand	Value-added - 40%
United States of America	ATPA	Bolivia, Ecuador, Colombia, Peru	Value-added - 35%
	APTA	Canada	CTH & Value-added
	CBI	Caribbean Basin	Value-added - 35%
	GSP	†	Value-added - 35%
	NAFTA	Canada Mexico	CTH & Value-added
	FAS	Marshall Islands Federated States of Micronesia Republic of Palau	Value-added - 35%
	Insular Possessions of the United States	†	Value-added - 30/50%
	IFTA	Israel	Value-added - 35%
	Products of the West Bank, Gaza Strip or a Qualifying Industrial Zone	As described	Value-added - 35%

† Details not provided
* Both methods used - for details see Canada's appendix on NAFTA rules
** Primary criterion used is change in tariff heading

1.4 SUMMARY OF NON-PREFERENTIAL RULES OF ORIGIN

The following are summary tables of the non-preferential rules of origin for each APEC member.

Abbreviations

In the summary tables, the following abbreviations are used:

AD	Anti-dumping duties
CD	Countervailing duties
CO	Certificate of origin
EC	Export control
GP	Government procurement
IC	Import control
IQ	Import quota
MFN	Most-favoured nation
MK	Marking of origin
QR	Quantitative restriction
TQ	Tariff quota
TS	Trade statistics

Member: Australia	
Purposes	For imports AD, CD, MK, TS
Legislation	Customs Act 1901, Section 4 and Section 153Q
Available documents	
Authorities:	
for legislation for implementation	Customs Service Customs Service
Determination of origin	Importers' declaration Customs' confirmation Commercial invoices and other documents
Other conditions or requirements	Nil
Review procedures	Affected parties may appeal to the Federal Court for review of a decision.

Member: Canada	
Purposes	For imports MFN rates, AD, CD, IQ, MK, TS, GP
Legislation	Customs Act: Section 35.01, 35.1 Customs Tariff: Sections 13, 23, 46, 59-61, 63.1, 64 Customs Regulations
Available documents	
Authorities:	
for legislation for implementation	Revenue Canada, etc. Revenue Canada, etc.
Determination of origin	Importers' declaration, Documentary evidence
Other conditions or requirements	(Marking rules for a good from a NAFTA member are subject to other conditions or requirements.)
Review procedures	Affected parties may appeal an origin decision with regard to tariff preference.

1.4 SUMMARY OF NON-PREFERENTIAL RULES OF ORIGIN (Cont.)

Member: People's Republic of China	
Purposes	For imports MFN rates, TS, MK, IC, (AD, CD, SG, TQ) For exports EC, TS, MK
Legislation	Provisional Regulations of the Customs of People's Republic of China on Origin of Import Goods, Rules of the People's Republic of China on the Place of Export Goods
Available documents	
Authorities:	
for legislation for implementation	Customs General Administration (CGA), State Council for Customs
Determination of origin	Importers' declaration, Customs' confirmation Certificates of origin and other documents
Other conditions or requirements	Nil
Review procedures	Any declarant may file a protest to local Customs, and may make an appeal to the CGA and then to the Court.

Member: Hong Kong	
Purposes	For imports MK For exports MK, TS, CO
Legislation	Trade Description Ordinance, Export Regulations of the Import and Export Ordinance, Protection of Non-Government Certificates of Origin Ordinance
Available documents	"Trade Circulars"
Authorities:	
for legislation for implementation	Trade Department, Certification Coordination Committee Customs
Determination of origin	Importers' declaration Documentary evidence
Other conditions or requirements	Nil
Review procedures	Affected parties may make a written request to the Trade Department for reconsideration or clarification.

1.4 SUMMARY OF NON-PREFERENTIAL RULES OF ORIGIN (Cont.)

Member: Japan	
Purposes	For imports MFN rates, IC, MK, TS For exports CO
Legislation	Article 68-3-4 of the Customs Directive of General Provisions for Implementing the Customs Law, Import Circular No, 34-10
Available documents	Collection of the Laws and Orders Concerning Tariff Affairs, etc.,
Authorities:	
for legislation	Ministry of Finance, Ministry of International Trade and Industry (MITI)
for implementation	Customs, MITI
Determination of origin	Importers' declaration Customs' confirmation Certificate of origin and other documents
Other conditions or requirements	Nil
Review procedures	Any person may file a protest to Customs and may make an appeal to the Minister of Finance.

Member: Republic of Korea	
Purposes	For imports MFN rates, AD, CD, SG, MK, QR, TS, GP
Legislation	Article 31-4 of the Foreign Trade Law, Article 63-5 of the Enforcement Decree of the Foreign Trade Law, Article 3-7-6 of the Foreign Trade Regulation
Available documents	*Daily Trade, HS Synthetic Manuals*
Authorities:	
for legislation	Ministry of Trade, Industry and Energy (MTIE)
for implementation	Customs Service
Determination of origin	Importers' declaration Customs' confirmation Certificate of origin and other documents
Other conditions or requirements	Direct shipment, without passing through any other country
Review procedures	Administrative review procedures operated by MTIE, procedures by way of Customs Service.

1.4 SUMMARY OF NON-PREFERENTIAL RULES OF ORIGIN (Cont.)

Member: Singapore	
Purposes	For exports CO
Legislation	Part III of the Imports and Exports Regulations 1995
Available documents	(available on the Internet)
Authorities:	
for legislation for implementation	Trade Development Board Trade Development Board, etc.,
Determination of origin	Exporters' application for the issuance of CO Documentary evidence
Other conditions or requirements	
Review procedures	Not applicable

Member: Chinese Taipei	
Purposes	For imports MFN rates, AD, CD, SG, IQ, TQ, MK, TS, GP For exports CO
Legislation	"Rules of Origin on Imported Goods" "Rules Governing the Issuance of Certificates of Origin"
Available documents	Official gazettes, etc.
Authorities:	
for legislation for implementation	Ministry of Finance and Ministry of Economic Affairs Customs
Determination of origin	Importers' declaration Customs' confirmation Documentary evidence
Other conditions or requirements	Nil
Review procedures	Any person may file a protest to Customs in accordance with Customs Law or Customs Preventive Law.

1.4 SUMMARY OF NON-PREFERENTIAL RULES OF ORIGIN (Cont.)

Member: The United States	
Purposes	For imports GP, MFN, MK, IQ (for textiles)
Legislation	Government Procurement - 19 U.S.C.2511 19 C.F.R 177.21 Marking Rules of Origin - 19 U.S.C. 1304 19 C.F.R. 102.0 Most-Favored-Nation Duty Assessment - General Note 3 to Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) Textiles and Textile Products - 7 U.S.C. 1854 19 U.S.C 3592 19 C.F.R 12.130 19 C.F.R. 102.21
Available documents	United States Code (U.S.C.) United States Code of Federal Regulations (C.F.R.) United States Customs Service administrative rulings United States federal court decisions The Harmonized Tariff Schedule of the United States (HTSUS)
Authorities:	
for legislation for implementation	United States Congress President of the U.S. and U.S. Federal Governmental departments and agencies
Determination of origin	Importers' declaration Customs' confirmation Documentary evidence
Other conditions or requirements	Nil
Review procedures	Administrative review by the United States Customs Service Judicial review by the U.S. Court of International Trade Review through an appeal to the U.S. Court of Appeals for the Federal Circuit Review by the U.S. Supreme Court.

2.1.1 AUSTRALIA: PREFERENTIAL RULES OF ORIGIN

2.1.1.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Determination of substantial transformation is on a value-added basis expressed as a percentage of factory cost. Origin is achieved when a threshold of 50 percent or more of factory cost is attributable to materials and/or processing of the country or area concerned.

2.1.1.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Trade Initiatives

Preferential rates of duty flow from the following trade initiatives:

Initiative	Agreement Status	Preference Flow
Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)	Bilateral	Reciprocal
Canada Australia Trade Agreement (CANATA)	Bilateral	Reciprocal
Papua New Guinea Australia Trade and Commercial Relations Agreement (PATCRA)	Unilateral	Non-reciprocal
Developing Country Preferential Rates	Unilateral	Non-reciprocal
South Pacific Regional Trade & Economic Cooperation Agreement (SPARTECA)	Bilateral	Non-reciprocal

Variations in Rules of Origin

Except for a few minor differences, Australia's value based schemes are essentially the same. The only differences between the schemes are:

- Each preference recipient group has its own "qualifying area" in which the minimum value-added threshold necessary to confer origin is to be achieved.
- Forum Island countries and Papua New Guinea may count the costs of cartage from the port/airport to store on foreign material inputs in the minimum value-added threshold.
- Materials partly manufactured in New Zealand, a Forum Island country or Papua New Guinea may, if substantially transformed in those countries or Australia, be treated as materials of those countries.

- A two percentage point tolerance may, in certain restrictive circumstances, be applied to the minimum value-added threshold applicable to Forum Island countries, Papua New Guinea and New Zealand.

- The minimum value-added threshold may be varied in the case of exports from New Zealand Forum Island countries and Papua New Guinea.

- A special category of wholly manufactured goods applies in the case of Papua New Guinea and New Zealand.

- A common minimum value-added threshold of 50 percent applies to all countries except Canada.

- Direct shipment is not required except for goods made in Canada.

Australia's Tariff

Australia's Tariff has preferential rates specified throughout the schedule for particular preference countries. The tariff authorises preferential rates of duty for goods sourced from preference countries that are the "produce or manufacture" of that country. The term "produce or manufacture" is interpreted in accordance with the rules of origin described below.

It is important to note that origin in this case is for preference purposes only. Thus, where goods are imported from a particular country and are not entitled to preference, their origin will not change but they will pay the general (or MFN) rate of duty.

2.1.1.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Australia's preferential rules of origin are embodied in the following legislation:

Customs Act 1901	Section 4 (definition of "unmanufactured raw products") Division 1A of Part VIII
Customs Regulations	Regulations 107A and 107B.

Other Publicly Available Documents

More detailed information on Australia's preferential rules of origin, is set out in Division 9 of Volume 8 of *the Australian Customs Service Manual* for the benefit of interested parties and Customs Officers.

Simple explanatory booklets on rules and procedures governing the entry and substantiation of entitlement to preferential rates of duty are available for the benefit of parties involved in trade emanating from New Zealand and Fiji. These are:

- *ANZCERTA 'Trans-Tasman Textile, Clothing & Footwear Rules of Origin Enquiries Protocol on Customs Procedures',*

- *ANZCERTA 'Rules Governing Entitlement to Preferential Rates of Duty for trans-Tasman Trade,*

- *SPARTECA 'Protocol on Customs Procedures for Rules of Origin Under SPARTECA Joint Australia Fiji Booklet",*

- *SPARTECA 'A Reference Handbook for Forum Island Country Exporters'.*

A booklet explaining the Procedures in respect of Determined Manufactured Raw Materials (DMRM) in regard to trade between Australia and New Zealand has also been developed.

2.1.1.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Australia's system of self-assessment for entry clearance places responsibility for correct clearance of goods through Customs on the importer. Customs' compliance monitoring usually takes place after clearance of the goods. In satisfying their obligations under this system, importers will be expected to make reasonable enquiries about preference entitlement with the exporter concerned if they are to avoid the application of penalties.

Nevertheless, importers will, in ordinary circumstances, be entitled to rely for immunity from the application of penalties, on a declaration placed by the exporter to support entitlements when preference is claimed.

Failure to substantiate a preference entitlement claimed, will mean that the normal or General rate of duty will apply to shipments of the particular goods entered in the immediately preceding 12 months.

2.1.1.5 RULES OF ORIGIN

Goods originating in a preference country may be divided into three categories:

1. Goods wholly the produce of the country (known as unmanufactured raw products');
2. Goods wholly manufactured in the country from one or more of the following:
   (a) unmanufactured raw products;
   (b) materials wholly manufactured in Australia or the preference country;
   (c) materials determined to be raw materials of the country; and
3. Goods partly manufactured in the country.

Goods Wholly the Produce of a Country (except for Canada where direct shipment is a condition)

These goods consist of unmanufactured raw products of a preference country as defined in Section 4 of the Customs Act. They are entitled, without further conditions except direct shipment from Canada, to preferential rates of duty when imported from a preference country.

Goods Wholly Manufactured in the Country

This concession allows imported materials to be deemed to be materials of the preference country. Goods in this category are entitled to preferential rates of duty without further conditions. In certain circumstances in relation to New Zealand, Canada and Papua New Guinea goods traded between the countries may be regarded as "wholly manufactured" even though the goods contain raw materials imported from third countries. The special conditions are known as the Determined Manufactured Raw Materials (DMRM) provisions and certain specified criteria must be met before the traded goods are eligible for preferential rates.

Goods Partly Manufactured in the Country

There are two conditions to preference entitlement for goods partly manufactured in the preference country/area and partly outside it. These are:

1. The last process of manufacture must be performed by the manufacturer in the preference country; and

2. Not less that 50 percent (25 percent or 75 percent in the case of Canada) of the defined factory cost must be made up of defined qualifying expenditure.

Minimum Value-added Formula

$$\frac{\text{Qualifying expenditure on materials + qualifying labour + qualifying overhead}}{} \times 100$$

Total expenditure on materials + qualifying labour + qualifying overhead

Total Expenditure on Materials

This cost includes all directly attributable costs of acquisition of material inputs into the manufacturer's store but excludes certain duties and taxes levied within the qualifying area.

Qualifying Expenditure on Materials

Qualifying expenditure is total expenditure in all instances except:

- Where the last process of manufacture on materials occurs outside the qualifying area, there is no qualifying expenditure except the cost of cartage from wharf to store in the case of Forum Island manufactures; and

- Where materials are processed within the qualifying area from imported raw materials last processed outside that area, the total cost of those materials to the final manufacturer in the preference country is reduced by the cost of such imported raw materials consumed in the processing.

Note: Where the qualifying area is Australia/New Zealand or Australia/Forum Island country or Australia/Papua New Guinea and the qualifying expenditure equals or exceeds 50 percent of total expenditure on the processed materials by the factory performing the last process of manufacture, qualifying expenditure may become total expenditure.

Qualifying Expenditure on Labour and Overhead

Labour and overhead costs which may form part of qualifying expenditure are prescribed in Regulations 107A and 107B. Unless costs are prescribed, they cannot form part of qualifying expenditure.

Further constraints apply to prescribed costs in that they may be included in qualifying expenditure only to the extent that they:

(a) are incurred by the manufacturer of the goods;

(b) relate directly or indirectly to the production of the goods;

(c) can reasonably be allocated to the production of the goods;

(d) are not specifically excluded; and

(e) are not included elsewhere.

2.1.1.6 DIRECT SHIPMENT PROVISIONS

Direct shipment is not required except for preferential imports from Canada.

2.1.1.7 OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

2.1.1.8 REVIEW PROCEDURES

The Australian Customs Service maintains internal review procedures. Any party may request an internal review of a decision denying entitlement to preferential rates of duty.

Where a decision is taken to require the payment of full duty on shipments presented for clearance through Customs, such payments may be made "under protest" by importers. This procedure will give

rise to a right to challenge the decision to require full duty allowing an application for review to be made to the Administrative Appeals Tribunal.

The Administrative Appeals Tribunal is an independent body that is empowered to subject the decision to a full merit review. The finding of the Tribunal will be binding on Customs unless successfully appealed to the Federal Court.

2.1.1.9 CONTACTS

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2.1.2 AUSTRALIA: NON-PREFERENTIAL RULES OF ORIGIN

2.1.2.1 In regard to goods imported into Australia Non-preferential Rules of Origin (ROO) are used to determine the origin of goods originating in a country that is not a preference country. Non-preferential rules of origin may be used to cover requirements for, inter alia:

- application of anti-dumping measures
- application of countervailing measures
- trade statistics
- labelling of goods

2.1.2.2 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Determination of substantial transformation is on a value-added basis expressed as a percentage of factory cost. There are no supplementary rules for non-preferential ROO.

2.1.2.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Australia's non-preferential ROO are embodied in the following legislation:

Customs Act 1901	Section 4 (definition of "unmanufactured raw products") Section 153Q-Division 1A of part VIII

In addition there are references to the origin of goods in the following specific instances:

- **Dumped & Subsidised Goods**

  Section 269 of the Customs Act contains the procedural matters for the conduct of inquiries and imposition of anti-dumping and countervailing duties. Section 269T and 269TAC contain specific provisions for the establishment of origin.

  Essentially for dumping purposes the "Country of Origin" is the country where the goods are produced or manufactured. The criterion for determining origin for unmanufactured raw products is that they be wholly obtained in the country while for other goods the criterion is the country in which the last significant process in the manufacture or production of the goods was performed.

- **Trade Statistics**

  Section 71K and 71L of the Customs Act require that importers or their agents provide certain information when lodging Customs import entries for Trade Statistics. The provision of the correct origin is one of these requirements.

- **Marking of Goods**

  The Commerce (Trade Descriptions) Act and Commerce (Imports) Regulation 8(c)(i) provide that certain goods should be marked in a particular manner. As a general rule, the country of origin is the country where operations give the product its essential qualities and character. The relevant guidelines state that it is what the words "Made in....." are likely to mean to a typical consumer of the product that matters, not a technical or cost analysis of the product's content.

- **Responsible Authority**

The Australian Customs Service is responsible for introducing and revising the instruments providing the non-preferential rules of origin for each non-preferential rules of origin scheme.

- **Documents**

  There are currently no other publicly available documents in respect to non-preferential ROO. The ACS, however, distributes administrative guidelines and directions in regard to a number of issues in Australian Customs Service Manuals.

2.1.2.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

It is the responsibility of the beneficial owner of goods, or his/her agent, to correctly enter goods for Customs purposes. Customs may examine cargo against documents at the time of entry or undertake investigations at a later stage to determine whether the origin has been correctly declared. The Australian Customs Service determines the country/area of origin of a good for each non-preferential rules of origin scheme.

Generally the origin of goods is determined when an entry for home consumption is lodged by the owner/agent and it is accepted by Customs. The ACS reserves the right to audit such entries and after examination reassess them. In addition decisions can be made prior to the lodgement of an entry or before shipment of goods has been made if application is made to the ACS. In respect of goods subject to anti-dumping or countervailing inquiry the origin of the exported goods is determined during the course of the investigation.

The beneficial owner of goods, or his/her agent, is required to show the correct country of origin on a Customs entry which is usually based on information contained in commercial invoices or way-bills. The owners or agent may be required at some later date to produce documentary evidence to support the claimed origin.

