

# **WORLD TRADE ORGANIZATION**

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**Committee on Rules of Origin**

## **OVERALL ARCHITECTURE OF THE HARMONIZED NON-PREFERENTIAL RULES OF ORIGIN**

Note by the Secretariat

As agreed in the meeting of the Committee on Rules of Origin on 23 July 1999, the latest update of the text of the overall architecture is herewith circulated to Members.

## WORKING DOCUMENT

### HARMONIZED NON-PREFERENTIAL RULES OF ORIGIN\*

1. 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.
2. \*Order of rules and the placement of rules are to be finalised.

### DEFINITIONS

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

Methods of obtaining goods include manufacturing, raising, growing, breeding, mining, extracting, harvesting, fishing trapping, gathering, 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.

["Essential character" means the predominant physical nature, principal function, or other attribute of a good, that establishes the identity of the good. (CAN)]]

#### *Observations :*

- (a) *The definitions should include a definition of "change in tariff classification" instead of indicating such a definition in Appendix 2, Rule 3 (Rules of Application) (IND)*
- (b) *The inclusion of the term "essential character" in the definitions is not necessary since this term is not used in the harmonized rules of origin. Moreover, no satisfactory definition of this term has been established so far. (EC)*
- (c) *The scope of application should be the first provision of the Annex followed by Definitions. Thereafter the General Rules should begin in numbered sequence. (CAN)(IND)*

## **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**

1. 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.
2. [The outcome of an origin determination under the Harmonized Non-Preferential Rules of Origin shall not be affected by the amendments to the Harmonized System. (CAN)(IND)] When amendments to the Harmonized System are recommended by the CCC [WCO Council] , a technical review shall be undertaken with respect to their possible effect upon the results of origin determinations under the Harmonized Non-Preferential Rules of Origin. Necessary technical rectifications approved by the WTO shall take effect on the date when the amendments to the Harmonized System enter into force. [Such approval shall be made at least one year before the entry into force of the amendments to the Harmonized System. Otherwise the technical rectifications shall take effect on the date specified by the Committee on Rules of Origin. (JPN)]

*The Technical Committee intends to consult with the Committee on Rules of Origin concerning possible institutional arrangements for technical review and rectification. As provided in Art. 6 of the Agreement, such technical review should encompass not only alignment with the HS, but also technical review of the origin rules to keep them updated and assure administrability.*

### **General Rule 3 : DEFINITIONS**

[moved to the beginning of this Annex]

### **General Rule 4: 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 5 (Proposed) : DE MINIMIS**

Non-originating materials that do not meet the primary rules set forth in Appendix 2 shall be disregarded in determining the country of origin provided that these materials do not exceed

the threshold laid down in Appendix 2. This provision is hereinafter referred to as the “de minimis rule”. (EC)]

*(to be considered with other de minimis proposals in General Rule 8 and Appendix 2, Rule 6)*

#### **General Rule 5 : Minimal operations or processes**

[The following operations or processes, taken by themselves or in combination with each other and undertaken for the purposes prescribed herein, are considered to be minimal and thus shall be treated as provided in Paragraph 2 to Appendix 1 [or Rule 3 to Appendix 2, as appropriate (*Deletion proposed by PHI, CH, IND*)]]:

- (i) operations or processes to ensure the preservation of goods in good condition for the purposes of transport or storage;
- (ii) operations or processes to facilitate shipment or transportation;
- (iii) operations or processes that concern the packaging or presentation of goods for sale.]

