

Committee on Rules of Origin

INTEGRATED NEGOTIATION TEXT FOR THE HARMONIZATION WORK PROGRAMME

OVERALL ARCHITECTURE

Note by the Secretariat

This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO

Revision

1. At its meeting on 10 May 1996, the Committee on Rules of Origin (CRO) decided to establish an Integrated Negotiating Text (INT) for the Harmonization Work Programme. The first INT was circulated in document G/RO/W/13 (24 May 1996), and had been periodically updated (G/RO/W/13/Rev.1-3, G/RO/W/13/Rev.3/Add.1 and 2). A further consolidated INT was circulated in document G/RO/41(3 September 1999), and has also been periodically updated (JOB(99)/5869, JOB(99)/7617, JOB(00)/1573, JOB(00)/3230, JOB(00)/5207 and JOB(00)/7194).
2. The attached document is the latest update of the negotiating text of the overall architecture and reflects the progress made by the CRO in April 2002.

HARMONIZED NON-PREFERENTIAL RULES OF ORIGIN

- Where no square bracket is placed in the text, it is understood that a general consensus has been reached on the text, subject to the overall coherence examination.

DEFINITIONS

References to "manufacturing", "producing" or "processing" goods include any kind of working, assembly or processing operation.

Methods of obtaining goods include manufacturing, producing, processing, raising, growing, breeding, mining, extracting, harvesting, fishing, trapping, gathering, collecting, hunting and capturing.

"Material" includes ingredients, parts, components, subassemblies and goods that were physically incorporated into another good or were subject to a process in the production of another good.

"Originating material" means a material whose country of origin, as determined under these rules, is the same country as the country in which the material is used in production.

"Non-originating material" means a material whose country of origin, as determined under these rules, is not the same country as the country in which that material is used in production.

"Customs Valuation Agreement" means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.

GENERAL RULES

General Rule 1: SCOPE OF APPLICATION

Rules of Origin provided in this Annex shall be as defined in Article 1, paragraph 1 of the Agreement on Rules of Origin annexed to the Agreement Establishing the World Trade Organization (WTO), and shall be applied for the purposes set out in Article 1, paragraph 2 of the Agreement on Rules of Origin.

General Rule 2: HARMONIZED SYSTEM

References to headings and subheadings are references as they appear in the Harmonized Commodity Description and Coding System (hereinafter referred to as “Harmonized System” or “HS”) as amended and in force. Classification of goods within headings and subheadings of the Harmonized System is governed by the General Interpretative Rules and any relative Section, Chapter and Subheading Notes to that System. Classification of goods within any additional subdivisions created for purposes of the rules of origin shall also be governed by the General Interpretative Rules and any relative Section, Chapter and Subheading Notes to the Harmonized System, unless the rules of this Annex otherwise require.

Chairman's proposed text for a possible paragraph 2:

The possible effects of amendments to the HS on harmonized non-preferential rules of origin shall be examined according to the review mechanism referred to in Article 6(3) of the ARO.

Alternative text:

When amendments to the Harmonized System are recommended by the CCC, their possible effect on [the results of origin determinations under – *brackets requested by IND and PHI*] the harmonized non-preferential rules of origin shall be examined by the CRO. Any amendments of the rules of origin resulting from such an examination shall take effect on the date approved by the Ministerial Conference.

General Rule 3: DETERMINATION OF ORIGIN

The country of origin of a good shall be determined in accordance with these General Rules and in accordance with the provisions of Appendix 1 and Appendix 2, applied in sequence.

General Rule 4: NEUTRAL ELEMENTS

[Unless otherwise provided in this Annex, (*MOR*) (*TUN*)] in order to determine whether a good originates in a country, the origin of the power and fuel, plant and equipment, including safety equipment, or machines and tools used to obtain a good or the materials used in its manufacture which do not remain in the good or form part of the good shall not be taken into account.

Consensus on the unbracketted text was confirmed. However one delegation requested that the bracketed text be included in the provision until a complete picture was obtained.