2.1.2.5 RULES OF ORIGIN

Goods originating in a non-preference country may be divided into three categories:

1. Goods wholly the produce of the country (known as 'unmanufactured raw products');

2. Goods wholly manufactured in the country from one or more of the following:

   (i) unmanufactured raw products;

   (ii) materials wholly manufactured in Australia or the non-preference country, or Australia and the non-preference country;

   (iii) materials determined to be raw materials of the country; and

3. Goods partly manufactured in the country.

There are two conditions for goods partly manufactured in a country. These are:

1. The last process of manufacture must be performed by the manufacturer in the non-preference country, and

2. Their allowable factory cost is not less than the specified percentage of their total factory cost.

This specified percentage is:

75 percent where the goods are of a kind commercially manufactured in Australia (50percent for Christmas Island, Cocos Island and Norfolk Island); or

25 percent if the goods are of a kind not commercially manufactured in Australia.

2.1.2.6 OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements necessary for establishing origin.

2.1.2.7 REVIEW PROCEDURES

While there are no formal review procedures prescribed in the Customs Act an internal review of a decision may be made where an objector can supply further information to Customs. An objector may at any time appeal to the Federal Court under the Administrative Decisions Judicial Review Act for review of a decision.

2.1.2.8 CONTACTS

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2.2 BRUNEI DARUSSALAM: RULES OF ORIGIN

Brunei Darussalam applies the ASEAN Common Effective Preferential Tariff (CEPT) Scheme. Please see Appendix 3.4 for a copy of the ASEAN CEPT Agreement in relation to ROO.

2.3.1 CANADA: PREFERENTIAL RULES OF ORIGIN

2.3.1.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Determination of substantial transformation is dependent on the trade agreement. Under the NAFTA substantial transformation may be based on tariff shift rules, tariff shift and regional value content or regional value content only. Rules containing a regional value content requirement will specify the percentage of the good's value that must originate from production occurring within the NAFTA territory. See Appendix 3.1 for further explanation of regional value content.

For other trade agreements such as the Australian or New Zealand Trade Agreement and the like, determination of substantial transformation is on a cost of processing basis expressed as a percentage. Origin is achieved when a threshold of 50 percent or more of factory cost is attributable to materials and/or processing of the country or area concerned.

2.3.1.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Trade Initiatives

Preferential rates of duty flow from the following trade initiatives:

Initiative	**Agreement Status**	**Preference Flow**
North American Free Trade Agreement (NAFTA)	Trilateral	Reciprocal
Canada Australia Trade Agreement (CANATA)	Bilateral	Reciprocal
New Zealand Trade Agreement	Bilateral	Reciprocal
Caribbean Trade Agreement (CARIBCAN)*	Unilateral	Non-reciprocal
British Preferential Tariff Treatment	Unilateral	Non-reciprocal
Least Developed Developing Country Rates*	Unilateral	Non-reciprocal

* = GSP based tariff treatment

Variations in Rules of Origin

The rules of origin for most of Canada's preferential tariffs are generally the same. The area where a difference is quite visible though is between the NAFTA and all other tariff treatments.

Canada's Tariff

Canada's Tariff has preferential rates (MFN) specified throughout the schedule for most countries. Please note that Canada refers to the MFN more as a base rate or non-preferential rate as it offers the MFN to most countries in the world. There are currently only four countries to which Canada applies the General rate of duty.

The Tariff authorizes preferential (MFN) rates of duty for goods from preference countries that originate in that country. This is achieved when 50 percent of the cost of production of the goods was incurred by the industry of one or more of the countries that are beneficiaries of the Most-Favoured-Nation Tariff or the British Preferential Tariff, or by the industry of Canada, and the goods were finished in a country that is a beneficiary of the MFN or the BPT in the form in which they were imported into Canada.

The General Tariff applies to goods that are not considered to originate in a preference country.

2.3.1.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Canada's preferential rules of origin are embodied in the following legislation:

Customs Act	Section 35.1 (Origin of Goods)
Customs Tariff	Sections 13, 21, 22-45, 47-58
Customs Regulations	- Proof of Origin of Imported Goods Regulations - NAFTA Certification of Origin Regulations - Rules of Origin Regulations - General Preferential Tariff and Least Developed Developing Countries Regulations - NAFTA Rules of Origin for Casual Goods Regulations - Caribcan Rules of Origin Regulations - New Zealand and Australia Rules of Origin Regulations - Rules of Origin Respecting the Most Favored Nation - British Preferential Tariff

Other Publicly Available Documents

A number of guides and pamphlets are available to the importing public on a variety of topics. In addition to the various publications Customs D memorandum are also available to the public. These D memorandum contain regulations, general guidelines and pieces of the legislation common to the area of concern addressed in the memorandum.

2.3.1.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Canada's system of self-assessment for entry clearance places the responsibility for correct clearance of goods through Customs on the importer. Customs compliance monitoring for issues such as origin or tariff classification usually takes place after clearance/release of goods.

It is up to importers and/or their brokers to ensure, to the best of their abilities, that they are entitled to the tariff preference that they claim. Canada does not usually impose penalties for origin infractions unless they are repetitive or fraudulent in nature.

Failure to substantiate a preference entitlement claimed will result in the MFN (usually) rate being applied against that particular shipment and possibly to other shipments of identical goods imported during the review period. Canada can re-determine origin in various cases for a period of 30 days to two years.

2.3.1.5 RULES OF ORIGIN

Goods originating in a preference country may be divided into a number of categories depending on the trade agreement. The NAFTA contains many categories whereas all other agreements rely on a cost of processing criteria.

Under the Australia and New Zealand Trade Agreements there is no distinction between wholly obtained and produced or partly obtained and produced. In order for goods to originate in either of these countries not less than 50 percent of the cost of production of the goods must be incurred in New Zealand or Australia, depending on the agreement, or Canada, or both and the goods must be finished in New Zealand or Australia in the form in which they were imported into Canada.

In calculating the cost of production the cost of the following items shall not be included or considered:

(a) outside packing and expenses related thereto, required for the transportation of the goods, not including packing in which the goods are ordinarily sold for consumption;

(b) gross profit of the manufacturer or exporter and the profit or remuneration of any trader, broker or other person dealing in the article in its finished manufactured condition;

(c) royalties;

(d) customs or excise duty or tax paid or payable on imported materials;

(e) carriage, insurance and other charges from the place of production or manufacture in the country of origin to the port of shipment; and

(f) any other costs or charges incurred or to be incurred subsequent to the completion of the manufacture of the goods.

Cost of production includes:

(a) materials (exclusive of duties and taxes);

(b) labour; and

(c) factory overhead.

For the Most Favoured Nation or British Preferential Tariff Treatment the requirements are similar to those noted above with a minor exception. Where the MFN is claimed the 50 percent cost of production may be a combination of MFN and/or BPT beneficiaries and Canada or any combination thereof. Where the BPT is claimed the 50 percent cost of production may be a combination of BPT beneficiaries or BPT beneficiaries and Canada. The goods must also be finished in the form in which they were imported into Canada in either a BPT or MFN beneficiary country, that is, where the BPT is being claimed the goods must have been finished in a BPT eligible country.

Under the NAFTA there are a number of different categories that goods may originate under. They are:

(a) Goods wholly obtained or produced entirely in the territory of one or more of the NAFTA countries.1

(b) The good is produced entirely in the territory of one or more of the NAFTA countries and satisfies the specific rule of origin as set out in Annex 401 of the NAFTA. Note that the rule may be a tariff shift rule, regional value content rule or a combination thereof.

(c) The good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

(d) The good is produced in the territory of one or more of the NAFTA countries and meets the regional value content rule but not the tariff shift as:

1. the good was imported in to the NAFTA country in an unassembled or disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System; or

2. the good incorporated one or more non-originating materials, provided for as parts under the HS, which could not undergo a change in tariff classification because the heading provided for both the good and its parts and was not further subdivided.

1. Goods wholly obtained are defined as:

(a) Mineral goods extracted in the territory of one or more of the Parties

(b) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or more of the Parties

(c) Live animals born and raised in the territory of one or more of the Parties

(d) Goods obtained from hunting, trapping or fishing in the territory of one or more of the Parties

(e) Goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag

(f) Goods produced on board factory ships from the goods referred to in subparagraph
(g) Provided such factory ships are registered or recorded with that Party and fly its flag

(h) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed

(i) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a non-Party

(j) Waste and scrap derived from:

(i) production in the territory of one or more of the Parties, or

(ii) used goods collected in the territory of one or more of the Parties, provided such goods are fit only for the recovery of raw materials; and

(k) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production.

2. Goods produced entirely in the territory that meet a specific rule of origin are those that incorporate non-NAFTA materials into the finished product as per the rules contained in Appendix B.

3. Goods that are produced exclusively from originating materials are those that are a combination of wholly obtained or produced and those that originate as a result of meeting a specific rule of origin.

4. Goods that meet the RVC only but do not meet a tariff shift are exactly that. In the two particular instances noted tariff shift is not possible and as such RVC provisions only apply. The RVC is explained in Appendix 3.1.

2.3.1.6 DIRECT SHIPMENT PROVISIONS

Direct shipment, on a through bill of lading, is a requirement for all goods where preferential treatment is claimed. Transshipment is generally allowed for all tariff treatments other than the BPT provided that the goods meet certain conditions including that the goods remain in Customs control while in transit. There are certain conditions that apply to transshipment where the BPT is concerned and amongst others is the condition that the goods may be transshipped through a BPT beneficiary country only.

Note that Canada has provided special orders where direct shipment conditions can not be met, for example, land locked countries, and will also provide exceptions to the rule in extenuating circumstances, for example, dock workers strike at the port of Vancouver.

2.3.1.7 OTHER CONDITIONS OR REQUIREMENTS

For the MFN, BPT, Australia or New Zealand tariff treatments there are no other requirements except those as indicated above. Under the NAFTA there are various other conditions that may or may not have to be met depending on the situation. One of the most notable of the conditions is that the production process that conferred origin on the goods must not be the result of an attempt to circumvent the regulations.

2.3.1.8 REVIEW PROCEDURES

The Customs Department at Revenue Canada maintains internal review procedures. There are varying levels of review and varying review periods. The review may be generated by Customs officers or at the request of the importer/broker. Reviews are generally referred to as either refund claims or appeals.

When a decision is taken to assess a higher duty rate on a particular shipment the duty must be paid, or a bond posted, before an appeal may be filed. The appeal period is generally within up to one year from the date that the goods were accounted for, that is, presented to Customs.

There are two internal levels of appeal with the department and two external. The first external level of appeal is The Canadian International Trade Tribunal, which is an independent body that

is empowered to receive appeals second internal level of appeal. The second level of external appeal is to the Federal Court of Canada who will hear appeals based strictly on a point of law.

2.3.1.9 CONTACTS

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2.3.2 CANADA: NON-PREFERENTIAL RULES OF ORIGIN

2.3.2.1 OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

To begin with, this outline has not considered the Most Favored Nation Tariff Treatment as non-preferential due to the fact that it was cited as a preferential treatment in the Australian request for Canada's preferential rules of origin. As such the MFN rules can be found in Canada's Compendium of Preferential rulesof Origin.

In addition to using rules of origin for purposes of tariff treatment Canada uses rules of origin for the application of:

1. country of origin marking
2. trade statistics purposes/invoice requirements
3. application of import quotas
4. application of countervailing duties
5. application of anti-dumping duties
6. government procurement purposes (a version of the NAFTA rules of origin are used for this purpose)

Note Canada will assess the General Tariff to goods exported from the four countries with which we have no trade agreements or in cases where none of the preferential rules of origin can be met.

2.3.2.2 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

Canada has a number of different rules of origin for all non-preference purposes. For country of origin marking Canada has two sets of rules, one for goods imported from a NAFTA country and another for goods imported from non-NAFTA countries. For NAFTA countries the marking rules are generally based on wholly obtained or produced rules or tariff shift rules; for non-NAFTA countries the rule is that of substantial transformation.

For trade statistic/invoice requirements the rule of origin is either growth, produce or manufacture. Manufacture is further defined as substantially transformed in the country specified as the country of origin to its present form ready for export to Canada. Certain operations such as packing, splitting or sorting may not be sufficient to confer origin.

Where anti-dumping is concerned, there is no definition in the Special Import Measures Act respecting the origin of goods. All orders or finding issued pursuant to that Act use the term "originating in or exported from". For example, countervailing duty is levied on all importations of "boneless manufacturing beef originating in or exported from the European Economic Community". Findings respecting the product of a specific manufacturer are worded accordingly, for example, "....produced or exported by or on behalf of .... or the companies with which it is associated","...produced by or on behalf of ....".

There is also no definition respecting the origin of goods subject to import control. Should the origin of goods subject to import control become an issue, it would be referred to the Special Trade Relations Bureau at the Department of External Affairs and International Trade for resolution. The origin determination for the goods at issue would be made by that office on the basis of international agreements currently in place.

For prohibited goods the country of origin of goods is not an issue. For example, offensive weapons as defined in the Criminal Code are prohibited entry into Canada, no matter what their country of origin. However, Code 9967 of the Customs Tariff covers "Any goods, in association with which there is used any description that is false in a material respect as to the geographical origin of the goods or the importation of which is prohibited by an order under section 52 of the Trade Marks Act." In instances where false marking or labeling is suspected and the actual origin of the goods becomes an issue, Canada Customs is guided by the documentation (paperwork) relevant to the goods, for example, Customs invoice, commercial invoice, shipping documents. Also taken into consideration is the routing of the goods, for example, goods marked "Made in the U.S.A." but shipped from an Asian country would be suspect.

From time to time, in the past, Canada Customs has been asked to determine origin in instances where a specific country of origin was required and, given the cumulative feature of most of Canada's rules of origin for tariff purposes, no legal basis existed for such determination.

In such instances, the country of origin has been determined on an *ad-hoc* basis in light of any or all several considerations:

(a) change in tariff classifications;

(b) industry practices;

(c) other countries' rules or origin and practice;

(d) other government departments' opinions and practice;

(e) common sense; and

(f) logic.

For government procurement purposes the NAFTA rules of origin are used. These rules were supplied with the submission detailing Canada's preferential rules of origin.

2.3.2.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Canada's Non-preferential Rules of Origin are embodied in the following legislation:

Customs Act — Section 35.01 (Marking of Goods)
Section 35.1 (Origin of Goods)

Customs Tariff — Sections 13, 23, 46, 59-61, 63.1, and 64.

Customs Regulations:

- The Determination of Country of Origin for the Purpose of Marking Goods (NAFTA Countries) Regulations
- The Determination of Country of Origin for the Purpose of Marking Goods (Non-NAFTA) Regulations
- The Marking of Imported Goods Regulations

2.3.2.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Canada's system of self-assessment for entry clearance places the responsibility for correct clearance of goods through Customs on the importer. Customs compliance monitoring for issues such as origin, tariff classification or anti-dumping, usually take place after clearance/release of goods. The marking of goods however is examined at the time of release.

It is up to importers and or their brokers to ensure, to the best of their abilities, that they are entitled to whatever is claimed or that all permit requirements have been met. Canada does not usually impose penalties for origin infractions unless they are repetitive or fraudulent in nature.

2.3.2.5 RULES OF ORIGIN

These rules, used for the marking of goods, and to determine the proper NAFTA tariff treatment, are available from Revenue Canada, Customs, Trade Administration Branch.

2.3.2.6 OTHER CONDITIONS OR REQUIREMENTS

The only non-preferential rules that contain other conditions or requirements are the marking rules for goods from a NAFTA country.

2.3.2.7 REVIEW PROCEDURES

As covered in the preferential rules of origin compendium any person may appeal an origin decision with regard to tariff preference, or lack thereof. Canada is currently working on appeal procedures for disagreements concerning the marking of goods imported from a NAFTA country.

2.3.2.8 CONTACTS

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2.4 CHILE: PREFERENTIAL RULES OF ORIGIN

2.4.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Substantial transformation implies a change of tariff heading for the goods due to the new character obtained.

In some cases, a value-added basis is considered, with a threshold of 50 percent or less of the FOB value of the exported good attributable to CIF value of materials of third party countries.

2.4.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Trade Initiatives

In Chile only one trade initiative where rules of origin appear is in force. This is within the framework of the Latin American Integration Association, LAIA (Asociación Latino Americana de Integración, ALADI), whose function is the verification of origin as a requirement for being granted the benefit of preferential treatment.

LAIA Members

Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Mexico, Peru, Uruguay and Venezuela.

Chile's Tariff

At present Chile charges customs duties at a general rate of 11 percent. With LAIA, bilateral agreements are allowed. So preferential rates range from 0 to about 11 percent.

2.4.3 Legislation and other Rules/Documents

The LAIA Treaty was approved by Decree 568, of the Foreign Affairs Ministry, published on 24 Augus 1981.

A special rule about the general scheme of origin is LAIA Resolution 78, of 24 November 1987. Chile has bilateral agreements which apply Resolution 78 to Argentina, Bolivia, Colombia, Ecuador, Mexico, Uruguay and Venezuela.

No booklets on rules of origin and related procedures are available.

2.4.4 Responsibility for correct Determination of Origin

There is a standard form, adopted by LAIA, which is a statement to prove that origin requirements are met. It must be completed by the final producer or the exporter and certified by a public body or an authorized union in the exporting country.

2.4.5 Rules of Origin

Criteria contained in Resolution 78 depend on the goods' special status, as follows:

- completely produced in an LAIA country, with material from an LAIA country;

- certain convened headings, on account of being produced in LAIA territories - for example, mineral, vegetal, and animal products (including hunting and fishing), sea products extracted from its territorial or patrimonial waters or exclusive zones, by ships with LAIA flags and products which acquire final form through operations or processes carried out in LAIA territory;

- production in LAIA territory with materials from non-participating countries, if the transformation in the LAIA country confers new individuality to a product, resulting in classification under a different heading;

- simple assembling processes, assembly, packing, splitting in bundles, parts or volume, selection and classification, markings, composition or assortments or other processes which do not imply substantial transformation in terms of classification under a different heading of non member countries, **do not** confer origin.

- assembled in a LAIA country, with materials from a LAIA country and from a third country, if the CIF value of the materials of the third country is less than 50 percent FOB value of the exported product.

2.4.6 Direct Shipment Provisions

Direct shipment is required for preferential treatment. Transit through non-LAIA countries is allowed in exceptional cases.

2.4.7 Other Conditions or Requirements

Besides the abovementioned statement and its authentication, the importing country may ask the certifying body for additional data.

2.4.8 Review Procedures

The Chilean Customs Service maintains internal customs review procedures.

Where a decision is made to require the payment of full duty, the importer may claim under the general two instances procedure, which may be brought to the Supreme Court of Justice.