**[Operations or processes undertaken for the following purposes, by themselves or in combination with each other, are considered to be minimal in the context of paragraph 2 to Appendix 1 [and Rule 3 to Appendix 2, as appropriate (deletion proposed by PHI, CH, IND)]:**

- (i) to ensure presentation of goods and good condition for the purposes of transport or storage;**
- (ii) to facilitate shipment or transportation;**
- (iii) packaging or presentation of goods for sale (IND)]**

#### *Observations:*

*Minimal operations and processes have already been taken into account in the preparation of the product-specific rules. Appendix-level exclusions would override rules at the chapter and matrix level which have been agreed to confer origin. (CH)(PHI)*

[Examples of minimal operations or processes include, among others :

- ventilation
- spreading out
- [ - drying (Relevance of this process has been questioned by the US)]
- [ - chilling ( " " " " " " " " )]
- [ - removal of damaged parts ( " " " " " " " " )]
- [ - application of grease, anti-rust paint or protective coating ( " " " " )]
- removal of dust
- cleaning
- washing
- sifting or screening

**[General Rule 8: DE MINIMIS]**

[In application of rules in Appendices 1 and 2, non-originating materials that do not meet the primary rule set forth for the obtained good shall be disregarded in determining the country of origin provided these materials do not exceed the threshold of 20% of the ex-works price of such a good. ((MAU) MOR)]

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| 3. |  |
| 4. | <i>(To be considered with proposed De Minimis rules at proposed General Rule 5 and in Appendix 2, Rule 6.)</i> |
| 5. |  |
| 6. | <i>This Rule is not necessary. (PHI) (SEN)(IND)(MAL)(NZ)</i>   |
| 7. |  |

***See Referral Issue No. 4***

## **APPENDIX 1 - Wholly Obtained Goods**

### **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. Minimal Operations and Processes**

For purposes of this Appendix, minimal operations or processes referred to in General Rule 5 shall not be taken into account in determining whether a good has been wholly obtained in one country.

### **3. 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 4, provided they are imported and normally sold therewith and correspond, in kind and number, to the normal equipment thereof.**

<b><u>Definitions</u></b>		<b><u>Notes</u></b>
<b>1.</b>	<b>The following goods are to be considered as being wholly obtained in one country :</b>	
<b>(a)</b>	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>(b)</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.
<b>(c)</b>	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.
<b>(d)</b>	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.
<b>(e)</b>	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><b>Definitions</b></u>		<u><b>Notes</b></u>
<b>(f)</b>	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.
<b>(g)</b>	[Articles collected in that country which can no longer perform their original purpose nor are capable of being restored or repaired and which are fit only for disposal or for the recovery of parts or raw materials;]	
<b>(h)</b>	<p><u>Alternative 1</u> :</p> <p>[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;]<sup>[1]</sup></p> <p><u>Alternative 2</u> :</p> <p>[Parts or raw materials obtained in that country from articles collected in that country which are not fit for their original purpose nor are capable of being restored or repaired and are fit only for disposal or for the recovery of parts or raw materials;]</p>	

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<sup>1</sup> [In the recovery of parts or raw materials, environmental considerations may arise, particularly for radioactive, hazardous and toxic waste that may result from the recovery of parts or raw materials from Articles. In this connection, this rule is without prejudice to Members' rights to take WTO-consistent measures to protect the environment.]



<u>Definitions</u>		<u>Notes</u>
(i)	Goods obtained or produced in that country solely from products referred to in (a) - (f) [and (g) and (h)] above;	<p>[For a good to be considered wholly obtained in one country under definition 1(i):</p> <p>(i) The good must have been obtained or produced from the products of that country mentioned in definitions 1(a) to (h);</p> <p>(ii) the products of definitions 1(a) to (h) must not have undergone processing in another country; and</p> <p>(iii) <i>the good must not contain materials not considered to be wholly obtained in that country.</i></p>
[2]	<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.]</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.]
[2]	<p><u>Alternative Text</u></p> <p>(i) Products of sea-fishing and other products taken from the sea outside the territorial sea and maritime zones over which the coastal state has jurisdiction are considered to be wholly obtained in the state of registration of the vessel that carries out those operations.</p> <p>(iii) products taken from the area of the seabed and ocean floor and subsoil thereof outside national jurisdiction, as defined in accordance with the provisions of the United Nations Convention on the Law of the Sea, are considered to be wholly obtained in the state that has the exploitation rights, in conformity with the provisions of that Convention and the Agreement relating to the Implementation of Part XI of that Convention of 28 July 1994.]</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.]