General Rule 5: PACKING AND PACKAGING MATERIALS AND CONTAINERS

Unless the provisions of Appendix 1 or Appendix 2 otherwise require, the origin of packing and packaging materials and containers presented with the goods therein shall be disregarded in determining the origin of the goods under General Rule 3, provided such packing and packaging materials and containers are classified with the goods under the Harmonized System. The packing and packaging materials and containers which are not classified with their contents are separate goods, thus their origin shall be determined in accordance with the appropriate rules set forth in Appendix 1 and Appendix 2.

Consensus had already been reached at the previous session. However one delegation requested that the alternative text be contained in the box until a complete picture was obtained.

Alternative text:

- A. The origin of packing and packaging materials and containers presented with the goods therein shall be disregarded in determining the origin of the goods under General Rule 3, provided such packing and packaging materials and containers are classified with the goods under the Harmonized System,
- B. When a container is presented with its contents and the container gives the whole its essential character so that the contents are classified with the container, the origin of the whole shall be determined on the basis of the origin of the container, as set forth in Appendix 1 and Appendix 2, and
- C. When packing, packaging materials or containers and their contents are classified separately under the Harmonized System, their origin shall be separately determined in accordance with the appropriate rules set forth in Appendix 1 and Appendix 2.

Reason: The current text of General Rule 5 does not take into account the situation where a container gives the whole its essential character and the container with its contents are classified under the provision for the container. Attention is called to the last sentence of HS General Interpretative Rule 5(a). Draft General Rule 5(b), above, is intended to remedy that situation.

General Rule 6: ACCESSORIES AND SPARE PARTS AND TOOLS

Accessories, spare parts, tools and instructional or other informational material classified and presented with a good shall be disregarded in determining the origin of that good under General Rule 3, provided they are normally sold therewith and correspond, in kind and number, to the normal equipment thereof.

APPENDIX 1 - Wholly Obtained Goods

1. Rule 1: Scope of Application

This Appendix sets forth the definitions of the goods that are to be considered as being wholly obtained in one country.

2. Rule 2: Minimal Operations and Processes

Operations or processes undertaken, by themselves or in combination with each other for the purposes listed below, are considered to be minimal and shall not be taken into account in determining whether a good has been wholly obtained in one country:

- (i) ensuring preservation of goods in good condition for the purposes of transport or storage;
- (ii) facilitating shipment or transportation;
- (iii) packaging or presenting goods for sale.

Consensus on this rule was confirmed. It was agreed that the possibility of application of this rule to Appendix 2 should be reconsidered at a later stage when the work was virtually completed.

<u>Definitions</u>		<u>Notes</u>
1.	The following goods are to be considered as being wholly obtained in one country :	
(a)	Live animals born and raised in that country;	In definitions 1 (a), (b), and (c) the term "animals" covers all animal life, including mammals, birds, fish, crustaceans, molluscs, reptiles, bacteria and viruses.
(b)	Animals obtained by hunting, trapping, fishing, gathering or capturing in that country;	Definition 1 (b) covers animals obtained in the wild, whether live or dead, whether or not born and raised in that country.
(c)	Products obtained from live animals in that country;	Definition 1 (c) covers products obtained from live animals without further processing, including milk, eggs, natural honey, hair, wool, semen and dung.
(d)	Plants and plant products harvested, picked or gathered in that country;	Definition 1 (d) covers all plant life, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants grown in that country.
(e)	Minerals and other naturally occurring substances, not included in definitions (a)-(d), extracted or taken in that country;	Definition 1 (e) covers crude minerals and other naturally occurring substances, including rock or solar salt, crude mineral sulphur occurring in free state, natural sands, clays, stones, metallic ores, crude oil, natural gas, bituminous minerals, natural earths, ordinary natural waters, natural mineral waters, natural snow and ice.