2.4.9 CONTACTS

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2.5 PEOPLE'S REPUBLIC OF CHINA: NON-PREFERENTIAL RULES OF ORIGIN

2.5.1 OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

China's current non-preferential rules of origin are divided into two categories, import and export;

1. Import Rules of Origin are used for the application of MFN rates, for compiling trade statistics, for marking of origin, for import control, and will be used for anti-dumping duties, countervailing duties, safeguard measures, and tariff quota.

2. Export Rules of Origin are used for export control, for compiling trade statistics and for marking of origin.

Up to now we have had a single set of rules of origin for all non-preferential purposes.

2.5.2 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

(a) Import:

Where the production of the goods has taken place in several countries/areas, the countries/areas carrying out the last substantial processes economically, shall be regarded as the original country of the goods. "The substantial processes" means that, after processing, the tariff heading of a product has been changed in the "Customs Import and Export Tariff", or the percentage of the value-added reaches 30 percent or more of the whole value of the new product.

"The substantial processes" is used as the basic principle of our current rules and "value-added" criteria is used as supplementary rules.

(b) Export:

Products containing imported material or components mainly or finally manufactured or processed within the territory of the People's Republic of China with substantial alterations in the appearance, nature, state or purposes of the imported materials or components. The list of procedures of manufacturing and processing shall be formulated and adjusted by the State Department in charge of foreign economic relations and trade in consultation with departments concerned of the State Council according to the principle of taking the manufacturing and processing procedures as the main body supplemented by the proportion of composition.

2.5.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

The People’s Republic of China non-preferential ROO are embodied in the following legislation:

"Provisional Regulations of the Customs of People's Republic of China on Origin of Import Goods" issued by the Director-General of Customs General Administration.

"Rules of the People's Republic of China on the Place of Export Goods" issued by the State Council.

Certificates of Origin:

For export, the State Import and Export Commodities Inspection Departments and their branches in various localities, the China Council for the Promotion of International Trade and their branches and other organizations authorized by the State Department in change of foreign economic relations and trade are responsible for signing and issuing certificates of origin of export goods according to the regulations formulated by the State Department in charge of foreign economic relations and trade.

2.5.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The declarant has responsibility for the correct declaration of import. Even after they receive an import permit, they are not free of such responsibility and Customs may, as necessary, conduct post-entry examinations.

Customs determines the country/area of origin of a good at the stage of clearance of a good.

In principle, the country/area of origin of a good is determined on the basis of a declarant's declaration. Customs, as necessary, verifies the declaration through the examination of submitted relevant documents and inspection of marking of goods. Furthermore, Customs could require the declarant to submit the certificate of origin issued by the exporting country/area's authorities.

2.5.5 RULES OF ORIGIN

Goods Wholly Obtained from a Country (for import):

(i) Mineral products extracted from its soil and territorial water

(ii) Vegetable products harvested or gathered in the territory of the country/area

(iii) Live animals born or raised in the territory of that country/area and products obtained therefrom

(iv) Products obtained from hunting or fishing in that country/area

(v) Products obtained by maritime fishing loaded from a vessel of the country/area and other products taken from the sea by a vessel of the country/area

(vi) Products obtained aboard a factory ship of that country/area, solely from products of the kind covered by paragraph (v) above

(vii) Scrap and waste collected in that country/area and fit only for remanufacturing and reprocessing operations

(viii) Goods produced in that country/area solely from the products referred to in paragraphs (i) to (vii) above

2.5.6 OTHER CONDITIONS OR REQUIREMENTS

No other conditions and requirements are provided.

2.5.7 REVIEW PROCEDURES

Any declarant may file a protest if he/she is not satisfied with a disposition concerning determination of origin taken by local customs in accordance with the provision of "Provisional Regulations of the Customs of the People's Republic of China on Origin of Import Goods." Furthermore, he/she may make an appeal to the Customs General Administration, then to the court according to "Regulations of the People's Republic of China on Import and Export Duties".

2.5.8 CONTACTS

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Customs General Administration
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China

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2.6 HONG KONG: NON-PREFERENTIAL RULES OF ORIGIN

2.6.1 OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

Being a free port, Hong Kong imposes no origin requirement on imported goods except where origin marking is concerned.

Hong Kong's rules of origin are devised and administered to facilitate customs clearance of Hong Kong exports. The origin requirements for marking and trade statistics purposes are equally applied on exports.

2.6.2 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

Goods involving multiple country processing and/or materials are deemed to be substantially transformed in Hong Kong if they have undergone a manufacturing process(es) in Hong Kong which has changed permanently and substantially the shape, nature, form or utility of the basic materials used in the manufacture.

Processes such as simple diluting, packing bottling, drying, simple assembly, sorting or decorating, etc. are not regarded as genuine manufacturing processes.

Where the manufacturing process alone does not suffice to express substantial transformation, the Hong Kong cost content attributable to local component parts and labour *vis-a-vis* the total manufacturing cost will be considered in a supplementary manner (mainly applied to electronic and electrical products). The current local cost content requirement is 25 percent for the products concerned.

2.6.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Origin Marking

Origin marking (for imports and exports) is governed by the Trade Description Ordinance, Chapter 362 of the Laws of Hong Kong. It stipulates that in relation to description of goods, goods shall be deemed to have been:

(i) manufactured in the country in which they last underwent a treatment or process which changed permanently and substantially the shape, nature, form or utility of the basic materials used in their manufacture except when the Director-General of Trade stipulates otherwise; or

(ii) produced in the country in which they were wholly grown or mined.

Certificate of Origin

The issue of certificate of origin by the Hong Kong Government Trade Department is governed by the Export (Certificates of Origin) Regulations of the Import and Export Ordinance, Chapter 60 of the Laws of Hong Kong. The issue of certificates of origin by the Government Approved Certificate-issuing Organizations (GACOs) is governed by the Protection of Non-government Certificates of Origin Ordinance, Chapter 324 of the Laws of Hong Kong.

Other Publicly Available Documents

Interested parties can obtain information on Hong Kong's rules of origin through Trade Circulars issued by the Hong Kong Government Trade Department or make enquiry to the Trade Department Certification Branch and the five Government Approved Certification Organizations (GACOs).

The Government Approved Certificate-issuing Organizations are:

- The Hong Kong General Chamber of Commerce;
- Federation of Hong Kong Industries;
- The Chinese Manufacturers' Association of Hong Kong;
- The Indian Chamber of Commerce, Hong Kong; and
- The Chinese General Chamber of Commerce.

2.6.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Importers are responsible for lodging the necessary documents for clearance of goods through customs as required by relevant ordinances and regulations.

For all imports, since Hong Kong is a free port with no tariffs, there is no need for origin determination except only when an origin marking offence is concerned. The origin of imported goods is required to be indicated on import declarations for trade statistics purposes.

Similarly for all exports, an origin indication is made on the export declaration for statistical purposes.

For those exports under a Certificate of Hong Kong Origin (CHKO), origin determination is made by either the Hong Kong Government Trade Department or one of the five GACOs in deciding whether a CHKO is issuable. Application for certificates of origin for exports should be made before exportation of the goods concerned.

2.6.5 RULES OF ORIGIN

The introduction and revision of the Hong Kong origin rules are an administrative arrangement undertaken by the Hong Kong Government Trade Department and the Certification Coordination Committee (CCC). The criteria for determining origin are:

- For wholly-obtained goods, they must be natural produce of Hong Kong which have been grown or mined in Hong Kong.

- There is no special provision for definition of "wholly manufactured goods" in Hong Kong.

- For manufactured goods involving multiple country processing and/or materials, they must be the product of a manufacturing process(es) in Hong Kong which has changed permanently and substantially the shape, nature, form or utility of the basic materials used in the manufacture. Where the manufacturing process alone does not suffice to express substantial transformation, the Hong Kong cost content attributable to local component parts and labour *vis-a-vis* the total manufacturing cost will be considered in a supplementary manner. The current local cost content requirement is 25 percent.

The Certification Co-ordination Committee is established to co-ordinate certification policy and to standardize practices and procedures amongst the certificate-issuing organizations, and to improve the overall efficiency of the certification system. It is chaired by the Assistant Director-General of the Trade Department responsible for certification of origin matters and attended by representatives of all GACOs, the Customs and Excise Department and the Industry Department.

2.6.6 OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

2.6.7 REVIEW PROCEDURES

In case where Hong Kong origin status is not granted to a particular good, the affected party may make written request or representations to the Trade Department for reconsideration or clarification.

2.6.8 CONTACTS

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2.7 JAPAN: NON-PREFERENTIAL RULES OF ORIGIN

2.7.1 OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

Japan's current non-preferential rules of origin are divided into the following two categories:

1. those used for the application of GATT rates, for control of the goods with false marking of origin, for compiling trade statistics and for issuance of certificates of origin of the goods to be exported; and

2. those used for the import control of goods.

2.7.2 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

In the rules of category 1, the country of origin is defined as "in cases where two or more countries are involved in the production of the goods, the country in which the last substantial transformation which confers a new character to the goods has taken place." Furthermore, "the substantial transformation which confers a new character to the goods" is provided therein as follows:

(i) manufacturing or processing, as a result of which change the HS heading number of a good from that of all the non-originating materials used in the production of the good;

(ii) certain designated manufacturing or processing which do not come under the category (i) above.

Notwithstanding the provisions of (i) and (ii) above, some designated operations are provided as not being "the substantial transformation which confers a new character to the goods" (minimal operations or processes).

In the rules of category 2, the country of origin of goods is defined as follows:

(i) a country or an area in which the good was produced, manufactured or processed; or

(ii) the country of origin of the main part in the case of goods consisting of two or more parts whose origin differs from each other.

2.7.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation and Other Rules

Japan's non-preferential rules of origin are embodied in the following legislation:

1. Those for the application of GATT rates

This rule is provided in the Article 68-3-4 of the Customs Directive of General Provisions for Implementing the Customs Law, issued by the Director-General of the Customs and Tariff Bureau of Ministry of Finance (hereinafter referred to as the "Article 68-3-4 of the Director-General's Directive").

2. Those for compiling trade statistics

Import statistics are compiled on the basis of country of origin of goods. In this case, the country of origin of goods is determined in accordance with the Article 68-3-4 of the Director-General's Directive as provided in Article the 7-2 of the Customs Directive on merchandise trade issued by the Director-General of Customs and Tariff Bureau of Ministry of Finance.

3. Those for import control of goods with false marking of origin

Article 71 of the Customs Law provides that no import permit shall be given to any foreign goods showing directly or indirectly a false marking. Rules of origin for determining whether marking of origin is false or not are provided in the Customs Directive titled "Treatment of Imported Goods with False Marking of Origin" issued by the Director of Import Division of Customs and Tariff Bureau on 28 March 1973.

This Directive sets forth that the Article 68-3-4 of the Director-General's Directive is applied, *mutatis mutandis*, in determination of country of origin. However, it additionally provides that the scope of simple assembly of parts, which are regarded as not being the substantial transformation which confers a new character to the goods, is limited to assembly of parts where involved are only simple assembly operations such as by means of simple fixing devices (e.g., screws, bolts and nuts), by riveting and by welding.

Whereas this also provides that assembly which improves the quality or performance of goods is excluded from the simple assembly of parts. Such kinds of assembly may include that of complete knockdown of electronic calculators or watches. In this case, the country in which calculators or watches were assembled is regarded as the country of origin of such goods. And thus true marks of origin thereof shall be, for example, "assembled in country A".

4. Those for certificates of origin

Japanese Chamber of Commerce applies, *mutatis mutandis,* the Article 68-3-4 of the Director-General's Directive when it issues certificates of origin.

5. Those for import control

Article 52 of the Foreign Exchange and Foreign Trade Control Law provides that import control may be introduced to ensure the sound development of international trade and domestic economy based on a cabinet order.

Under this provision, Articles 3 and 4 of the Import Control Order introduce three kinds of import control scheme (i.e., import quota, import approval and prior confirmation), and grant the authority to decide and publish the scope of goods to be controlled and necessary requirements including country of origin to the Minister of International Trade and Industry

Necessary requirements mentioned above are provided in the Import Notice on the Items of Goods Which Are Required to Obtain Import Quota, Country/Area of Origin or Shipment Which Are Required to Obtain Import Approval and Other Necessary Matters Concerning Import of Goods.

Under the schemes of import approval and prior confirmation, import of specified goods from specified countries of origin is under control. Rules of origin used for these controls are provided in the Import Circular (No. 34-10) as follows.

The country of origin of a good is either:

(a) a country or an area in which the good was produced, manufactured or processed;

(b) the country of origin of the main part in the case of goods consisting of two or more parts whose origin differ from each other; or,

(c) the country of origin of the good before being processed according to trusted processing contract where the right of ownership does not transfer.

Other Publicly Available Documents

Information is also available in the following:

- Article 71 of the Customs Law, Article 52 of the Foreign Exchange and Foreign Control Law, Articles 3 and 4 of the Import Control Order and the Import Notice on the Items of Goods Which Are Required to Obtain Import Quota, Country/Area of Origin or Shipment Which Are Required to Obtain Import Approval and Other Necessary Matters Concerning Import of Goods are contained in the Collection of the Laws and Orders Concerning Tariff Affairs ("*Kanzei-Roppou*" published by the Japan Tariff Association).

- Article 68-3-4 of the Director-General's Directive is contained in the Collection of Customs Directives of General Provisions for Tariff Affairs ("*Kanzei-Kankei-Kihon-Tsuutatsu-Shuu* published by the Japan Tariff Association).

- The Customs Directive titled "Treatment on Imported Goods with False Marking of Origin" issued by the Director of Import Division of Customs and Tariff Bureau on 28th March 1973 is contained in the Collection of Individual Customs Directives for Tariff Affairs ("K*anzei-Kankei-Kobetsu-Tsuutatsu-Shuu* published by the Japan Tariff Association).

- The Import Circular (No.34-10) is contained in the Collection of Import Circulars (Revised Edition "*Shin-Yunyuu-Tyuui-Jikou-Shuu*" published by the International Trade and Industry Research Institute).

2.7.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Japan employs duty-assessment system on a declaration basis and hence importers have responsibility for the correct declaration of imports. Even after they receive an import permit, they are not free of such responsibility and Customs may, as necessary, conduct post-entry examinations.

Customs determines the country/area of origin of a good at the stage of clearance of a good.

The Ministry of International Trade and Industry (hereinafter referred to as MITI) determines the country/area of origin of a good when it gives approval before import declaration.

MITI determines the country/area of origin of a good when it undertakes the prior confirmation.

Customs determines the country/area of origin of a good at that time.

In principle, the country/area of origin of a good is determined on the basis of an importer's declaration. Customs, as necessary, verify the declaration through the examination of submitted relevant documents and inspection of marking of goods.

In application of GATT rates, verification is conducted in accordance with the provisions of Article 68-3-6 of the Customs Directive of general provisions for implementing the Customs Law, issued by the Director-General of the Customs and Tariff Bureau of Ministry of Finance. This provision is contained in the Compendium of the Laws and Orders Concerning Tariff Affairs ("*Kanzei-Roppou*" published by the Japan Tariff Association).

2.7.5 RULES OF ORIGIN

Article 68-3-4 of the Director-General's Directive and the Customs Directive "Treatment on Imported Goods with False Marking of Origin" issued by the Director of Import Division of Customs and Tariff Bureau on 28 March 1973.

In Article 68-3-4 of the Director-General's Directive, country of origin is defined as the country in which the goods are wholly obtained or produced; or, in case where two or more countries are involved in the production of the goods, the country in which the last substantial transformation which confers a new character to the goods has been conducted.

Terms used in above-mentioned definition are provided as follows:

1. Goods wholly obtained or manufactured in the origin country/area the following goods are provided as wholly obtained or produced ones:

   (a) Mineral products extracted in that country including its continental shelf

   (b) Plants and plant products harvested in that country

   (c) Live animals born and raised in that country

   (d) Products derived from live animals in that country

   (e) Products obtained by hunting, trapping or fishing in that country

   (f) Marine products obtained in the high seas by that country's vessels

   (g) Products produced aboard a vessel of that country from the products referred to in subparagraph (f) above

   (h) Mineral products obtained in the high seas by vessels or other structures of that country excluding the products covered by subparagraph (a) above

   (i) Used products, collected in that country and fit only for the recovery of raw materials

   (j) Scrap and waste derived from manufacturing operations carried out in that country

   (k) Goods produced in that country only from products referred to in subparagraphs (a) through (f) above

2. Goods partly manufactured in the origin country/area and partly outside it

   (a) (i) In case where two or more countries are involved in the production of the goods, the country of origin is defined as the country in which the last substantial transformation which confers a new character to the goods has been conducted, and furthermore "the substantial transformation which confers a new character to the goods" is provided as follows:

      (a) manufacturing or processing, as a result of which change the HS heading number of a good from that of all the non-originating materials used in the production of the good (the criterion of change in tariff classification);

      (b) certain designated manufacturing or processing which does not come under the category a. above (the criterion for manufacturing or processing).

   (a) (ii) Notwithstanding the provisions of a(i) above, the following operations are provided as not being "the substantial transformation which confers a new character to the goods" (minimal operations or processes).

      a. Classifying, sorting and repackaging

      b. Sticking or affixing labels or marking on products or package

      c. Sticking into a bottle, box or other similar containers

      d. Mere assorting

      e. Mere cutting;

      f. Drying, freezing, soaking in brine or other similar processing for transporting or preserving purposes

      g. Mere mixing

      h. Mere assembling of parts

      i. Any combination of two or more actions described above

j. Rolling of unexposed photographic sheet films

(b) (i) The Criterion of Change in Tariff Classification

- Japan's Tariff Schedule used for the criterion of change in tariff classification is based on the 1996 version of HS. The latest version of HS will be used as a basis of that criterion whenever HS is amended.
- The criterion of change in tariff classification is used in all HS Chapters. The operations listed in (a)(ii)a.-j., however, are not regarded as "the substantial transformation which confers a new character to the goods."