## 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 Determination of origin**

#### **[Principles of Approach]**

*Observation : See Attachments I, II, III, IV, and V*

[Origin Determination under Primary Rules *insertion of this header proposed by (HK)(PHI); deletion proposed by (US)(CAN)]*

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

- (a) 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 country in which that good was obtained in that condition;

*N.B. reference to other Ottawa-type rules (where born, where raised, where grew) to be added when final decisions are made on product-specific rules.]*

- (b) the country of origin of a good is the last country of production [provided] [where (IND)(PHI)(HK)(MAL)(BRA)] a primary rule applicable to the good was satisfied **[in that country (deletion suggested by India)];**

- [(c)(i) [when a good undergoes a non-origin conferring operation, the origin of the good is the country from which the good originated immediately prior to such an operation.]

*Observation : The scope of this provision (c)(i) as drafted is overly broad; there should be reference to operations identified in the Annex, such as minimal operations or processes or other non-origin conferring operations as specified at a Chapter level. (EC)*

- [(c)(ii)

#### **Alternative 1**

[when no applicable primary rule was satisfied [in the last country of manufacture or processing *deletion proposed by (PHI)*][and no applicable chapter residual rule was satisfied] but the good has been produced in that country by further processing of [a material or article] [an article] classified in the same provision as that of the good, the country of origin of the good is the country in which that [material or article] [article] originated, provided that any materials subsequently added to the [material or article][article] have undergone the change of

classification or have otherwise satisfied any other requirement specified in the primary rule applicable to the good;]

### **Alternative 2**

[when the further processing of a good does not change the classification of the good, and any materials used in the further processing satisfy the primary rule for the good, the country of origin of the good is the country of origin prior to the further processing;]

### **Alternative 3**

[when no applicable primary rule was satisfied in the last country of manufacture or production [and no applicable chapter residual rule was satisfied] and the good was produced as a result of further processing which did not change its classification, the country of origin of the good is the country of origin prior to such further processing;]

*Observation: This provision (c)(ii) is unnecessary as the idea and consequences of its application are taken up in subparas. (b) and (c)(i). Moreover, the provision is not properly a rule but a principle; as such, it needs to be reformulated and probably presented elsewhere. (IND)(SEN)*

[Origin Determination under Residual Rules *insertion of this header proposed by (HK)(PHI); deletion proposed by (US)(CAN)]*

[(d) when no applicable primary rule has been satisfied [in the last country of production - *deletion proposed by (IND)*], the country of origin shall be determined as indicated in the applicable residual rule specified at the chapter level;]

*Observations:*

*It may be appropriate to apply (d) before (c)(i) and (c)(ii). (US) (CH) (EC) (EGY) (CAN) (JPN) (MOR)  
The placement here is appropriate. (HK)(IND)(MAL)*

(e) when no applicable primary rule was satisfied [in the last country of manufacture or processing of the good ***deletion proposed by PHI***] [and no applicable chapter residual rule was], and the good is produced from materials originating in a single country, the country of origin of the good is the country in which those materials originated;

[(f) when no applicable primary rule was satisfied [in the last country of manufacture or processing of the good *deletion proposed by (PHI)*] [and no applicable chapter residual rule was satisfied], and the good is produced from materials originating in a single country that did not undergo the change of classification or otherwise satisfy the primary rule applicable to the good, the country of origin of the good is the country in which that material originated;]

*Observations:*

*This provision (f) is highly important because of its relation to the primary rules. When a primary rule is not met, account should be taken in the residual rules of the design of the primary rules, giving due weight to the intended results of the primary rules and seeking not to give originating status to an operation or material by application of a residual rule when the applicable primary rule was intended to prevent that same result. That is why this rule bases origin on the country of origin of the material(s) originating in a single country which did not satisfy a primary rule, and thus complements the outcome of the primary rule. If the applicable primary rule is change of heading "except from a specified heading", then obviously the intent of the primary rule was that the specified change did not result in substantial transformation. It is thus logical and appropriate to focus on the origin of the materials which did not undergo the required change. (US)*