<u>Definitions</u>		<u>Notes</u>
(f)	Scrap and waste derived from manufacturing or processing operations or from consumption in that country and fit only for disposal or for the recovery of raw materials;	Definition 1(f) covers all scrap and waste, including scrap and waste resulting from manufacturing or processing operations or consumption in the same country, scrap machinery, discarded packaging and household rubbish and all products that can no longer perform the purpose for which they were produced, and are fit only for discarding or for the recovery of raw materials. Such manufacturing or processing operations include all types of processing, not only industrial or chemical but also mining, agricultural, construction, refining, incineration and sewage treatment operations.
(g)	Articles collected in that country which can no longer perform their original purpose there nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;	
(h)	Parts or raw materials recovered in that country from articles which can no longer perform their original purpose nor are capable of being restored or repaired;	
(i)	Goods obtained or produced in that country solely from products referred to in (a) through to(h) above;	

<u>Definitions</u>		<u>Notes</u>
[(2)]	<p><u>Alternative Text 1 (EC)</u></p> <p>[(i) Products of sea-fishing and other products taken from the sea, outside the territorial sea of a country, are considered to be wholly obtained in the country whose flag the vessel that carries out those operations is entitled to fly.</p> <p>(ii) Goods obtained or produced on board a factory ship outside the territorial sea of a country are considered to be wholly obtained in the country whose flag the ship that carries out those operations is entitled to fly, provided that these goods are manufactured from products referred to in subparagraph (i) originating in the same country.</p> <p>(iii) Products taken from the sea bed or subsoil beneath the sea bed, outside the territorial sea of a country, are considered to be wholly obtained in the country that has the rights to exploit that sea bed or subsoil in accordance with the provisions of the UN Convention on the Law of the Sea.]</p> <p>([JPN], [MOR], [NOR], [US], [CAN], [KOR])</p> <p><u>Japan's alternative text for (iii)</u></p> <p>[(iii) Products taken from the continental shelf of a country are considered to be wholly obtained in the coastal state, and the products taken from the sea bed or subsoil beneath the sea bed beyond the limits of the jurisdiction of a country are considered to be wholly obtained in the country that has the right to exploit that sea bed or subsoil in accordance with the provisions of the UN Convention on the Law of the Sea.]</p>	<p>[For the purposes of point (2), the term "territorial sea of a country" is that as referred to in the United Nations Convention on the Law of the Sea.]</p>

	<u>Definitions</u>	<u>Notes</u>
[(2)]	<p><u>Alternative Text 2</u> (Argentina)</p> <p>[(i) Products of sea fishing and other products taken from waters beyond the sovereignty and jurisdiction of a State are considered to be wholly obtained in the country whose flag the vessel that carries out those operations is entitled to fly.</p> <p>(ii) Goods obtained or produced on board a factory ship in the high seas are considered to be wholly obtained in the country whose flag the ship is entitled to fly, provided that those goods are manufactured from the products referred to in subparagraph (i) above and according to that same subparagraph originating in the same country.</p> <p>(iii) Mineral products obtained from the sea bed and subsoil beyond the limits of national jurisdiction (the Zone) are considered:</p> <p>(a) obtained wholly in the State that has exploitation rights, granted by the International Seabed Authority,</p> <p>(b) obtained wholly in the sponsoring State of natural or juridical persona which has exploitation rights, granted by the Seabed Authority.]</p>	<p>[In conformity with the 1982 UN Convention on the Law of the Sea (UNCLOS), the coastal State has customs jurisdiction in the Contiguous Zone. Thus any operation therein performed should be considered as carried out in that State. No provision of this paragraph/part shall be interpreted in contradiction of the provisions of the 1982 Convention on the Law of the Sea.]</p>
[(2)]	<p><u>Alternative Text 3</u></p> <p>[(i) Products of sea-fishing and other products taken from the sea outside a country are considered to be wholly obtained in the country of registration of the vessel that carries out those operations.</p> <p>(ii) Goods obtained or produced on board factory ships are considered to be wholly obtained in the country of registration of the factory ship, provided that those goods are manufactured from the products referred to in subparagraph (i) originating in the same country.</p> <p>(iii) Products taken from the sea-bed or subsoil beneath the sea-bed outside a country are considered to be wholly obtained in the country that has the rights to exploit that sea-bed or subsoil.] [COL]</p>	<p>[The term “registration” in Definition 2(i) and (ii) includes registration that a country grants to chartered vessels or factory ships, provided this registration is in accordance with the requirements of that country.]</p>