(b)(ii) The Criterion for Manufacturing or Processing Operations mentioned below are additionally designated as "the substantial transformation which confers a new character to the goods" although they are not accompanied by changes in tariff classification.

a. Crushing ores and uniforming the size of them with respect to natural abrasives

b. Refining of sugars, oils and fats, waxes or chemicals which may change or specify the usage of them

c. Manufacturing of the goods of Section 6 and 7 of the Tariff Schedule accompanied by chemical transformation

d. Dyeing, coloring, mercerization, resin finishing, embossing and other similar processing with respect to leather, yarn and fabrics

e. Manufacturing of twist yarn from single yarn

f. Manufacturing listed below with respect to the goods of heading No. 68.12 or 70.19 of the Tariff Schedule

- manufacturing of yarns from fibers;
- manufacturing of fabrics from yarns; and
- manufacturing of clothing and other products from fibers, yarns or fabrics

g. Manufacturing of the products of headings Nos. 71.01 through 71.04 of the Tariff Schedule from the unworked goods of the headings within that group

h. manufacturing of alloys

i. manufacturing of metal lump from scrap and waste of metals; and

j. manufacturing of metal foil from metal plates, sheets and strip

k. Manufacturing of products of Chapter 71 (only of precious metals), Chapters 74 through 76 or Chapters 78 through 81 in the shape of ingots, rods, wires or in the shape of goods described in headings Nos. 72.03, 72.05 through 72.17, 72.28 or 73.01 through 73.26 of the Tariff Schedule, excluding the manufacturing of products in the shape of goods described in headings Nos. 72.03, 72.05 through 72.17, 72.28 and 73.01 through 3.26 of the Tariff Schedule with which the goods before the manufacturing and the goods after the manufacturing fall in the same heading if the words "iron or steel" in these headings are replaced with the raw material metal used to manufacture the goods

l. Manufacturing of products of heading No. 96.01 or 96.02 from worked products of the same heading

(b) (iii) The *Ad Valorem* Percentage Criterion is not employed.

(b) (iv) Any Other Special Provisions

The country/area of origin of exposed photographic films etc. (heading Nos. 37.04-37.06) is deemed to be the country to which the person who produced the goods belongs.

In case where two or more kinds of raw materials, some of which are important constituents that give a specific character to the manufactured goods and others of which are not, are used in manufacturing and where the manufacturing with respect to the raw materials forming important constituents falls under either of subparagraph(s) 2(a)(i)a. or (2)(b)(ii) a.-l. above, such manufacturing shall be deemed to be the manufacturing of subparagraph(s) 2(a)(i) a. or (2)(b)(ii) a.-l.

Import Circular (No.34-10)

In Import Circular (No.34-10), the country/area of origin of a good is defined as follows:

1. A country or an area in which the good was produced, manufactured or processed;
2. The country of origin of the main part in the case of goods consisting of two or more parts whose origins differ from each other; or,
3. The country of origin of the good before being processed according to trusted processing contract where the right of ownership does not transfer. Further detailed provisions are provided only for certain goods such as woven fabrics of silk.

2.7.6 OTHER CONDITIONS AND REQUIREMENTS

No other conditions and requirements are provided.

2.7.7 REVIEW PROCEDURES

Any person may file a protest if he/she is not satisfied with a disposition concerning the determination of origin taken by a Director-General of Customs in accordance with the provision of Article 89 of the Customs Law. Furthermore, any person may make an appeal to the Minister of Finance if he/she is not satisfied with the decision made by the Director-General of Customs against his/her filing a protest in accordance with the provisions of the Administrative Dissatisfaction Review Law.

2.7.8 CONTACTS

Deputy Director in charge of Sub-Committee on Customs Procedures,
International Trade Organizations Division,
Customs and Tariff Bureau,
Ministry of Finance
1-1, Kasumigaseki 3-Chome
Chiyoda-ku, Tokyo 100
Japan

Tel: 81-3-3581-3825
Fax: 81-3-5251-2123

Any person who is to import a good may request an issuance of an advance classification ruling to the below-mentioned Customs through the submission thereto of an inquiry document containing the necessary information for determination of origin. Specific provisions on procedures are provided in Article 7-16 of the Customs Directive of General Provisions for Implementing the Customs Law, issued by the Director-General of the Customs and Tariff Bureau of Ministry of Finance. This provision is contained in the Collection of Customs Directives of General Provisions for Tariff Affairs ("*Kanzei-Kankei-Kihon-Tsuutatsu-Shuu* published by the Japan Tariff Association).

Tokyo Customs, Office of Customs Counselor, Tel: 81-3-3472-7001
Osaka Customs, Office of Customs Counselor, Tel: 81-6-576-3001

2.8.1 KOREA: PREFERENTIAL RULES OF ORIGIN

2.8.1.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Determination of substantial transformation is generally based on a change in tariff heading (by six digits of H.S.), with the exception of the value-added Basis in case of imports under the GSTP. (See Annex II of the Agreement on the Global System of Trade Preference among Developing Countries)

2.8.1.2 BACKGROUND TO THE PREFERENTIAL RATES OF DUTY

Trade Initiatives

Initiative	Agreement Status	Preference Flow	Receiving Countries
Agreement on the Global System of Trade Preference among Developing Countries (GSTP)	Multilateral	Reciprocal	Bangladesh, Peru, Iraq, etc. (40 members)
Bangkok Agreement under ESCAP	Multilateral	Reciprocal	India, Sri Lanka, Bangladesh, etc. (5 members)
Trade Negotiation among Developing Countries under the WTO (TNDC)	Multilateral	Reciprocal	Israel, Romania, Uruguay, etc. (13 members)

Variations in Rules of Origin

Except for the difference in the basis of substantial transformation between the GSTP and the other two initiatives, all of Korea's preferential rules of origin are essentially similar in terms of customs procedures of confirmation, direct transport rules, qualification for origin of accessories and packing materials, etc.

Structure and Application of Tariff

Korea has three kinds of preferential tariff rates. They are all on a reciprocal basis.

Under the Bangkok Agreement, Korea has granted tariff concessions for 249 items, applying rates 10 to 37.5 percent lower than the general rate.

Under the GSTP, 26 items have been conceded at rates 10 percent lower than the general rate.

Under the TNDC protocol, Korea introduced preferential tariffs for the first time. Since its accession to the Protocol in 1973, Korea has applied fixed preferential tariff rates to 12 items. However, with a sharp reduction in the general rate of Korea, the preferential rate under the TNDC protocol is now much higher than the general rate, expect for that of one item.

2.8.1.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Korea's preferential rules of origin are embodied in the following legislation:

Customs Act :	Section II-2 (International Customs Cooperation) Article 43-15 (Submission, etc. of Documents Certifying Origin of Imported Goods)
Presidential Decree :	Article 53-4 (Certificates of Origin)
Ordinance of the Prime Minister :	Article 31 (Certificates of Origin and the Basis of Determination)

Other Publicly Available Documents

Relevant laws and regulations were translated into English in 1995 and are available at the Customs Cooperation Division of the Ministry of Finance and Economy.

2.8.1.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Korea's system of self-assessment for import clearance places the responsibility for correct clearance of goods through Customs on the importer.

Importers intending to receive the benefits of a preferential tariff shall file a certificate of origin with the Customs house at the time of import declaration. The presentation of the certificate may be deferred until such time that import licences of the goods concerned have been granted in cases where the Customs Collector deems it impossible for the applicant to present the certificate of origin at the time of import declaration for inevitable reasons.

Certificates of origin of directly transported goods from the country of origin to the Republic of Korea must be issued by the Customs, administrative agency, or chamber of commerce of the country of origin with the right to issue such a certificate.

2.8.1.5 RULES OF ORIGIN

The country of origin of imported goods shall mean the country of production, processing, manufacture which falls under any of the following categories:

1. The country which has produced the goods wholly.
2. In cases where goods have been produced, processed, or manufactured in two or more countries, the country which has ultimately made substantial transformation in the goods and has added new characteristics to them.

Country of Origin of Wholly Produced Goods

Goods wholly produced in the country of origin are define as follows :

1. Mineral products extracted from the territory or the territorial water of that country and agricultural and vegetable products harvested or gathered in that country
2. Live animals born or raised in that country and products obtained therefrom
3. Products obtained from the hunting or fishing conducted in that country
4. Products obtained by maritime fishing and other products taken from the sea by a vessel of that country
5. Scrap and waste from manufacturing or processing operation in that country
6. Goods manufactured or processed in that country or on a vessel of that country solely from the products referred to above

Country of Origin of Goods of which Two or More Countries Have Taken Part in the Production

There are two conditions that should be met for preference entitlement on goods for which two or more countries have taken part in the production. These are:

1. New characteristics shall be added to the goods
2. Substantial transformation shall be ultimately made to the goods

Substantial transformation means producing the goods that are different in the tariff classification (by six digits of H.S.) from raw material through the manufacturing or processing in that country. (Exception: the value added-basis [50 percent or more] is applicable to imports under the GSTP.)

Special Cases of Qualification for Origin

1. Accessories, spare parts and tools for use with a machine, appliance, apparatus or vehicle shall 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.
2. Packing materials shall be deemed to have the same origin as the goods they contain unless the tariff schedule requires them to be classified separately, in which case their origin shall be determined separately from that of the goods.

2.8.1.6. DIRECT SHIPMENT PROVISIONS

The country of origin of the imported goods shall be determined only if the goods are directly transported and brought into Korea from the country of origin without passing through any other country.

However, in the following cases, if the goods concerned are transshipped or temporarily stored in a bonded area in a non-originating country under the supervision of the Customs office and it is acknowledged that there was no act other than such activities, then such goods shall be deemed as being directly transported to Korea.

1. Goods simply pass through a non-originating country by reason of geography or transportation, and the goods were transshipped or temporarily stored in the non-originating country
2. Goods which have been exported to a non-originating country to be displayed in a trade show or exhibition or other similar event and were imported into Korea after such an exhibition

2.8.1.7 OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

2.8.1.8 REVIEW PROCEDURES

Clear appeal provisions are provided in the Customs Act.

Plaintiffs in rules of origin cases have a range of measures available to them including protesting to the Collector, requesting a review by the National Tax Tribunal and instituting legal proceedings in court.

2.8.1.9 CONTACTS

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Director

Customs Cooperation Division
Tax and Customs Office
Ministry of Finance and Economy
1 Jungang-dong, Kwachun-si
Kyunggi-do
Korea

Tel: 82-2-503-9237
Fax: 82-2-503-9239

2.8.2 KOREA: NON-PREFERENTIAL RULES OF ORIGIN

2.8.2.1 OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

Korea has introduced and operated its rules of origin since joining the Annex D.1. and D.2. of the International Convention (Kyoto Convention) on the simplification and harmonization of customs procedures in 1991. Article 31-4 of the Foreign Trade Law is a basic reference for the rules of origin for all non-preferential purposes. Specifically, the rules of origin are applied equally for all commercial policy instruments such as MFN rates, anti-dumping and countervailing duties, safeguard measures, origin-marking requirements, any discriminatory quantitative restrictions, government procurement and trade statistics.

This Article and its subordinate regulations provide that the origin of imported goods should be determined on the basis of the criteria for wholly produced goods and substantial transformation. Such regulations were notified in the full English version to the WTO in accordance with the Agreement on Rules of Origin in April 1995 (see WTO G/RO/N/1/Add.1).

2.8.2.2 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

Article 63-5 of the Enforcement Decree of the Foreign Trade Law provides that in cases where two or more countries are involved in the production of goods, origin should be conferred to the country where the last substantial transformation has been carried out through the production processes, resulting in adding new characteristics to the goods. According to Article 3-7-6 of the Foreign Trade Regulations issued by the Minister of Trade, Industry and Energy, whether or not substantial transformation has occurred is generally determined on the basis of the change of subheading rule, with the exception of 30 items to which *ad valorem* rules are supplementarily applied.

2.8.2.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Legislative provisions for rules of origin are as follow:

Article 31-4 of the Foreign Trade Law (Criteria for Determining Country of Origin)

Article 63-5 of the Enforcement Decree of the Foreign Trade Law (Criteria for Determining Country of Origin).

Article 3-7-6 of the Foreign Trade Regulation (Country of Origin of Imported Goods) issued by the Minister of the Trade, Industry and Energy.

The Ministry of Trade, Industry and Energy is the responsible authority for the above legislations concerning rules of origin, and such legislation is implemented by the Korea Customs Service.

Other Publicly Available Documents

The revision of rules of origin is published and noticed in the *Daily Trade*, which is a daily periodical for traders. Another publicly available document is the *HS Synthetic Manuals* published by the Korea Customs Institute.

2.8.2.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The responsibility for the correct clearance of goods through customs is imposed on the importer. The head of the customs office confirms the country of origin of the goods on the basis of the relevant documents submitted by the importer in accordance with the aforementioned legislation. Generally, confirmation of origin is made at the time of the clearance of goods, and it is also possible to confirm the origin of goods before or after clearance if importers or interested parties request origin confirmation in accordance with related procedures. In case of origin confirmation, the certificate of origin issued by the exporting country's competent authority is normally used in declaring the country of origin of goods. In exceptional cases, however, the head of the customs office may request that the importer present other evidence documents for confirmation of the origin.

2.8.2.5 RULES OF ORIGIN

Wholly Produced Goods

The following are considered as goods wholly produced in one country:

- Mineral, agricultural and vegetable products produced in the country
- Live animals born or raised in the country
- Goods obtained from hunting or fishing in the country
- Fish and other goods taken from the waters by a vessel of the country
- Scrap and waste from manufacturing or processing operations in the country
- Goods manufactured or processed in the country or its vessels from the goods referred to above.

Korea's definition of wholly produced goods is interpreted so as not to permit any imported content, including imported packaging materials. In Korea' s rules of origin, however, packaging is a minimal operation, so that it does not affect the status of the wholly produced goods, even if imported packaging materials are used for the goods

Substantial Transformation

In cases where two or more countries are concerned in the production of goods, origin is conferred to the country where the last substantial transformation has been carried out through the production processes. Substantial transformation is considered to have occurred when the following requirements are satisfied: (This criteria is applied for all non-preferential purposes.)

(i) *Criteria of change in tariff classification*

It is considered that substantial transformation has occurred when the HS subheading of the goods produced by using imported materials is changed from the HS subheading of the imported materials used for production of the goods through the manufacturing or processing operations of the goods. This simple change of subheading rule is applied for the origin determination of all imported items, and to export for 30 items to which *ad valorem* criteria is applied. The reference for the criteria is the 1996 version of the HS Nomenclatures.

(ii) *Ad valorem percentage criteria*

For origin determination of imported goods, *ad valorem* criteria is applied to 30 items, all of which are mechanical and electronic goods. The value-added threshold is 35 percent of the price of the goods.

The formula is as follows:

(a) For 30 items, origin is conferred to the country where 35 percent or more of the value-added of raw materials or components used in the production of the relevant goods was generated.

(b) The percentage of the value-added is the ratio of the aggregate price by origin of the raw materials or components used in the production of the relevant goods, to the import price of the goods.

(c) The nominator is the summation of the price by origin of the raw materials or components used in the production of the goods, which is calculated on the basis of the ex-factory price (in case of local supply) or FOB price (in case of foreign supply) per purchased unit.

(d) The denominator is the import price of the imported goods, which is calculated on an FOB basis.

(iii) *Any other special provisions*

Accessories, spare parts and tools are considered to have the same origin as that of the machine, appliance, apparatus or vehicle on the condition that they are presented together with the machine, etc. The same principle is applied to packing and packaging materials and containers.

2.8.2.6 OTHER CONDITIONS OR REQUIREMENTS

Basically, the country of origin of imported goods is recognized only if the goods are directly shipped and brought into Korea from the country of origin without passing through any other country.

2.8.2.7 REVIEW PROCEDURES

The Ministry of Trade, Industry and Energy operates administrative review procedures. Where the declared country of origin is denied, the affected parties may use the procedures by way of the Korean Customs Service.

2.8.2.8 CONTACTS

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Ministry of Trade, Industry and Energy
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Kwachon-shi, Kyonggi-do, Korea 427-760

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2.9 MALAYSIA: PREFERENTIAL RULES OF ORIGIN

2.9.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

For ASEAN

The criterion used is value-added with 40 percent of the FOB value of the product produced being the minimum content. The base used to determine the 40 percent content in the finished product are raw materials, labour and overhead cost.

For Commonwealth

Malaysia uses a value-added criterion of at least 25 percent of the final product.

2.9.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Preferential Trade Initiatives

Initiative	Agreement Status	Preference Flow	Respective Preference
Malaysia/ASEAN (CEPT Agreement)	Bilateral	Reciprocal	All ASEAN countries
Malaysia/Australia (Trade Agreement between the Federation of Malaya and the Commonwealth of Australia)	Bilateral	Reciprocal	Australia
Malaysia/New Zealand (Trade Agreement between the Federation of Malaya and the Government of New Zealand)	Bilateral	Reciprocal	New Zealand

Variations in rules of origin

There are two different schemes practiced by Malaysia in relation to ROO.

1. Common Effective Preferential Tariff Scheme (CEPT)

This scheme is available to ASEAN countries under the following conditions:

(a) the goods are wholly produced or obtained in a Member Economy; or

(b) content is at least 40 percent of the FOB value of the product produced or obtained or finally processed in the exporting Member Economy; or

(c) aggregate or cumulative ASEAN content of the final product is at least 40 percent of FOB value.

2. Commonwealth Preferences

Malaysia accords preferential tariff treatment under this scheme to manufactured products which meet the value-added criteria of at least 25 percent in the finished state produced or are manufactured in and consigned direct from Australia and/or New Zealand.

Goods that are imported from a country that is not eligible for preference rates pay the full rate of duty.

Malaysia's Tariff

The Malaysian tariff is based on "Customs Duty Order" 1996. The rates of duty payable under the preferential tariff of Commonwealth/ASEAN countries are different to the MFN tariff, as shown in the comparison table below.

Tariff Code	Product	Duty Rate	
Number		Commonwealth	MFN
200830911	Citrus fruit containing added sugar or sweetening matter a spirit in air tight containers	15%	20%

Malaysia also has CEPT for ASEAN countries where the duty rate has been scheduled until 2003. An example of the difference between CEPT and MFN is as follows:

Tariff Code	Product	Year	Duty Rate	
Number			CEPT	MFN
160510100	Crab in air tight containers	1995	10 percent	20 percent
160510100	Crab in air tight containers	1996	9 percent	20 percent

Cumulative rules of origin, direct consignment, treatment of packing and green-lane clearance counters are only applicable among ASEAN countries.

2.9.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Malaysia's preferential rules of origin are embodied in the following legislation:

Customs Act 1967 - Section 11

Customs Act 1967
Customs Duties Order 1996

Customs Act 1967
Customs Duties (Goods of ASEAN Countries Origin) Common

Effective Preferential Tariff Order 1995

Other Publicly Available Documents

Malaysia does not have any other publications or documents which describe preferential ROO.

2.9.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Malaysian Customs are responsible for the correct clearance of goods. However, to be entitled to enjoy preferential status, the Government authorities of the exporting countries concerned are responsible for providing legal documentation.

In Malaysia, the Ministry of International Trade and Industries (MITI) is responsible for such action.

In the case of fraud, the Government authorities of each member state shall cooperate in the action to be taken in the respective state against the persons involved.

2.9.5 RULES OF ORIGIN

Goods originating in a preference country may be divided into two categories:

1. Products wholly produced or obtained in the exporting Member State;
2. Products not wholly produced or obtained in the exporting Member State.