*This provision (f) should be deleted. In the residual rules origin should be based upon the origin of all the materials used, without distinction. (IND)*

*The provision (f) introduces an extra step in determination of origin and is overly complex to apply. In many cases the materials used will originate in several countries, and thus origin would be found by application of subparagraph (g). (EC)(EGY)*

*This provision (f) has to be considered in relation to primary rules submitted to the CRO which are based on the exclusion of specified materials. (CH)*

*Additional provision proposed for application before provision (g): [when the good is produced from originating or non-originating materials of more than one country and a primary rule has not been satisfied for the good, the country of origin of the good shall be the country of origin of the material that fulfills the major role with regard to the use of the good; (CAN)]*

*Observation : This is a very practical and transparent method of determining origin in a residual environment by first focussing on the use of the good and associating based on that material which fulfils the major role in this regard. (CAN)*

(g) when no applicable primary rule was satisfied [in the last country of manufacture or processing of the good *deletion proposed by (PHI)*][and no applicable chapter residual rule was satisfied], and the good is produced from materials [(whether or not originating) **(CH) (IND) (US) deletion proposed by (EC)**] of more than one country [that did not undergo the change of classification or otherwise satisfy the primary rule applicable to the good *deletion proposed by (IND)(CAN)* ], 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.

*Observations:*

*The bracketed text referring to materials which did not undergo change of classification or otherwise satisfy the primary rule should be deleted. In the residual rules origin should be based upon the origin of all the materials used, without distinction. (IND)(CAN)*

*The bracketed text in (g) referring to materials which did not undergo change of classification or otherwise satisfy the primary rule should be retained for the reasons expressed in the observation regarding subparagraph (f). (US)*

*General Observation:*

*All three provisions, subparagraphs (e), (f), and (g), will be necessary to determine origin in certain cases and should be retained. (COL)*

[ (h) the country of origin of the good shall be the last country of production. (CAN) ]

*Observation : Subparagraph (h) to be used in only the few cases where subparagraph (g) cannot provide a single country of origin. Normally, this would only occur in the case of a tie, at which point a rule providing origin to the last country of production is the most predictable, clear and simplest solution. (CAN)*

### **Rule 3 Rules of Application**

- (a) [[Subject to the minimal operations or processes referred to in General Rule 5 or any other applicable provisions – *deletion proposed by (PHI)*], rules of origin that refer to change in classification require that each non-originating material in the good has undergone a change in classification at the level of the Harmonized System (Section, Chapter, heading, or subheading), or of any additional subdivision thereof, specified in the rule.]
- (b) [Unless the rules of this Appendix require comparison of originating and non-originating materials, the origin criteria set forth in the rules apply only to non-originating materials. (EC)]
- (c) [The term “change in tariff classification” is understood to mean that non-originating materials used in the production of a good are not classified in the same split subheading, subheading, split heading, heading, respectively, as the good that is under examination. (TUN)]

[Rules of origin that refer to change in classification require that each foreign material in the good undergo a change in classification at the level of the Harmonized System (section, chapter, heading, subheading), or of any additional subdivision thereof, specified in the rule, by reason of production, other than by the minimal operations or processes defined in General Rule 5 or in applicable legal notes. (US)]

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*A suggestion was made to consolidate the above provisions within the following text:*  
In applying this Appendix :

- [(a) Origin shall be determined according to the rules provided for goods based upon their classification in the Harmonized System and any additional subdivisions created thereunder, and subject to other rules [or chapter notes (CAN)] provided in this Annex.
- (b) Rules of origin that refer to change in classification require that each non-originating material in the good undergo the change of classification specified in the rule, other than

by the minimal operations or processes defined in General Rule 5 or any other applicable non-origin conferring process. (US)(IND, see **Rule 3 in Attachment 1**)(PHI)]