<u>Definitions</u>		<u>Notes</u>
[(2)]	<p><u>Alternative Text 4 (Brazil)</u></p> <p>[(i) Products of sea-fishing and other products taken from the sea outside the exclusive economic zones, over which the coastal State has jurisdiction, are considered to be wholly obtained in the country whose flag the vessel that carries out those operations is entitled to fly.</p> <p>(ii) Goods obtained or produced on board factory ships in the high seas are considered to be wholly obtained in the country whose flag the ship is entitled to fly, provided that those goods are manufactured from the products referred to in subparagraph (i) originating in the same country.</p> <p>(iii) Products taken from the sea-bed or subsoil beneath the limits of the continental shelf of a coastal State are considered to be wholly obtained in the country that has the rights to exploit that sea-bed or subsoil.]</p>	<p>[1. The term "flag" in Definition (I) and (ii) includes the registration that a country grants to chartered vessels or factory ships, provided this registration is in accordance with the requirements of that country.</p> <p>2. Use of terms and scope for the purposes of this point (2) as defined in accordance with the provisions of the United Nations Convention on the Law of the Sea.]</p>
	<p><u>Alternative Text 5 (Philippines)</u></p> <p>[(i) Products of sea-fishing and other products taken from waters beyond the sovereignty and jurisdiction of a State are considered to be wholly obtained in the country of registration of the vessel that carries out those operations.</p> <p>(ii) Goods obtained or produced on board a factory ship from waters beyond the sovereignty and jurisdiction of a State are considered to be wholly obtained in the country of registration of the factory ship that carries out those operations, provided that these goods are manufactured from products referred to in subparagraph (i) originating in the same country.</p> <p>(iii) Products taken from the sea bed or subsoil beneath the sea bed in waters beyond the sovereignty and jurisdiction of a State, are considered to be wholly obtained in the country that has the rights to exploit that sea bed or subsoil in accordance with the provisions of the UN Convention on the Law of the Sea.]</p>	

	<u>Definitions</u>	<u>Notes</u>
[(2)]	<p><u>Alternative Text 6 (India)</u></p> <p>[(i) Products of sea-fishing and other products taken from the sea outside the territorial sea of a country but within its exclusive economic zone, are considered to be wholly obtained in that country.</p> <p>(ii) Goods obtained or produced on board a factory ship, outside the territorial sea of a country but within its exclusive economic zone, are considered to be wholly obtained in the country, provided that these goods are manufactured from products referred to in subparagraph (i) originating in the same country.</p> <p>(iii) Products of sea-fishing and other products taken from waters in the high seas are considered to be wholly obtained in the country whose flag the vessel that obtains such products is entitled to fly.</p> <p>(iv) Goods obtained or produced on board a factory ship in the high seas are considered to be wholly obtained in the country whose flag the ship is entitled to fly, provided that those goods are manufactured from the products referred to in subparagraph (iii) originating in the same country.</p> <p>(v) Products taken from the sea bed, ocean floor or subsoil thereof, outside the territorial sea but within the continental shelf of a country, are considered to be wholly obtained in that country.</p> <p>(vi) Products taken from the sea bed, ocean floor or subsoil thereof beyond the limits of national jurisdiction, are considered to be wholly obtained in the country that has the rights to exploit that sea bed, ocean floor or subsoil thereof.]</p>	<p>The terms "territorial sea of a country", "exclusive economic zone", "continental shelf" and "high seas" have the same meaning as in the United Nations Convention on the Law of the Sea.</p>

APPENDIX 2 - Product Specific Rules of Origin

Rule 1: Scope of Application

This Appendix sets forth rules for determining the country of origin of a good when the origin of the good is not determined under Appendix 1.

Rule 2: Application of Rules

- a) The rules provided in this Appendix are to be applied to goods based upon their classification in the HS and any additional subdivisions created thereunder, as referred to in General Rule 2 of this Annex.
- b) All primary rules contained in this Appendix are co-equal. ~~[They shall be applied in conjunction with Chapter Notes and relevant provisions of this Appendix.]~~
- c) [Unless otherwise specified], primary rules shall apply only to non-originating materials.
- d) [Where the primary rules require a change in classification, the following changes in classification shall not be considered in determining the origin of the good :
 - changes which result from disassembly;
 - changes which result from packaging or repackaging;
 - changes which result solely from application of General Rule of Interpretation 2 (a) of the HS with respect to collections of parts that are presented as unassembled or disassembled articles.
 - changes which result from merely putting up in sets.