Wholly Produced or Obtained

The following shall be considered as wholly produced or obtained in the exporting Member State:

(a) Mineral products extracted from its soil, its water or its seabed

(b) Agricultural products harvested there

(c) Animals born and raised there

(d) Products obtained from animals referred to in paragraph (c) above

(e) Products obtained by hunting or fishing conducted there

(f) Products of sea fishing and other marine products taken from the sea by its vessels

(g) Products processed and/or made on board it's factory ships exclusively from products referred to in paragraph (f) above

(h) Used articles collected here, fit only for the collection of raw materials

(i) Waste and scrap resulting from manufacturing operations conducted there

(j) Goods produced there exclusively from the product referred to in paragraph (a) to (i) above

Not Wholly Produced or Obtained

(i) A product shall be deemed to be originating from ASEAN Member States if at least 40 percent of its content originates from any Member State.

(ii) The value of the non-originating materials, parts or produce shall be:

(a) The CIF value at the time of importation of the products or when importation can be proven; or

(b) The earliest ascertained price paid for the products of undetermined origin in the territory of the Member State where the working or processing takes place.

The formula for 40 percent ASEAN content is as follows:

$$\frac{\text{Value of Imported Non-ASEAN Materials Parts or Produce} + \text{Value of Undetermined Origin Materials, Parts or Produce}}{\text{FOB Price}} \times 100 \leq 60\%$$

2.9.6 DIRECT SHIPMENT PROVISIONS

For CEPT

The following shall be considered as consigned directly from the exporting Member State to the importing Member State:

(a) If the products are transported passing through the territory of any other ASEAN country;

(b) If the products are transported without passing through the territory of any other non-ASEAN country;

(c) The products whose transport involves transit through one or more intermediate non-ASEAN countries with or without transshipment or temporary storage in such countries, provided that:

  (i) the transit entry is justified for geographical reasons or by consideration related exclusively to transport requirements;
  (ii) the products have not entered into trade or consumption there; and

  (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

2.9.7 OTHER CONDITIONS OR REQUIREMENTS

No other conditions apply.

2.9.8 REVIEW PROCEDURES

The following review procedures apply:

(a) In the case of a dispute concerning origin determination, classification of products or other matters the Government authorities concerned in the importing and exporting Member States shall consult each other with a view to resolving the dispute, and the result shall be reported to the other Member States for information.

(b) Where no settlement can be reached bilaterally the issue concerned shall be decided by the Senior Environment/Economic Officials Meeting.

2.9.9 CONTACTS

MOHD. SEHAN AWANG AIN
Senior Assistant Director of Customs
Research and Corporate Planning Branch
Royal Customs and Excise Department
Block 11, Government Office Complex
Jalan Duta, Kuala Lumpur

Tel: 603-6502189
Fax: 603-651 5485

ISMAIL NIZA ALI
Superintendent of Customs
International Affairs
Royal Customs and Excise Department
Block 11, Government Office Complex
Jalan Duta, Kuala Lumpur

Tel: 603-6502230
Fax: 603-6515485

2.10 NEW ZEALAND: PREFERENTIAL RULES OF ORIGIN

2.10.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Determination of substantial transformation is on a value-added basis expressed as a percentage of factory cost. Origin is achieved when a threshold of 50 percent or more of factory cost is attributable to materials and/or processing in the country or area concerned.

2.10.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Trade Initiatives

Preferential rates of duty flow from the following trade initiatives:

Initiative	Agreement Status	Preference Flow
Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)	Bilateral	Reciprocal
New Zealand Canada Trade & Economic Agreement	Bilateral	Reciprocal
South Pacific Regional Trade & Economic Co-operation Agreement (SPARTECA)	Unilateral	Non-reciprocal
Developing Country Preferential Rates (Generalised System of Preferences)	Unilateral	Non-reciprocal
New Zealand Malaysian Bilateral Trade Agreement	Bilateral	Non-reciprocal
United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands	Bilateral	Non-reciprocal

Variations in Rules of Origin

New Zealand's value systems are essentially the same in that they operate a 50 percent or more value-added requirement at a factory cost level, however there are minor technical differences in implementation of the rules of origin between the different preferential arrangements. These include:

- Each preference recipient group has its own "qualifying area" in which the minimal value-added threshold necessary to confer origin must be achieved;
- A common minimum value-added threshold of 50 percent applies to all countries but under SPARTECA the Forum Island Countries also have has a 45 percent rule for clothing;
- The minimum value-added threshold may be varied in the case of exports from Australia, Forum Island Countries, and Canada;
- A two percentage point tolerance may, in certain restrictive circumstances, be applied to the minimum value-added threshold applicable to Australia and the Forum Island Countries;

- Materials partly manufactured in Australia, or in a Forum Island Country, and used as an input in the finished good to be traded to New Zealand, are calculated on a different basis from the other preferential rules of origin for the purposes of the 50 percent value-added calculation;

- A special category of wholly manufactured goods applies in the case of Australia;

- For the United Kingdom of Great Britain, preference entitlement only relates to certain motor vehicles and to certain motor vehicle parts and accessories;

- Direct shipment is not required for Australia or the Forum Island Countries.

New Zealand's Tariff

The 'Rates of Duty' heading in the Tariff of New Zealand is broken down into two columns, one for the normal tariff and the other for the preferential tariff. Rates of Duty are applicable to all tariff items specified in the Tariff of New Zealand.

The normal tariff column applies to goods from all countries except those goods entitled to be entered as preferential tariff duty rates.

The preferential tariff column details the preferential rate of duty (including Free) for a particular country, for example, Australia or a group of countries, for example, GSP (Generalised System of Preferences) Countries. The Preferential rate of duty is for goods sourced from preference countries that are the "produce or manufacture" of that country.

The term "produce or manufacture" is interpreted in accordance with the rules of origin described below.

It is important to note that origin is in this case for preferential purposes only. Thus, where goods are imported from a particular country and are not entitled to preference, for example, 50 percent requirement is not achieved, the goods will pay the normal tariff rate of duty.

2.10.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

New Zealand's preferential rules of origin are embodied in the following legislation:

Customs and Excise Act 1996 Sections 64 to 67

Customs and Excise Regulations 1968 Regulations 32 to 51

Other Publicly Available Documents

A simple explanatory booklet for exports from Australia to New Zealand (joint Australian Customs Service and New Zealand Customs Service publication on the ANZCERTA Rules of origin, hereafter referred to as "the ANZCERTA booklet") is available from the New Zealand Customs Service (see the contact section).

A Protocol on Customs Rules of Origin Enquiry Procedures for trans-Tasman Textile, Clothing & Footwear under ANZCERTA has been published and this may also be obtained from the New Zealand Customs Service.

Under the ANZCERTA Rules of Origin, a joint Australian and New Zealand Customs publication on the Determined Manufactured Raw Materials (DMRM) has been developed.

For the Forum Island Countries, a joint Australian and New Zealand Customs initiative is an input on the SPARTECA Rules of Origin into a booklet that will be published by the Forum Secretariat in Fiji.

Customs' Instructions on the other preferential rules of origin are currently being revised and will be available later in the year. The Instructions will be available for reference by Customs Officers and the public.

2.10.4 RESPONSIBILITIES FOR CORRECT DETERMINATION OF ORIGIN

Conditions Precedent to Entry at Preferential Rates (previously known as Certificates of Origin)

New Zealand no longer has a legal requirement for the production of prescribed certificates of origin.

But the New Zealand importer must, on entering the goods for Customs purposes, have sufficient information on which to base a claim for the preferential rate of duty. Effectively, this requires the overseas manufacturer or exporter to provide the importer with clear information as to those goods which meet the particular rules of origin.

There is now the opportunity to detail on the export documentation, for example, the commercial document (invoice) by way of a statement, declaration, or certification that identifies goods which meet the rules of origin. This requirement accommodates the paperless environment for international trade under EDI (Electronic Data Interchange).

In Appendix 4 of the ANZCERTA booklet, there is an example of a declaration for Australian goods under ANZCERTA; the declaration can be modified or adapted to the other preferential rules of origin.

Responsibility for a Preference Claim

The Collector of Customs may require a preferential duty claim to be verified at the time of entry or at any subsequent time, including any time after the goods have ceased to be subject to the control of Customs.

Where the Collector requires such a claim to be verified at the time of entry, and the claim is not verified to the satisfaction of the Collector at that time, the goods are not entitled to that claim — the normal tariff applicable to those goods would be payable.

The extent of verification either at the time of entry, or at a subsequent (post entry) time will depend upon the circumstances in which the claim is made. Verification may involve the following points:

- It may be inappropriate to accept information as to preference from a freight forwarder (as against the manufacturer)

- It may require physical examination of the goods

- It may require the production of costing details, certified by the manufacturer, for example, by the manufacturer's account, together with additional details as required. Arrangements can be made for this information to be required to be supplied directly from the manufacturer to the Collector

- It may require full details on the qualifying expenditure of materials used in the manufacture of the goods and which were obtained from within the qualifying area

- In some cases, the Collector will arrange for officers to visit the factory where the goods were made to check the validity of the preference claim

- It may require a combination of any of the above factors

2.10.5 RULES OF ORIGIN

Goods originating in a preference country are divided into three categories:

1. Goods wholly the produce of the country/goods wholly obtained/ unmanufactured raw materials of the country.

2. Goods wholly manufactured in the country.

3. Goods partly manufactured in the country (commonly referred to as the 50 percent rule).

Goods Wholly the Produce

Preferential rules of origin relating to the Forum Island Countries, and Less and Least Developed Countries under New Zealand's administration of the GSP scheme use the Kyoto Convention definition of 'goods wholly obtained'.

For other countries, other than Australia, the term 'goods wholly the produce' of the country is used. Essentially these are the natural products of the country.

For Australia, the term 'unmanufactured raw products' of Australia is used and this is detailed in Appendix 2 (under the 'New Zealand' heading) of the ANZCERTA booklet.

No imported content is permitted and packaging used to package the goods does not remove the goods from being classed as 'wholly the produce of'.

Goods Wholly Manufactured in the Country

This does not apply to the preferential rules of origin relating to Canada, the Forum Island Countries, and Less and Least Developed Countries under New Zealand's administration of the GSP scheme.

For other countries, other than Australia, goods are wholly manufactured where they are manufactured from unmanufactured raw products.

For Australia, the goods wholly manufactured category consists of goods made from one or more of the following:

(a) unmanufactured raw products;
(b) materials wholly manufactured in Australia, or in New Zealand, or in Australia and New Zealand;
(c) imported materials that the New Zealand Customs Service has determined.

The imported materials in (c) are known as DMRMs and must be specifically approved.

The 'unmanufactured raw products' in all cases may be imported.

Packaging used to package the goods does not remove the goods from being classed as 'goods wholly manufactured'.

Goods Partly Manufactured in the Country

There are two conditions to preference entitlement for goods partly manufactured in the preference country/area and partly outside it. These are:

1. That the last process of manufacture must be performed by the manufacturer in the preference country; and

2. Not less than 50 percent (45% for clothing in the case of the Forum Island Countries) of the defined factory cost must be made up of the defined qualifying expenditure.

Minimum Value-added Formula

The 50% Rule is based on the following formula:

$$\frac{\text{Qualifying Expenditure}}{\text{Factory Cost}} \times 100$$

Qualifying Expenditure = Qualifying expenditure on materials + qualifying labour + qualifying overhead (includes inner containers);

Factory Cost = Total expenditure on materials + qualifying labour + qualifying overhead (includes inner containers).

The difference between the qualifying expenditure and factory cost is effectively that the qualifying expenditure excludes the cost of imported materials that are used in manufacture.

Total Expenditure on Materials

This cost includes all directly attributable costs of acquisition of material input into the manufacturer's store but excludes certain duties and taxes levied within the qualifying area. Included in this cost is the cost of inner containers.

Qualifying Expenditure on Materials

Qualifying expenditure is total expenditure except:

- Where the last process of manufacture on materials occurs outside the qualifying area, there is

  - **no** qualifying expenditure for Australia or the Forum Island Countries;

  - qualifying expenditure for other countries is all the local costs incurred in the 'qualifying area' for the movement of the materials from the wharf or airport to the manufacturer's factory.

- Where materials are processed within the qualifying area from any imported raw materials last processed outside that area, of the total cost of those materials to the manufacturer, the portion of the cost that is attributed to being incurred within the area is the qualifying material expenditure while the balance of the cost relating to the cost of the imported raw materials is excluded from being qualifying expenditure but must be accounted as part of the 'Total Expenditure on Materials'.

- Where the qualifying area is **New Zealand/Australia or New Zealand/Forum Island Country** special expenditure provisions apply , refer to pages 8 and 9 of the ANZCERTA booklet under the heading "Materials of mixed origin".

Qualifying Expenditure on Labour and Overheads

Labour and overhead costs which may form part of the qualifying expenditure are contained in the regulation form.

For the ANZCERTA and SPARTECA Rules of Origin, the labour and overheads are contained on pages 10 to 12 of the ANZCERTA booklet.

For the other preference countries, the labour and overheads are detailed in
Appendix 3.2 of this compendium.

Qualifying Expenditure on Inner Containers

Where the qualifying area is **New Zealand/Australia or New Zealand/Forum Island Country** inner containers are treated as qualifying expenditure only where the containers meet the 50 percent rules in their own right, that is, they themselves have qualifying expenditure which equals or exceeds 50 percent.

Cumulative Rule

Under the partly manufactured rule, GSP countries may regard goods (materials) the "produce or manufacture" of any other GSP countries as qualifying expenditure (as detailed under "Qualifying Expenditure on Materials" above) for the purpose of the expenditure incurred by the manufacturer performing the last process of manufacture of a good for export to New Zealand.

The same provisions apply to the Forum Island Countries which may regard goods (materials) the "produce or manufacture" of any other Forum Island Country as qualifying expenditure as detailed under "Qualifying Expenditure on Materials" above.

Donor Country Content Rule

Under the partly manufactured rule, New Zealand (as the donor country) allows goods (materials) the "produce or manufacture" of New Zealand as contributing to the qualifying expenditure as detailed under "Qualifying Expenditure on Materials" above.

Donor country content does not apply to the rules of origin for Great Britain and Malaysia.

2.10.6 DIRECT SHIPMENT PROVISIONS

Direct shipment is required for all preferences except those from Australia or the Forum Island Countries. Goods in transit through another country as part of their voyage to New Zealand are deemed as a direct shipment.

For Less and Least Developed Countries under the GSP scheme, goods of a Less and Least Developed Country which meet the rules of origin can move through other Less and Least Developed Countries and not breach the direct shipment provisions. The same provisions apply to member countries of the Forum Island Countries under SPARTECA.

2.10.7. OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

2.10.8. REVIEW PROCEDURES

The New Zealand Customs Service maintains internal review procedures. Any party may request an internal review of a decision denying entitlement to preferential rates of duty. The obligation to pay outstanding duty is not deferred by reason of the review.

In circumstances where the preferential tariff rate of duty is denied, for example, in a situation where the New Zealand Customs Service is of the opinion that the goods do not meet the particular rules of origin thereby requiring the payment of the normal tariff (full duty rate), an appeal can be made to the Customs Appeal Authorities. Customs Appeal Authorities have been established to provide a relatively low ocst and independent appeal mechanism and hear appeals against specific decisions of the New Zealand Customs Service.

2.10.9 PREFERENTIAL ORIGIN RULINGS

The New Zealand Customs Service provides for Customs rulings on origin matters specifically relating to New Zealand's preferential rules of origin.

There are two types of origin rulings:

Country of produce or manufacture - origin for preferential tariff purposes

This ruling provision will determine whether or not specific goods meet the rules of origin for preferential tariff entry into New Zealand. For example, under the origin provisions relating to goods exported from Australia to New Zealand, a ruling could be given on whether or not the goods met the 50 percent origin rule thereby clarifying the entitlement of the goods to be entered under the Australian tariff preference.

Correct Application of Regulations - interpretation of any matter of the preferential rules of origin

This ruling allows for the correct application (interpretation) of any provision of the preferential rules of origin. For example, whether or not the factory manager's motor vehicle under the manager's employment contract was an allowable labour cost for the purposes of the 50 percent origin rule calculation.

Applications must be made on either Form C7A "Country of Produce or Manufacture" or Form C7B "Correct Application of Regulations" prescribed for that purpose. There is a fee of NZ $40.00 (inclusive of Goods and Services Tax) levied for each ruling at the time of application.

Details on the supply of the prescribed forms together with further information about the origin rulings can be obtained from the New Zealand Customs Service Address under the "Contact" heading.

2.10.9 CONTACT

M A Spong, Director Trade & Business Facilitation
New Zealand Customs Service
Head Office
PO Box 2218
Wellington

Tel: 64-4-473-6099
Fax: 64-4-472-3886

2.11 PAPUA NEW GUINEA: PREFERENTIAL RULES OF ORIGIN

2.11.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Determination of substantial transformation is on a change in tariff heading basis.

2.11.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Trade Initiatives

Preferential rates of duty flow from the following trade initiatives:

Initiative	Agreement Status	Preference Flow
Trade Agreement among the Melanesian Spearhead Group Countries	Multilateral	Reciprocal

Duty free access only applies to certain products as specified in the National Gazette No. G108 of 12 November 1995.

2.11.3 LEGISLATION AND OTHER RULES/DOCUMENTS

The rules of origin are incorporated in Annex 1 (Rules of Origin) of the Trade Agreement among the Melanesian Spearhead Group Countries (Appendix 3.3 of this compendium).

2.11.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Customs operations in the Internal Revenue Commission are responsible for the correct determination of origin of a product. A potential exporter must satisfy customs operations that the goods do originate within the MSG countries. The customs authorities can then issue a Certificate of Origin. This will allow duty free importation of the specified products to any of the other MSG countries.

2.11.5 RULES OF ORIGIN

Goods the Produce of the Country

Wholly obtained products are basically non-manufactured raw products of a preference country. These include mineral products, marine and agricultural products etc.

Goods Wholly Manufactured in the Country

This category includes goods that are produced exclusively from products that are wholly obtained from the country.

Goods Partly Manufactured in the Country

The criterion applied is a change of tariff heading system. A product is considered to be sufficiently worked or processed when the product is classified in an HS tariff heading (at the four digit level) which is different from those in which all the non-originating materials used in its manufacture are classified.

A number of operations are considered as insufficient working or processing to confer the status of originating products, whether or not there is a change of tariff heading. These include packing, marking and labelling, mixing of products, simple assembly of parts of articles and slaughter of animals.

2.11.6 DIRECT SHIPMENT PROVISIONS

Direct shipment is not required.

2.11.7 OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

2.11.8 REVIEW PROCEDURES

Any issues in dispute should be addressed to the Commissioner for Customs.

2.11.9 CONTACTS

Mr David Sode
Commissioner for Customs
Internal Revenue Commission
Revenue House
P.O. Box 777
Port Moresby
PAPUA NEW GUINEA

Tel: 675-322-6602
Fax: 675-321-4002

2.12: THE REPUBLIC OF THE PHILIPPINES: RULES OF ORIGIN

The Philippines applies the ASEAN Common Effective Preferential Tariff (CEPT) Scheme. Refer to Appendix 3.4 for a copy of the ASEAN CEPT Agreement in relation to ROO.

2.13 SINGAPORE: PREFERENTIAL RULES OF ORIGIN

2.13.1.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERIA

Determination of substantial transformation is on a value-added basis expressed as a percentage of the factory cost. Origin is achieved when a threshold of 40 percent or more of its contents originated from the country of origin.

2.13.1.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Trade Initiatives

Preferential rates of duty flow for the following trade initiatives:

Initiative	Agreement Status	Preferential flow
Trade Agreement (CEPT) Common Effective Preferential Tariff	Regional - ASEAN	Reciprocal

Variations of the Rules of Origin

There are no variations.

Singapore's tariff

98 percent of Singapore's imports enter the country duty-free. The rest, that is, 87 tariff lines for motor vehicles, petroleum, alcoholic beverages and tobacco have specific duties.

Under the CEPT Scheme, all tariffs are to reach the 0 to 5 percent tariff range by the year 2003.

Singapore offers duty free access on 5656 tariff lines under the CEPT Scheme.

2.13.1.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Singapore's preferential rules of origin are embodied in the Regulation of Imports and Exports Regulations 1995 Part III and Part V.

Other Publicly Available Documents

The information on procedures on how to apply for a Singapore Certificate of Origin is available on the Internet. The website address is http://www.tdb.gov.sg/ieinfo/ie_home.html.

2.13.1.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The responsibility for correct clearance of goods through Customs is on the importer.

2.13.1.5 RULES OF ORIGIN

Products under the CEPT Scheme may be eligible for preferential concessions under the following conditions:

Wholly Produced or Obtained

Products shall be considered as wholly produced or obtained in the exporting ASEAN Member State if they are:

(a) Mineral products extracted from its soil, its water or its seabeds

(b) Agricultural products harvested there

(c) Animals born and raised there

(d) Products obtained from animals referred to in paragraph (c) above

(e) Products obtained by hunting or fishing conducted there

(f) Products of sea fishing and other marine products taken from the sea by its vessels

(g) Products processed and/or made on board its factory ships exclusively from products referred to in paragraph (f) above

(h) Used articles collected there, fit only for the recovery of raw materials

(i) Waste and scrap resulting from manufacturing operations conducted there

(j) Goods produced there exclusively from the products referred to in paragraph (a) to (i) above

Not Wholly Produced or Obtained

(a) A product shall be deemed to be originating from ASEAN Member States, if at least 40 percent of the contents originates from any Member States.

(b) Subject to Sub-paragraph (i) above, for the purpose of implementing the provisions of products not wholly produced or obtained, products worked on and processed as a result of which the total value of the materials, parts or produce originating from non-ASEAN countries or of undetermined origin used does not exceed 60 percent of the FOB value of the product produced or obtained and the final process of the manufacture is performed within the territory of the exporting Member State.

(c) The value of the non-originating materials, parts or produce shall be:

  (i) The CIF value at the time of importation of the products or when importation can be proven; or

  (ii) The earliest ascertained price paid for the products of undetermined origin in the territory of the Member State where the working or processing takes place.

The formula for 40% ASEAN content is as follows:

$$\left\{ \frac{\text{Value of Imported Non-ASEAN Materials Parts or Produce} + \text{Value of Undetermined Origin Materials, Parts or Produce}}{\text{FOB Price}} \times 100 \right\} \leq 60\%$$

Cumulative Rule of Origin

Products which comply with origin requirements and which are used in a Member State as inputs for a finished product eligible for preferential treatment in another Member State shall be considered as products originating from the Member State where working or processing of the finished product has taken place provided that the aggregate ASEAN content of the final product is not less than 40 percent.

2.13.1.6 DIRECT CONSIGNMENT

The following shall be considered as consigned directly from the exporting Member State to the importing Member State:

(a) If the products are transported passing through the territory of any other ASEAN country

(b) If the products are transported without passing through the territory of any other non-ASEAN country

(c) The products whose transport involves transit through one or more intermediate non-ASEAN countries with or without transhipment or temporary storage in such countries, provided that:

  (i) The transit entry is justified for geographical reasons or by consideration related exclusively to transport requirements;

  (ii) The products have not entered into trade or consumption there; and

  (iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

2.13.1.7 OTHER CONDITIONS OR REQUIREMENTS

Treatment of Packing

(a) Where for purposes of assessing customs duties a Member State treats products separately from their packing, it may also, in respect of its imports consigned from another Member State, determine separately the origin of such packing.

(b) Where paragraph (a) above is not applied, packing shall be considered as forming a whole with the products and no part of any packing required for their transport or storage shall be considered as having been imported from outside the ASEAN region when determining the origin of the products as a whole.

Certificate of Origin

A claim that products shall be accepted as eligible for preferential concession shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Member State and notified to the other Member States in accordance with the Certification Procedures approved by the Senior Economic Official Meeting (SEOM).

2.13.1.8 REVIEW PROCEDURES

These rules may be reviewed as and when necessary upon request of a Member State and may be open to such modifications as may be agreed upon by the Council of Ministers.

2.13.1.9 CONTACTS

Head
Regulatory Unit
Trade Operations Department
Trade Development Board
230 Victoria Street #09-00
Bugis Junction Office Tower
Singapore 188024

Tel: 65-433-4571
Fax: 65-337-6898

2.13.2 SINGAPORE: NON-PREFERENTIAL RULES OF ORIGIN

Imports

There are no non-preferential rules of origin for imports.

Exports

The Certificate of Origin (CO) is issued when it is required.

An exporter is not required to apply for a Singapore CO except where there are special arrangements requiring the Singapore CO to be used. For example, exports of textiles and garments to the textile quota markets or when the Certificate is required by the importer.

2.13.2.1 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

To qualify as of Singapore origin the product must either:

(a) be wholly obtained (i.e. wholly grown or produced) in Singapore, or

(b) possess a local content of at least 25 percent of the ex-factory price of the product if it is manufactured with imported materials. Products which undergo minimal processing are not conferred originating status.

2.13.2.2 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

Singapore's legislation for the issue of Certificates of Origin is under Part of the Regulation of the Imports and Exports Regulations 1995.

The Trade Development Board is the administration and enforcement authority.

Authority issuing Certificates of Origin for export purposes

The Singapore Trade Development Board (STDB) and six organisations authorised by the Board: Singapore Commodity Exchange Ltd, Singapore Chinese Chamber of Commerce and Industry, Singapore Indian Chamber of Commerce and Industry, Singapore International Chamber of Commerce, Singapore Malay Chamber of Commerce and Singapore Confederation of Industries.

Applicants have to submit their applications and documentary evidence to the issuing authority to verify that the product qualifies as of Singapore origin. Singapore Commodity Exchange Ltd issues COs for the export of rubber only. The authorised organisations do not issue COs for exports of controlled items such as textiles and garments to the textile quota countries and shipments made under the preferential schemes such as the Generalised System of Preferences (GSP). The COs for these products are issued only by the STDB.

Other Publicly Available Documents

Information on procedures on how to apply for the Singapore Certificate is available on the Internet. The website address is http://www.tdb.gov.sg/ieinfo/ie_home.html.

2.13.2.3 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The Importers have the responsibility for correct declaration of their imports. This includes the country of origin for the products. For import approval, TDB verifies the country of origin of the products with the supporting documents.

2.13.2.4 RULES OF ORIGIN

For a product to qualify as of Singapore origin, it must either wholly obtained in Singapore, that is, wholly grown or produced in Singapore. The product may also be manufactured in Singapore from imported materials with at least 25 percent local contents of the ex-factory price of the product. A product will not qualify as being of Singapore origin if it has undergone simple or minimal processing such as packing, bottling, drying or sorting.

Wholly Obtained Products

The following categories of products can qualify as wholly obtained (i.e. wholly grown or produced) in Singapore.

(a) Mineral products extracted from its soil, or from its seabed

(b) Vegetable products harvested in Singapore

(c) Live animals born and raised in Singapore

(d) Products obtained in Singapore from live animals

(e) Products obtained by hunting or fishing conducted in Singapore

(f) Products of sea fishing and other products taken from the sea by its vessels

(g) Products made on board its factory ships exclusively from products referred to in (f) above

(h) Used articles collected in Singapore, fit only for the recovery of raw materials

(i) Waste and scrap resulting from manufacturing operations conducted in Singapore

(j) Goods produced in Singapore exclusively from the products specified in (a) to (i) above (such as iron sheets, bars produced from iron ore, cotton fabrics woven from raw cotton, recovery of lead from used motor-car batteries, recovery of metal from metal shavings)

Local Content

The 25 percent local content is derived from the total value of originating raw materials used and direct labour and overhead costs incurred in the production of the finished product expressed as a percentage of the ex-factory price. The calculation is as follows:

$$\text{Local Content} = \frac{\text{Singapore Raw Materials Cost + Direct Labour Cost + Overhead Cost}}{\text{Ex-factory Price}} \times 100 \geq 25\%$$

[Ex-factory Price = Total Materials Costs + Direct Labour Cost + Overhead Cost + Profit]

If an importing country has specific origin criteria for certain products, the Singapore exporter has to comply with those criteria instead of the 25 percent local content rule.

Products with Import Content - Minimal Processes

Products which have only undergone the following 'minimal processes' would not qualify as of Singapore origin:

(a) Operations to ensure the preservation of products in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations)

(b) Simple operations consisting of removal of dust, sifting or screening, sorting, classifying, matching (including the making up of sets of articles), washing, painting, cutting up

(c) (i) Changes of packing and breaking up and assembly of consignments

(ii) Simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, and all other simple packing operations

(d) The affixing of marks, labels or other like distinguishing signs on products or their packing

(e) Simple mixing of products, whether or not of different kinds

(f) Simple assembly of parts of products to constitute a complete product

(g) A combination of two or more operations specified in (a) to (f)

(h) Slaughter of animals

2.13.2.5 OTHER CONDITIONS OR REQUIREMENTS

Procedures for the issue of a Certificate of Origin (CO)

The Singapore Trade Development Board (STDB) issues COs for products made by registered manufacturers who have obtained prior approval from STDB that their products have complied with the origin criteria. The STDB conducts a factory visit to register a manufacturer and the products he intends to export with the CO. The manufacturer has to register any new products before he can apply for the CO from STDB. He is also required to maintain his production records for a period of two years for inspection.

After registration, the manufacturer submits a Manufacturing Cost Statement to STDB for verification that his product meets the 25 percent local content requirement. A Manufacturing Cost Statement is required for each model of the product. After verification, STDB sends a letter to inform the manufacturer if his product qualifies for the CO. With the approval letter, a manufacturer or his exporter can apply for a CO from STDB or from the authorised organisations. The Manufacturing Cost Statement is valid for one year and must be updated annually or earlier when there are changes during the year.

2.13.2.6 REVIEW PROCEDURES

Not applicable

2.13.2.7 CONTACTS

Head
Regulatory Unit
Trade Operations Division
Trade Development Board
230 Victoria Street #08-00
Bugis Junction Office Tower
Singapore 188024

Tel: 65-337-6628
Fax: 65-337-6898

2.14 CHINESE TAIPEI: NON-PREFERENTIAL RULES OF ORIGIN

2.14.1 OUTLINE OF REGIME

Chinese Taipei has a single set of rules of origin for imported goods, namely "Rules of Origin on Imported Goods". It is applicable to MFN rates, anti-dumping duties, safeguard measures, countervailing duties, import quotas and tariff quotas, trade statistics, marking of origin and government procurement purposes. As for issuance of certificates of origin of goods to be exported, it should follow the "Rules Governing the Issuance of Certificates of Origin of Taiwan Area".

2.14.2 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

According to the "Rules of Origin on Imported Goods," the country/area of origin is defined as the country/area in which the goods have been wholly produced; and where the processing, manufacturing or raw materials of the goods involved two or more countries/areas, the country/area in which the last substantial transformation of the goods had taken place. The definitions of substantial transformation of goods are:

1. The first six digits of the Customs Import Tariff of the processed or manufactured goods shall be different from those of their parts or materials;

2. Though the tariff heading under the Customs Import Tariff has not been changed as referred to in the preceding sub-paragraph as a result of manufacturing or processing operations, an important manufacturing process has been completed, or the ratio of added value has exceeded 35% percent.

2.14.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

The "Rules of Origin on Imported Goods" is co-issued by the Ministry of Finance (MOF) and the Ministry of Economic Affairs (MOEA), and both the MOF and the MOEA are responsible for introducing and revising rules/new rules.

Interested parties and persons can gain access to information on the "Rules of Origin on Imported Goods," from official gazettes, public notice boards, and Compendium on Customs Law and Regulations, or by inquiry to the Directorate General of Customs or regional Customs houses.

2.14.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

Chinese Taipei employs a duty-assessment system on a declaration basis and hence importers are responsible for correctly declaring imports.

The Customs Authority, at the place of importation, determines the country/area of origin of a good at the stage of clearance of a good.

In principle, the country/area of origin of a good is determined on the basis of an importer's declaration. Customs, as necessary, verifies the declaration through the examination of submitted relevant documents and inspection of marking of goods.

2.14.5 RULES OF ORIGIN

Chinese Taipei's "Rules of Origin on Imported Goods" is namely in terms of "goods wholly obtained" and "goods wholly manufactured in the origin country/area."

The definition of "goods wholly obtained or manufactured" shall be:
1. Mineral products excavated from a given country or area.

2. Plant products harvested or gathered within a given country or area.

3. Live animals born and raised within a given country or area.

4. Products obtained from live animals within a given country or area.

5. Products obtained from hunting or fishing conducted within a given country or area.

6. Fishery catch and other products obtained from the sea by a vessel registered in a given country or area, or products made from such fishery catch or other products.

7. Products extracted from the marine soil or subsoil outside the territorial waters of a given country or area which such country or area has the sole right to exploit.

8. Used articles or scrap and waste from manufacturing operations collected within a given country or area and fit only for the recovery of raw materials.

9. Goods produced from products referred to in Sub-paragraphs to above within a given country or area.

Goods Partly Manufactured in the Origin Country/Area and Partly Outside It

(1) In case where two or more countries/areas are involved in the production of the goods, the origin is defined as the country/area in which the last substantial transformation which confers a new character to the goods has been conducted, and furthermore "the substantial transformation which confers a new character to the goods" is provided as follows:

- The first six digits of the Customs Import Tariff of the processed or manufactured goods shall be different from those of their parts or materials;

- Though the tariff heading under the Customs Import Tariff has not been changed as referred to in the preceding sub-paragraph as a result of manufacturing or processing operations, an important manufacturing process has been completed, or **the ratio** of added value has exceeded 35% percent.

Notwithstanding the provisions of 1 and 2 above, the following operations are not considered to be "substantial transformation which confers a new character to the goods".

(a) Operations necessary for the preservation of goods during the transportation or storage.

(b) Sorting, grading, repackaging and packing operations of the goods for marketing or transportation.

(c) Combination or mixing operations of goods which have not resulted in any important difference in the characteristics of the goods before such combination or mixing and after.

(d) Simple assembling operations.

(e) Simple diluting operations which have not changed the nature of the goods.

The *Ad Valorem* Percentage Criterion

The ratio of added value, referred to in the proceeding paragraph 2, shall be computed as follows:

(FOB value of exported goods - CIF value of direct and indirect imported raw materials and parts) ÷ FOB value of imported goods = Ratio of added value

2.14.6 OTHER CONDITIONS OR REQUIREMENTS

No other conditions or requirements are provided.

2.14.7 REVIEW PROCEDURES

Any person may file a protest if he/she is not satisfied with disposition concerning determination of origin taken by the Customs Authorities, at the place of importation, in accordance with the provision of Article 23 of the Customs Law or Article 47 of the Customs Preventive Law.

2.14.8 CONTACTS

Section Chief-in-Charge of SCCP
Department of Customs Administration
Ministry of Finance
2 Ai-Kuo West Road
Chinese Taipei

Tel: 886-2-322-8216
Fax: 886-2-394-1479

2.15 THAILAND: PREFERENTIAL RULES OF ORIGIN

Thailand does not formulate preferential rules of origin (ROO) for exports but merely implements the rules as applicable (GSP, GSTP, ASEAN PTA and CEPT).

As it is not necessary to include ROO relating to the Generalised System of Preference (GSP) as these are part of the UNCTAD booklet on GSP, the information on ROO of GSTP and ASEAN PTA and CEPT can be expressed in brief and simple terms as follows.

A value-added criterion is employed as the basis of the substantial transformation test under the preferential system of GSTP and ASEAN PTA and CEPT.

The GSTP (Global System of Trade Preferences) is employed among developing countries and least developed countries of the Group of 77. ASEAN PTA (Preferential Trading Arrangements) and CEPT (Common Effective Preferential Tariff) are employed among ASEAN member countries.

Variation in Rules of Origin

The same value-added basis is applied in GSTP and ASEAN PTA and CEPT. There are a few minor differences as follows:

GSTP is employed among developing countries and least developed countries of the Group of 77, while ASEAN PTA and CEPT are employed among ASEAN member countries.

Under the GSTP, a product is deemed to originate from the exporting country of the Group of 77 if at least 50 percent of its content originates from that exporting country. The 50 percent local content requirement refers to a single country and 60 percent local content requirement refers to cumulative GSTP content.

Under ASEAN PTA and CEPT, a product is considered to originate from ASEAN member countries if at least 40 percent of its contents originates from any ASEAN member countries. The 40 percent local content requirement refers to both single country and cumulative ASEAN content.

Structure and Application of Thailand's Tariff

Thailand's preferential rates of duty are applied for GSTP and ASEAN PTA and CEPT imports. Thus, goods imported and not entitled to preference will pay the normal or general rate of duty.

2.15.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

As preferential ROO are already prescribed in each preferential system of GSP, GSTP, ASEAN PTA and CEPT, Thailand therefore does not find it necessary to formulate any legislation and preferential ROO applying to preferential exports.

Other Publicly Available Documents

The GSTP handbook prepared by UNCTAD and the manual of ASEAN PTA and CEPT prepared by ASEAN Secretariat are available for exporters.