However, such changes shall not preclude conferring origin on a good if origin is conferred as a result of other operations.]

- e) Where none of the primary rules are satisfied, origin shall be determined according to Rule 3 (c) through (f)[(g)] of this Appendix.

Consensus was confirmed on Rule 2(a).

As regards Rule 2(b) the concept of the co-equality of primary rules was acceptable to all Members. Further fine-tuning of the text would be needed at a later stage when the work was virtually completed.

As regards Rule 2(c), consensus was achieved (subject to HK): The bracketed text would be reconsidered when a complete picture was obtained.

As regards Rule 2(d), it was agreed that this rule be reconsidered at a later stage when the work was virtually completed.

As regards Rule 2(e), no objection was raised.

f) Rule 3: Determination of origin

The country of origin shall be determined in accordance with the following provisions, applied in sequence:

Primary Rules

- (a) [The country of origin of a good is the country designated as such in the applicable primary rule.](EC) [NOR](JPN)

[When a primary rule specifies that the origin of a good is the country in which the good was obtained in its natural or unprocessed state, the country of origin of the good shall be the [single (IND)] country in which the good was obtained in that condition;] (IND)

[When a primary rule requires that the country of origin of a good is the country in which:

- (i) the good was obtained in its natural or unprocessed state, the country of origin of the good shall be the single country in which the good was obtained in that condition; or
- (ii) a specifically designated stage of production was attained, the country of origin of the good shall be the single country in which such stage of production was attained;] (US)

[The country of origin is the country determined as such by the application of the primary rule] (CAN)[NOR]

- (b) The country of origin of a good is the last country of production, provided that a primary rule applicable to the good was satisfied in that country¹;

Residual Rules:

- (c) [When a good is produced by further processing of an article which is classified in the same subdivision² as the good, the country of origin of the good shall be the single country in which that article originated;]

[When a good undergoes one or more operations that do not result in a change in its classification, the origin of the resulting good is the single country from which the good originated immediately prior to such operations, provided that any material that might have been added satisfies any change of tariff classification rule applicable to the good]

- (d) The country of origin of the good shall be determined as indicated in the applicable residual rule specified at the chapter level;
- (e) When the good is produced from materials all of which originated in a single country, the country of origin of the good shall be the country in which those materials originated;
- (f) [When the good is produced from materials (whether or not originating) of more than one country, the country of origin of the good shall be the country in which the major portion of those materials originated, as determined on the basis specified in each chapter, [and in the event of two or more

¹This applies also to primary rules requiring that the country of origin of a good is the country in which the good was obtained in its natural or unprocessed state. (PHI)

²The term "subdivision" relates to the [lowest] level of classification of the good, i.e. heading, subheading or split (sub)heading, as specified in Appendix 2.

countries equally contributing major portions of those materials, the good shall be assigned a multi-country origin]]]; (IND)

[When the good is produced from materials (whether or not originating) of more than one country, the country of origin is the single country of origin of the materials that did not satisfy a primary rule applicable to the goods; (US)

[When the good is produced from materials of more than one country, the country of origin of the good shall be the country in which the major portion of the non-originating materials originated, as determined on the basis specified in each chapter. However, when the originating materials represent at least 50% of all the materials used, the country of origin of the good shall be the country of origin of those materials]; (EC)

- (g) [When the good is produced from materials (whether or not originating) of more than one country that did not satisfy the primary rule applicable to the good, the country of origin of the good shall be the country in which the major portion of those materials originated, as determined on the basis specified in each chapter]. (US)

As regards Rule 3(a) one Member made a new proposal. Members stated that they needed more time to study this proposal. Another Member suggested reversing the order of Rules 3(a) and 3(b).