2.15.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

The Department of Foreign Trade, Ministry of Commerce is responsible for the issue of Certificates of Origin for a product exported under GSP, GSTP, ASEAN PTA and CEPT and is responsible for the assessment of the origin of that product before exporting. The invoice as well as the other documents of exportation such as the air waybill and bill of lading are used for the application of Certificates of Origin for the above mentioned exports.

2.15.5 RULES OF ORIGIN

Goods originating in a preference country may be divided into two categories as follows.

Wholly Obtained Goods

These goods are entirely grown, extracted from the soil or harvested within the exporting country or manufactured there exclusively from any of these products.

Goods Partly Manufactured in the Country

There are two conditions to preference entitlement for goods partly manufactured in the preference country as follows:

1. The last process of manufacture must be performed by the manufacturer in the preference receiving country and

2. Not less than 50 percent of the value of the exported product must be made up of local content for single country content and not less than 60 percent for cumulative content under the GSTP scheme and not less than 40 percent of the value of the exported product must be made up of local content for both single country and cumulative content under ASEAN PTA and CEPT schemes.

2.15.6 DIRECT SHIPMENT PROVISIONS

Direct shipment is required by GSTP and ASEAN PTA and CEPT.

2.15.7 OTHER CONDITIONS OR REQUIREMENTS

There are no other conditions or requirements.

2.15.8 REVIEW PROCEDURES

UNCTAD is responsible for maintaining review procedures under GSTP while the ASEAN Secretariat is responsible for ASEAN PTA and CEPT.

2.15.9 CONTACTS

Trade Preference Division
Department of Foreign Trade
Sanamachai Road
Bangkok 10200
Thailand

Tel: 662-282-8188
Fax: 662-281-7671

2.16.1 UNITED STATES: PREFERENTIAL RULES OF ORIGIN

2.16.1.1 BASIS OF SUBSTANTIAL TRANSFORMATION CRITERION

U.S. preferential rules of origin schemes are used for several special tariff programs. Most are set forth in the U.S. tariff schedule, that is, the Harmonized Tariff Schedule of the United States "HTSUS". A brief discussion of the above mentioned rules of origin is set forth below:

Andean Trade Preference Act (ATPA)

The ATPA is a program that provides for the duty free entry of merchandise from the following designated beneficiary countries: Bolivia, Ecuador, Colombia, and Peru. It is intended to encourage economic growth in those countries. Duty free treatment is granted under the ATPA to any otherwise eligible article which is the growth, product, or manufacture of a designated beneficiary country if (1) that article is imported directly from a beneficiary country into the U.S. customs territory and (2) the sum of the cost or value of materials produced in one or more Andean beneficiary countries or one or more Caribbean Basin Initiative beneficiary countries plus the direct costs of processing operations performed in one or more Andean or Caribbean Basin initiative beneficiary countries is not less than 35 percent of the appraised value of the article. Puerto Rico and the Virgin Islands are also considered beneficiary countries for this purpose. Up to 15 percent of the value attributable to the cost or value of materials produced in the United States may be applied toward the 35 percent minimum local content requirement.

Automotive Products Trade Act (APTA)

The APTA implements into U.S. law the United States-Canada Automotive Agreement. The APTA provides for the duty free entry of motor vehicles and specified original equipment parts that qualify as "Canadian articles" under general note 5 to the HTSUS. The term "Canadian articles" refers to articles produced in Canada but does not include any article produced in Canada with non-Canadian or non-U.S. materials unless the article satisfies the criteria for originating goods set forth in the NAFTA preferential rules of origin (as found in general note 12 to the HTSUS).

Caribbean Basin Initiative (CBI)

The CBI provides for free rates of duty for all but a few classes of merchandise and reduced rates of duty on selected classes of merchandise imported into the United States from designated beneficiary countries or territories. It is intended to encourage economic growth in those countries and territories. The elements of the CBI's origin rules (for goods that are not wholly obtained from a beneficiary country or territory) can be summarized as follows: (1) substantial transformation of foreign materials and local materials and/or direct processing cost-added of 35 percent of the appraised value; (2) dual substantial transformation of foreign materials possible; (3) unlimited cumulation possible among all CBI beneficiaries; (3) limited U.S.-country benefit (i.e., a prescribed percentage of U.S. materials permitted for satisfying the above-mentioned 35 percent value requirement); and (4) direct shipment from any CBI beneficiary is possible.

General System of Preferences (GSP)

The GSP provides for free rates of duty for merchandise imported into the United States from beneficiary developing independent countries and dependent countries and territories. It is intended to encourage economic growth in those countries and territories. The elements of the GSP's origin rules (for goods that are not wholly obtained from a beneficiary country or territory) can be summarized as follows: (1) substantial transformation of foreign materials and local materials and/or direct processing cost-added of 35 percent of the appraised value; (2) dual substantial transformation of foreign materials possible; (3) full and regional cumulation possible among members of certain free-trade associations; and (4) direct-shipment rule.

North American Free Trade Agreement (NAFTA)

The NAFTA eliminates tariffs on most goods originating in Canada, Mexico, and the United States over a maximum transition period of fifteen years. There are origin rules for tariff preferential purposes. The origin rules (for goods that are not wholly obtained from the NAFTA region) are based on a tariff-shift method and/or regional value-content method.

Compact of Free Association Act (FAS)

The FAS provides for zero rates of duty for merchandise imported into the United States from designated freely associated states of the United States. The freely associated states that have been designated as beneficiary countries for purposes of the FAS are the Marshall Islands, Federated States of Micronesia, and Republic of Palau. The elements of the FAS's origin rules (for goods that are not wholly obtained from a beneficiary state) can be summarized as follows: (1) local materials and/or direct processing cost-added of 35 percent of the appraised value; (2) limited U.S.-country benefit (i.e., a prescribed percentage of U.S. materials permitted for satisfying the above-mentioned 35 percent value requirement); and (3) direct-shipment rule.

Insular Possessions of the United States

Merchandise imported into the United States from insular possessions of the United States that are outside the customs territory of the United States are accorded preferential tariff treatment if they satisfy certain origin rules. The elements of the insular possessions' origin rules (for goods that are not wholly obtained from a beneficiary insular possession) can be summarized as follows: (1) local cost and profit added of 50 percent of the appraised value for articles not eligible for CBI preferences; (2) local cost and profit added of 30 percent of the appraised value for articles eligible for CBI preferences; (3) dual substantial transformation of foreign materials possible; and (4) unlimited percentage of U.S. materials permitted for satisfying the above-mentioned value requirement.

United States-Israel Free-Trade Agreement (IFTA)

The IFTA provides for zero or reduced rates of duty for merchandise imported from Israel into the United States. The IFTA is intended to stimulate trade between the United States and Israel. The elements of the IFTA's origin rules (for goods that are not wholly obtained from Israel) can be summarized as follows: (1) local materials and/or direct processing cost-added of 35 percent of the appraised value (including the cost or value of materials produced in and the direct costs of processing operations performed in the West Bank, the Gaza Strip or a qualifying industrial zone); (2) dual substantial transformation of foreign materials possible; (3) limited U.S.-country benefit (i.e., a prescribed percentage of U.S. materials permitted for satisfying the above-mentioned 35 percent value requirement); and (4) direct shipment from Israel required but direct shipment from West Bank, the Gaza Strip or a qualifying industrial zone also permitted for purposes of that requirement.

Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone

Merchandise imported into the United States from the West Bank, the Gaza Strip or a qualifying industrial zone are accorded preferential tariff treatment if they satisfy certain origin rules. The elements of those origin rules (for goods that are not wholly obtained from a beneficiary area or industrial zone) can be summarized as follows: (1) local materials and/or direct processing cost-added of 35 percent of the appraised value (including the cost or value of materials produced in and the direct costs of processing operations performed in Israel); (2) dual substantial transformation of foreign materials possible; (3) limited U.S.-country benefit (i.e., a prescribed percentage of U.S. materials permitted for satisfying the above-mentioned 35 percent value requirement); and (4) direct shipment from the West Bank, the Gaza Strip or a qualifying industrial zone required but direct shipment from Israel also permitted for purposes of that requirement.

2.16.1.2 BACKGROUND TO PREFERENTIAL RATES OF DUTY

Trade Initiatives

As indicated above, preferential rates of duty are derived from the following trade initiatives:

Initiative	Agreement Status	Preference Flow
Andean Trade Preference Act	Unilateral	Non-reciprocal
Automotive Products Trade Act	Bilateral	Reciprocal
Caribbean Basin Economic Recovery Act	Unilateral	Non-reciprocal
General System Preferences	Unilateral	Non-reciprocal
North American Free Trade Agreement	Trilateral	Reciprocal
Compact of Free Association Act	Unilateral	Non-reciprocal
Procucts of Insular Possessions	Unilateral	Non-reciprocal
Products of the West Bank the Gaza Strip or a Qualifying Industrial Zone	Unilateral	Non-reciprocal
United States-Israel Free Trade	Bilateral	Reciprocal Agreement

Variations in Rules of Origin

As indicated above, the U.S. preferential rules of origin schemes employ the "wholly obtained" criterion for goods that are wholly the growth, product, or manufacture of a particular country. On the other hand, for goods that consist in whole or in part of materials from more than one country, the majority of U.S. preferential rules of origin schemes are based (1) on a change in name/character/use and (2) on a required minimum value content. The NAFTA tariff preferential rules of origin (for goods that are not wholly obtained from the NAFTA region) are based on a tariff-shift method and/or regional value-content method.

U.S. Tariff Schedule

The Harmonized Tariff Schedule of the United States has preferential rates of duty specified throughout the schedule for particular special tariff programs. As indicated above, the goods must meet the requirements for the particular special tariff program in order to be eligible for the preferential rate of duty. The country of origin of goods is shown on the entry documents whether or not the country of origin is the country of last manufacture.

2.16.1.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

The United States of America's rules of origin are embodied in the following legislation:

Andean Trade Preference Act	General Note 11 to HTSUS (19 U.S.C. 1202) 19 U.S.C. 3201
Automotive Products Trade Act	General Note 5 to HTSUS (19 U.S.C. 1202) 19 C.F.R. 10.84 19 U.S.C. 2001
Caribbean Basin Economic Recovery Act	General Note 7 to HTSUS (19 U.S.C. 1202) 19 C.F.R. 10.191 19 U.S.C. 2701
General System of Preferences	General Note 4 to HTSUS (19 U.S.C. 1202) 19 C.F.R. 10.171 19 U.S.C. 2461
North American Free Trade Agreement Implementation Act	Article 401 of the North American Free Trade Agreement: Tariff Preferential Rules General Note 12 to HTSUS (19 U.S.C. 1202) 19 C.F.R. 181.131 19 U.S.C. 3332
Compact of Free Association Act	General Note 10 to HTSUS (19 U.S.C. 1202)
Products of Insular Possessions	General Note 3(a)(iv) to HTSUS (19 U.S.C. 1202) 19 C.F.R. 7.8
Products of the West Bank, the Gaza Strip or a Qualifying Industrial Zone	General Note 3(a)(v) to HTSUS (19 U.S.C. 1202) 19 U.S.C. 2112
United States-Israel Free Trade Area Implementation Act	General Note 8 to HTSUS (19 U.S.C. 1202) 19 U.S.C. 2112

Publicly Available Documents

The U.S. preferential rules of origin can be found in the following instruments: United States Code (U.S.C.), United States Code of Federal Regulations (C.F.R.), United States Customs Service Administrative Rulings, United States Federal Court Decisions, and the Harmonized Tariff Schedule of the United States (HTSUS).

2.16.1.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

U.S. importers are responsible for declaring the correct country of origin of imported goods. United States Customs Service officials at the ports of entry into the United States are responsible for verifying the accuracy of those declarations during the clearance of goods through customs. That responsibility is discharged and monitored though the review of pertinent documents and through selected audits of the merchandise and the importer. Pertinent entry documents (which may include declarations) are used to declare the country of origin of a good for the preferential rules of origin regime.

2.16.1.5 RULES OF ORIGIN

Under the U.S. preferential rules of origin regime, goods are considered to be "wholly obtained" from a particular country if they are wholly the growth, product, or manufacture of that country. The origin of goods not wholly obtained are determined as discussed above in item 1. Moreover, there is no fixed rule on the content permitted. Packaging is generally considered to originate from the same country as the goods contained therein. The NAFTA rules of origin are based on the 1996 version of the Harmonized System.

2.16.1.6 DIRECT SHIPMENT PROVISIONS

See the discussion for each scheme in item number 1 above.

2.16.1.7 OTHER CONDITIONS OR REQUIREMENTS

See the discussion for each scheme in item number 1 above.

2.16.1.8 REVIEW PROCEDURES

One may seek an administrative review of a country of origin determination by the United States Customs Service by protesting the decision to the Customs Service. A protest will result in the decision being internally reviewed by the Customs Service at a higher level of authority than the level at which the decision was originally rendered. If not satisfied with the decision resulting from the protest, one may seek judicial review of the decision by the United States Court of International Trade. If not satisfied with the decision by the United States Court of International Trade, one may seek review of the decision through an appeal to the United States Court of Appeals for the Federal Circuit. Finally, if not satisfied with the decision of the United States Court of Appeals for the Federal Circuit, one may request a review of the decision by the United States Supreme Court (the final court of review at the federal level in the United States).

2.16.1.9 CONTACTS

The following person is a contact for further information:

Myles B. Harmon, Director
International Agreements Staff
Office of Regulations and Rulings
United States Customs Service
Franklin Court, Room 4070
1301 Constitution Avenue, NW
Washington, D.C. 20229
U.S.A.

Tel: 1-202-482-7000
Fax: 1-202-482-7042

2.16.2 THE UNITED STATES: NON-PREFERENTIAL RULES OF ORIGIN

2.16.2.1 OUTLINE OF NON-PREFERENTIAL RULES OF ORIGIN REGIME

All U.S. non-preferential rules of origin schemes employ the "wholly obtained" criterion for goods that are wholly the growth, product, or manufacture of a particular country. On the other hand, all U.S. non-preferential rules of origin schemes employ the "substantial transformation" criterion for goods that consist in whole or in part of materials from more than one country. In the majority of the non-preferential schemes, the substantial transformation criterion is applied in a case-by-case manner that is based on a change in name/character/use method (i.e., an article that consists in whole or in part of materials from more than one country is a product of the country in which it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which is was so transformed). A rules of origin scheme for textiles and textile products exists that employs the substantial transformation criterion which is based on a tariff-shift method. Another rules of origin scheme for products imported from Canada or Mexico exists that also employs the substantial transformation criterion which is based on a tariff-shift method. A brief discussion of the above-mentioned rules of origin schemes is set forth below.

Government Procurement

This rules of origin scheme is used to determine the country of origin of government procurement for the purpose of granting waivers of certain "Buy American" restrictions in U.S. laws or practice for products for eligible countries. For purposes of this scheme, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which is was so transformed.

Most-Favored-Nation (MFN) Treatment

This rules of origin scheme is used to determine the country of origin of a product for purposes of MFN duty treatment. It employs the "wholly obtained" criterion for goods that are wholly the growth, product, or manufacture of a particular country. On the other hand, it employs the "substantial transformation" criterion for goods that consist in whole or in part of materials from more than one country. The substantial transformation criterion is based on a change in name/character/use method (i.e., an article that consists in whole or in part of materials from more than one country is a product of the country in which it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which is was so transformed).

Marking

There are two sets of rules of origin schemes for country of origin marking purposes. The first scheme is used to determine the country of origin of a product for all countries except Canada and Mexico. It employs a rules of origin approach similar to that discussed above for MFN duty treatment. The second scheme is based on Annex 311 to the North American Free Trade Agreement (NAFTA). It is used for products imported from Canada or Mexico.

For goods that consist in whole or in part of materials from more than one country, this scheme employs the substantial transformation criterion which is expressed or based exclusively on a tariff-shift method (which is based on the 1996 version of the Harmonized System). This scheme includes the following general rules: (1) a *de minimis* test of 7 percent of value of a good except for goods of chapter 22 wherein the test is 10 percent of the value of a good; (2) a chemical reaction origin rule for the goods of chapters 28, 29, 31, 32 or 38; (3) provisions relating to the origin of certain packaging materials, accessories, spare parts, tools, indirect materials (neutral elements), and certain non-qualifying operations (e.g., mere dilution with water).

Textile and Textile Products

This rules of origin scheme is used to determine the country of origin for textiles and textile products for, among other things, the application of quotas. It employs the substantial transformation criterion which is expressed or based exclusively on a tariff-shift method (which is based on the 1996 version of the Harmonized System).

2.16.2.2 BASIC PRINCIPLES OF NON-PREFERENTIAL RULES OF ORIGIN

As indicated above, all U.S. non-preferential rules of origin schemes employ the "wholly obtained" criterion for goods that are wholly the growth, product, or manufacture of a particular country. On the other hand, for goods not wholly obtained, the substantial transformation criterion is employed in the following general manner or method for the majority of the U.S. non-preferential rules of origin schemes.

An article that consists in whole or in part of materials from more than one country is considered to be a product of the last country in which it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. Also as indicated above, there are also rules of origin for textile and textile products and for products imported from Canada or Mexico that employ a tariff-shift method as the reflection of the substantial transformation criterion.

2.16.2.3 LEGISLATION AND OTHER RULES/DOCUMENTS

Legislation

The United States of America's legislation is embodied in the following legislation:

Government Procurement	19 U.S.C. 2511 19 C.F.R. 177.21
Marking Rules of Origin	19 U.S.C. 1304 19 C.F.R. 134 19 C.F.R. 102.0
Most-Favored-Nation Duty Assessment	General Note 3 to Harmonized Tariff Schedule of the United States (19 U.S.C.1202)
Textiles and Textile Products	7 U.S.C. 1854 19 U.S.C. 3592 19 C.F.R. 12.130 19 C.F.R. 102.21

The authority for introducing and revising instruments providing for the U.S. non-preferential rules of origin originates with the United States Congress. That authority has in certain instances been delegated to the President of the United States and to U.S. Federal Governmental Departments and Agencies.

Publicly Available Documents

The U.S. non-preferential rules of origin can be found in the following instruments: United States Code (U.S.C.), United States Code of Federal Regulations (C.F.R.), United States Customs Service Administrative Rulings, United States Federal Court Decisions, and the Harmonized Tariff Schedule of the United States (HTSUS).

Interested parties may gain access to the U.S. non-preferential rules of origin through the above-mentioned instruments which are all publicly available.

2.16.2.4 RESPONSIBILITY FOR CORRECT DETERMINATION OF ORIGIN

U.S. importers are responsible for declaring the correct country of origin of imported goods. United States Customs Service officials at the ports of entry into the United States are responsible for verifying the accuracy of those declarations during the clearance of goods through customs. That responsibility is discharged and monitored though the review of pertinent documents and through selected audits of the merchandise and the importer. Pertinent entry documents (which may include declarations) are used to declare the country of origin of a good for the non-preferential rules of origin regime.

2.16.2.5 RULES OF ORIGIN

Under the general U.S. non-preferential rules of origin regime, goods are considered to be "wholly obtained" from a particular country if they are wholly the growth, product, or manufacture of that country. On the other hand, an article that consists in whole or in part of materials from more than one country is considered to be a product of the last country in which it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. There are no fixed rules concerning the use of value content or the occurrence of specific manufacturing operations. There is also no fixed rule on the content permitted. Packaging is generally considered to originate from the same country as the goods contained therein.

There is also a rules of origin scheme for textile and textile products that employs the substantial transformation criterion which is based exclusively on a tariff-shift method. It is based on the 1996 version of the Harmonized System and covers the headings and chapters of the Harmonized System relevant to textile and textile products. The tariff shift involved in the scheme may take several forms: heading to heading, heading to chapter, etc.

There is also a rules of origin scheme for products imported from Canada or Mexico that employs the substantial transformation criterion which is based exclusively on a tariff-shift method (see attachments). It is based on the 1996 version of the Harmonized System and covers the headings and chapters of the Harmonized System. The tariff shift involved in the scheme may take several forms: heading to heading, heading to chapter, etc.

2.16.2.6 OTHER CONDITIONS OR REQUIREMENTS

The conditions or requirements for the U.S. non-preferential rules of origin are as discussed above in item 1.

2.16.2.7 REVIEW PROCEDURES

One may seek an administrative review of a country of origin determination by the United States Customs Service by protesting the decision to the Customs Service. A protest will result in the decision being internally reviewed by the Customs Service at a higher level of authority than the level at which the decision was originally rendered. If not satisfied with the decision resulting from a protest, one may seek judicial review of the decision by the United States Court of International Trade.

If not satisfied with the decision by the United States Court of International Trade, one may seek review of the decision through an appeal to the United States Court of Appeals for the Federal Circuit.

Finally, if not satisfied with the decision of the United States Court of Appeals for the Federal Circuit, one may request a review of the decision by the United States Supreme Court (the final court of review at the federal level in the United States).

2.16.2.8 CONTACTS

The following person is a contact for further information:

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CANADA

NAFTA REGIONAL VALUE CONTENT

Introduction

The North American Free Trade Agreement (NAFTA) sets out two different methods of calculating the regional value content of a good - the transaction value method and the net cost method. The following summarizes the information necessary for determining the regional value content for non-automotive goods under these two methods. It does not address the special rules governing automotive goods which are set out in sections 9 through 13 of the *NAFTA Rules of Origin Regulations*.

When are Regional Value Content Requirements Applicable?

Under the NAFTA, a good qualifies for preferential tariff rates if it satisfies one of the four general rules of origin as set out in Article 401. The majority of goods will qualify as originating under Article 401(b). This general rule of origin considers a good to originate, even though the good contains non-originating material, if the good meets the requirements of the Specific Rules of Origin as set out in Annex 401 of the Agreement (or Schedule I of the *NAFTA Rules of Origin Regulations*) . The specific rule of origin applicable to a good is determined by its tariff classification under the Harmonized System (HS).

For the large majority of goods, Annex 401 of the Agreement contains a single rule of origin which requires a specified change in HS tariff classification from non-originating materials to the finished good. For a limited number of goods (i.e., some goods in HS Chapters 39, 64, 84, 87 and 89) the single rule of origin also includes a regional value content requirement.

For a number of goods, there are two rules of origin. The first rule requires a substantive change in tariff classification that is sufficient in itself to confer origin. The second or alternate rule normally includes a lesser change in tariff classification that must be met together with a regional value content requirement (RVC). There are 24 instances (in HS Chapters 84, 85, 87 and 90) where the alternate rule is comprised only of an RVC requirement.

Rules containing a regional value content requirement will specify the percentage of the good's value that must originate from production occurring within the NAFTA territory. Generally, these rules will state two minimum RVC percentages, one as calculated under the transaction value method and the other as calculated under the net cost method. As noted below, there are some goods for which the RVC must be calculated under the net cost method.

Regional value content requirements can be found in the Specific Rules of Origin for some of the goods classified in HS Chapters 28 to 38, 39, 40, 64, 73, 74, 78, 79, 83-87, and 89-93. Regional value content must also be calculated when attempting to qualify a good under Article 401(d) which addresses those instances in which a good is unable to meet the required tariff change because:

i) the good is imported into the NAFTA territory in an unassembled or a disassembled form yet is classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the HS; or

ii) the good is produced using materials imported into a NAFTA country that are provided for as parts according to the HS, and those parts are classified in the same heading (which is not further subdivided into subheadings) or subheading as the finished good.

APPENDIX 3.1 (Cont.)

Which Method should be used to Calculate RVC?

In most situations, a producer may choose to calculate the good's regional value content under the transaction value method or the net cost method. A producer usually has the choice to use whichever method is more advantageous; however, the NAFTA sets out certain circumstances in which the transaction value method can **not** be used and therefore the net cost method **must** be used to calculate the regional value content.

How is the RVC Calculated using the Transaction Value Method?

Under the transaction value method, the regional value content of a good is calculated as follows:

$$\mathbf{RVC} = \frac{\mathbf{TV - VNM}}{\mathbf{TV}} \times \mathbf{100}$$

where;

RVC is the regional value content expressed as a percentage;
TV is the transaction value of the good adjusted to a FOB basis; and
VNM is the value of non-originating materials used by the producer in the production of the good.

Note that the transaction value is based on the transaction in which the **producer** of the good sold the good, regardless of whether it is the transaction that results in its sale for export. FOB means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer. Point of direct shipment means the location from which a producer of a good normally ships that good to the buyer of the good.

For further information on the transaction value, refer to the *NAFTA Rules of Origin Regulations*, Schedule II.

What is the Value of Non-originating Materials?

Non-originating materials are materials that are either imported from a non-NAFTA country or are acquired in the NAFTA territory but because of the high level of non-NAFTA input, do not qualify as originating materials under the NAFTA rules of origin.

Where the material is imported by the producer of the good into a NAFTA country, the value of the non-originating materials will be the customs value of the material, and should include certain costs as set out in the *NAFTA Rules of Origin Regulations*.

Where the non-originating material is acquired by the producer from another person within the NAFTA country in which the good is produced, the value will be the transaction value of the acquired material, and should include certain costs as set out in the *NAFTA Rules of Origin Regulations*.

For further information on the valuation of non-originating materials, refer to the *NAFTA Rules of Origin Regulations*, Section 7 and Schedule VIII.

How is the RVC Calculated using the Net Cost Method?

Under the net cost method, the regional value content of the good is calculated as follows:

$$\mathbf{RVC} = \frac{\mathbf{NC - VNM}}{\mathbf{NC}} \times \mathbf{100}$$

where;

RVC is the regional value content, expressed as a percentage;
NC is the net cost of the good; and
VNM is the value of non-originating materials used by the producer in the production of the good (see previous section on the valuation of non-originating materials).

Net cost is calculated as follows:

$$\mathbf{NC = TC - EC}$$

where:

TC is the total cost of producing the good. Note that the total cost of producing the good includes all product, period and other costs, but does not include profits.

EC are excluded costs which means sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs. Note that each of these costs are defined in detail in section 2 of the *NAFTA Rules of Origin Regulations*.

Schedule VII of the *NAFTA Rules of Origin Regulations* provides information on acceptable methods for allocating costs to goods. In summary, any reasonable allocation method used for internal management purposes by the producer will be acceptable. The reasonableness of a cost allocation method will be evaluated against the criteria of benefit, cause or ability to bear. It should also be noted that section 6 of Schedule VII prohibits the allocation of certain costs to a good including gains or losses resulting from the disposition of a discontinued operation or from the sale of capital assets.

What is Averaging?

The *NAFTA Rules of Origin Regulations* provide for the calculation of an average regional value content (RVC) under the net cost method. An average RVC is calculated by inserting, in the net cost formula, the **sum of the net costs** incurred and the **sum of the value of non-originating materials** used in the production of the good over a period of time (e.g., one month).

The provision for calculating the net cost RVC over a period of time for non-automotive goods is contained in subsection 6(15) of the Regulations. For non-automotive goods for which an average RVC is to be calculated, the goods must be identical and/or similar and produced in the same plant. Under section 6, an average RVC may be calculated over the period of one month, three months, six months or a year.

APPENDIX 3.2

NEW ZEALAND

QUALIFYING LABOUR AND OVERHEADS

The following are the qualifying labour and overheads for countries other than Australia and the Forum Island Countries:

a) Manufacturing wages:

b) Factory overhead expenses, namely:

i) All expenses directly or indirectly connected with manufacture, for example, rent, rates, and taxes in respect of the factory;
ii) motive power, gas, fuel, water, lighting, and heating of factory;
iii) Expenses of factory supervision, for example, wages and salaries of manager, foreman, timekeepers, and watchman;
iv) Repairs, renewals, and depreciation of plant, machinery, and tools;
v) Interest on capital outlay on plant, machinery, tools, and factory buildings; and
vi) Royalties payable in respect of patented machines or processes used in the manufacture of the goods.

PAPUA NEW GUINEA

ANNEX 1 OF TRADE AGREEMENT AMONG THE MELANESIAN SPEARHEAD GROUP OF COUNTRIES

1. For the purpose of this Agreement goods shall be accepted as originating in a Party, if it has been either wholly obtained or sufficiently worked or processed in a Party territory.

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

   (a) Mineral products extracted from their soil or from their seabed
   (b) Vegetable products harvested there
   (c) Live animals born and raised there
   (d) Products from live animals raised there
   (e) Products obtained by hunting or fishing conducted there
   (f) Products of sea fishing and other products taken from the sea by their vessels
   (g) Products made aboard their factory ships exclusively from products referred to in subparagraph (f)
   (h) Used articles collected there fit only fro the recovery of raw materials
   (i) Waste and scrap resulting from manufacturing operations conducted there
   (j) Goods produced there exclusively from products specified in subparagraphs (a) to (i)

3. The following shall be considered as sufficient working and processing.

   When the product obtained is classified in a heading which is different from those in which all the non-originating materials used in its manufacture are classified, subject to paragraph 4.

   The expression "heading" shall mean the 4 digit headings used in the Harmonised Commodity Description and Coding System.

4. The following shall be considered as insufficient working of processing to confer the status of originating products whether or not there is a change of heading:

   (a) Operations to ensure the preservation of merchandise in good condition during transport and storage (ventilation, spreading out, drying, chilling, placing in salt, sulphur dioxide or other aqueous solutions, removal of damaged parts, and like operations)

   (b) Simple operations consisting of removal of dust, sifting of screening, sorting, classifying, matching (including the making up of sets of articlues), washing, painting, cutting up

   (c) (i) Changes of packing and breaking up and assembly of consignments

   (ii) Simple placing in bottles, flasks, bags, cases, boxes, fixing on cards or boards, etc., and all other simple packaging operations

   (d) Affixing marks, labels or other like distinguishing signs on products or their packaging

   (e) Simple mixing of products, whether or not of different kinds, where one or more components of the mixtures do not meet the conditions laid down in the Annex to enable them to be considered as originating products

   (f) Simple assembly of parts of articles to constitute a complete article

APPENDIX 3.3 (cont.)

   (g) A combination of two or more operations specified in subparagraphs (a) to (f)

(h) Slaughter of animals

5. The preferential treatment provided for under this Agreement applies to products or materials which are transported directly between the territories of the Parties.

However, goods originating in the parties and constituting a single shipment which is not split up may be transported through territory other than that of the Parties with, should the occasion arise, transshipment or temporary warehousing in such territory, provided that the crossing of the latter territory is justified for geographical reasons, that the goods have remained under the surveillance of the customs authorities in the country of transit or of warehousing, that they have not entered into the commerce of such countries nor been delivered for home use there and have not undergone operations other than unloading, reloading or any operation designed to preserve them in good condition.

6. (a) Originating products within the meaning of this Annex shall, on import into the Parties, benefit from the Agreement upon submission of a certificate of origin, Form A, a specimen of which appears in Annex II, signed by the exporter and certified by the Parties' respective Customs Authorities.

(b) The exporter shall be prepared to submit a declaration setting forth all pertinent details concerning the production or manufacture of the articles covered by the certificates of origin upon request by a Party. A declaration should only be requested when a Party has reason to question the accuracy of the statement on a certificate of origin or when a Party randomly verifies certificates of origin.

(c) The Parties agree to assist each other in obtaining information for the purpose of reviewing transactions made under this Agreement in order to verify compliance with the conditions set forth in this Agreement.

RULES OF ORIGIN FOR THE ASEAN CEPT

In determining the origin of products eligible for the CEPT Scheme under the Agreement on the CEPT, the following Rules shall be applied:

RULE 1 ORIGINATING PRODUCTS

Products under the CEPT imported into the territory of a Member State from another Member State which are consigned directly within the meaning of Rule 5 hereof, shall be eligible for preferential concessions if they conform to the origin requirements under any one of the following conditions:

(a) Products wholly produced or obtained in the exporting Member State as defined in Rule 2; or

(b) Products not wholly produced or obtained in the exporting Member State, provided that the said products are eligible under Rule 3 or Rule 4.

RULE 2 WHOLLY PRODUCED OR OBTAINED

Within the meaning of Rule 1 (a), the following shall be considered as wholly produced or obtained in the exporting Member State:

(a) Mineral products, extracted from its soil, its water or its seabeds

(b) Agricultural products harvested there

(c) Animals born and raised there

(d) Products obtained from animals referred to in paragraph (c) above

(e) Products obtained by hunting or fishing conducted there

(f) Products of sea fishing and other marine products taken from the sea by its vessels

(g) Products processed and/or made on board its factory ships exclusively from products referred to in paragraph (f) above

(h) Used articles collected there, fit only for the recovery of raw materials

(i) Waste and scrap resulting from manufacturing operations

(j) Goods produced there exclusively from the products referred to in paragraph (a) to (i) above

RULE 3 NOT WHOLLY PRODUCED OR OBTAINED

(a) (i) A product shall be deemed to be originating from ASEAN Member States, if at least 40 percent of its content originates from any Member States.

(ii) Subject to Sub-paragraph (i) above, for the purpose of implementing the provisions of Rule 1 (*xxx*), products worked on and processed as a result of which the total value of the materials, parts or produce originating from Non-ASEAN countries or of undetermined origin used does not exceed 60 percent of the FOB value of the product produced or obtained and the final process of the manufacture is performed within the territory of the exporting Member State.

(b) The value of the non-originating materials, parts or produce shall be:

(i) The CIF value at the time of importation of the products or importation can be proven; or

(ii) The earliest ascertained price paid for the products of undetermined origin in the territory of the Member State where the working or processing takes place.

The formula for 40% ASEAN Content is as follows:

$$\left.\begin{array}{l}\left.\dfrac{\begin{array}{lcl}\text{Value of Imported} & & \text{Value of Undetermined}\\ \text{Non-ASEAN Materials} & + & \text{Origin Materials, Parts}\\ \text{Parts or Produce} & & \text{or Produce}\end{array}}{\text{FOB Price}}\right\} \times 100 \\ \leq 60\%\end{array}\right.$$

RULE 4 CUMULATIVE RULE OF ORIGIN

Products which comply with origin requirements provided for in Rule 1 and which are used in a Member State as inputs for a finished product eligible for preferential treatment in another Member State shall be considered as products originating in the Member State where working or processing of the finished product has taken place provided that the aggregate ASEAN content of the final product is not less that 40 percent.

RULE 5 DIRECT CONSIGNMENT

The following shall be considered as consigned directly from the exporting Member State to the importing Member State:

(a) If the products are transported passing through the territory of any other ASEAN country;

(b) If the products are transported without passing through the territory of any other non-ASEAN country;

(c) The products whose transport involves transit through one or more intermediate non-ASEAN countries with or without transhipment or temporary storage in such countries, provided that:

(i) The transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;

(ii) The products have not entered into trade or consumption there; and

(iii) The products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.

RULE 6 TREATMENT OF PACKING

(a) Where for purposes of assessing customs duties a Member State treats products separately from their packing, it may also, in respect of its imports consigned from another Member State, determine separately the origin of such packing.

(b) Where paragraph (a) above is not applied, packing shall be considered as forming a whole with the products and no part of any packing required for their transport or storage shall be considered as having been imported from outside the ASEAN region when determining the origin of the products as a whole.

APPENDIX 3.4 (Cont.)

RULE 7 CERTIFICATE OF ORIGIN

A claim that products shall be accepted as eligible for preferential concession shall be supported by a Certificate of Origin issued by a government authority designated by the exporting Member State and notified to the other Member States in accordance with the Certification Procedures to be developed and approved by the Senior Economic Officials Meeting (SEOM).

RULE 8 REVIEW

These rules may be reviewed as and when necessary upon request of a Member State and may be open to such modifications as may be agreed upon by the Council of Ministers.

4. GLOSSARY

ALADI	Asociación Latino Americana de Integración - also known as LAIA - comprising Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Mexico, Peru, Uruguay and Venezuela
ANZCERTA	Australia New Zealand Closer Economic Relations Trade Agreement
APEC	Asia-Pacific Economic Cooperation
APTA	Andean Trade Preference Act
ASEAN	Association of Southeast Asian Nations
ATPA	Automotive Products Trade Act
BPT	British Preferential Tariff Treatment (Canada)
CANATA	Canada Australia Trade Agreement
CARIBCAN	Caribbean Canadian Trade Agreement
CBI	Caribbean Basin Initiative
CEPT	Common Effective Preferential Tariff Scheme (under ASEAN)
CIF	Cost Insurance Freight
CTH	Change in Tariff Heading
CTI	Committee on Trade and Investment (APEC Committee)
DMRM	Determined Manufactured Raw Materials
FAS	Compact Free Association Act
FOB	Free On Board
GSP	Generalised System of Preferences
GSTP	Global System of Trade Preferences
HS	Harmonised System
IFTA	United States-Israel Free-Trade Agreement
LAIA	Latin American Integration Association - also known as ALADI - comprising Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Mexico, Peru, Uruguay and Venezuela
MFN	Most Favoured Nation
NAFTA	North American Free Trade Agreement
PATCRA	Papua New Guinea Australia Trade and Commercial Relations Agreement
PTA	Preferential Trading Arrangements
ROO	Rules Of Origin
RVC	Regional Value Content
SEOM	Senior Economic Officials' Meeting
SPARTECA	South Pacific Regional Trade and Economic Co-operation Agreement
TNDC	Trade Negotiation among Developing Countries under the WTO
WCO	World Customs Organisation
WTO	World Trade Organisation