As regards Rules 3(b), (c) and (f), there was a general agreement among Members on the basic approach to Rule 3, namely, the application of primary rules in the last country of production as the first test, the application of the origin-retaining concept as the second test, and the application of major portion concept as a final test. The gap among the various approaches would become more bridgeable at a later stage when a complete picture was obtained.

Consensus was confirmed on Rules 3(d) and (e). However it was noted that Rule 3(e) might not be necessary, since the application of Rules 3(f) and (g) would result in the same origin outcome.

Rule 4:Intermediate materials

[Except as otherwise provided in the Appendix, (US)] materials which have acquired originating status in a country are considered to be originating materials of that country for the purpose of determining the origin of a good incorporating such materials, or of a good made from such materials by further working or processing in that country.

The principle of this provision was acceptable to all Members. However, one delegation confirmed its request for the initial bracketed text to be included in the provision until a complete picture was obtained. Another delegation requested that the box should contain an indication whereby the originating status was acquired by fulfilling a primary rule or chapter residual rule.

Rule 5:[Interchangeable goods and materials]

[Where it is not commercially practical to keep separate stocks of interchangeable materials or goods originating in different countries, the country of origin of each of the commingled materials or goods may be allocated on the basis of an inventory management method recognized in the country in which the materials or goods were commingled. The use of this system shall not give rise to more products originating in a specific country than would have been the case had the commingled materials or goods been physically segregated.]

Some Members questioned the meaning of the interchangeable goods and what type of goods or materials were covered by this Rule. Accordingly, proponents of the Rule were requested to improve the text.

Rule 6: Putting up in sets [or kits (CAN)(NZ)(CH)(IND)]

Chairman's proposal

A distinction must be made between the following types of sets:

1. Sets which are explicitly mentioned in the HS (e.g. 82.14 – manicure sets; 3006.50 – first aid boxes and kits; 96.05 – travel sets for personal toilet);
2. Goods which are classified as sets by application of GIR 3(b) or (c);
3. Goods merely put together that are not classified as sets by either GIR 3(b) or (c) or within the HS.

There are three possible options:

- A. [US] Unless otherwise provided in this Appendix, goods put up in sets shall retain the origin of the individual articles in the set.
- B. [IND] Goods put up in sets or kits shall retain the origin of the individual articles except when such goods are explicitly mentioned as sets or kits in a heading or sub-heading of the HS or are classified as sets or kits by application of GIR 3(b) of the HS, in which case the origin of the set or kit shall be the country where it is put up.
- C. Merely putting articles into sets is not origin-conferring: with this option there is no need for a specific provision for sets, although it might be advisable to have this element included in the new rule 2(b)/old rule 3 (Application of Rules): the rule in this case might read "a CTH resulting from merely putting up in sets is not considered as origin-conferring". (MEX)

There is growing consensus on option C. As option C implies some further quest in the rules, following are the various possibilities:

[JPN][EC](CAN)(CH) There is no need to have a specific rule for sets. The country of origin of a set put up from articles that originate in more than one country shall be determined according to Residual Rule 3(f).

~~[CH] The country of origin of a set put up from different articles shall be the country which contributes with the highest value to the set, taking into account the value of the articles and the work carried out, the value of the articles (including work) having the same origin being taken together; and~~

~~For the purposes of this paragraph, the term "work" means that the country which put up articles into sets can consider its work (value) carried out as an equivalent part of the calculation.~~

~~It might be advisable to have an explicit reference to sets of articles originating in one~~

country: The country of origin of a set [or kit] put up from articles that originate in one country shall be that country.—[PHI]

There was growing consensus that putting up in sets was not origin-conferring, and that there was no need for a specific rule as well as for reference in Rule 2(d) of Appendix 2. Three delegations reserved their positions.

[Rule 7: DE MINIMIS]

For the application of the primary rule, non-originating materials that do not satisfy the rule shall be disregarded, provided that the totality of such materials does not exceed [10%] in value, weight or volume, as specified in each chapter, of the good.

There was general support for this Rule. Some Members stated that the nature of this Rule should be optional for producers (although this Rule itself should be mandatory for all Members)."