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(d) Minimal operations or processes

[For the purposes of this Appendix:

- (i) [minimal operations or processes referred to in General Rule 5 shall not confer origin on a good; and *deletion proposed by (CH)(PHI)*]
  - (ii) a minimal operation or process referred to in General Rule 5 or a combination of them shall not preclude conferring origin on a good if origin is conferred as a result of other operations or processes.]
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*Observations and Drafting Guidelines for Rule 3, Rules of Application*

*The Technical Committee took note that for completeness, a rule concerning the application of origin criteria might require more elements than those embodied in the texts above. The Technical Committee was of the view that consideration should be given to inclusion and appropriate arrangement of the following elements:*

- *Application of rules of origin begins with classification of the good in the HS and the identification of the corresponding product description in the Harmonized Non-Preferential Rules of Origin;*
- *An indication of where the rules of origin are to be found (matrix, chapter, Appendices, General rules), and that rules of origin are to be applied together with any applicable legal notes, chapter notes or rules of interpretation;*
- *An indication that primary rules are those rules found at a matrix or chapter level which confer origin and are to be applied first. All rules of origin are primary rules unless otherwise indicated;*
- *Residual rules are found at chapter [section] or appendix level, are specifically designated as such, and are applied only if primary rules give no result;*
- *For primary rules, both change of classification or other, a rule applicable to a good is met when non-originating materials undergo the required change in the last country of production; [For residual rules this is not decided, and normally residual rules will be applied according to their terms]*
- *It is also to be considered whether the present Rule 4 on intermediate materials could be included under Rule 3 as a Rule of Application.*

- *Separate specific application instructions are needed for change of classification rules as follows:*
  - *to indicate that all non-originating materials must undergo the required change of classification (subject to any limitations under a de minimis rule if agreed). ( Under other kinds of rules it is not necessarily the case that all materials undergo the required change);*
  - *to indicate the changes in classification which do not confer origin, such as disassembly, change of use, or change of classification by reason of GIR 2(a) of the HS.*

*There are three provisions that might be placed here as relating to the application of change of classification criteria : treatment of GIR 2(a); disassembly and the origin of disassembled parts; and change of use. Presentation of rules on these items as Appendix 2 Rules of Application would permit the deletion of these provisions from the Chapters in which they appear, and the Technical Committee decided to pursue this approach.*

*The Technical Committee's previous discussions on these issues took place largely in the context of rules for Chapters 84-90. The unresolved issues which emerged from these discussions are now considered by the Technical Committee to be horizontal issues relating to the application of origin criteria based on change in tariff classification which should be resolved in the context of rules of application in the overall architecture. These issues, originally formulated as Unresolved Issues in Referral Doc. 0015 covering Chapters 84-90, are reproduced at the end of this document following the presentation of the other Unresolved Issues arising in the overall architecture.*

#### **Rule 4 Intermediate materials**

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

#### **Rule 5 Special provisions**

##### **(a) Accessories and spare parts and tools**

Accessories, spare parts, tools and instructional or other informational material, [~~instructional and other informational material (MAL)~~] classified and presented with a good shall be disregarded in determining the origin of that good under General Rule 4, provided they are imported and normally sold therewith and correspond, in kind and number, to the normal equipment thereof.

##### *Observations:*

*Consideration could be given to moving this provision to the Annex, as it applies to the entire Annex. (HK)*

*The provision is potentially troublesome as drafted because the terms "accessories" and "spare parts" are not sufficiently precise. The provision needs to avoid leaving wide scope for differing interpretations. (NIG)*

**(b) [Fungible goods and materials]**

[When it is necessary to determine the origin of interchangeable goods or materials which are combined [commingled (US)] in inventory so that it is not practical to segregate the goods or materials by their country of origin, for purposes of the application of the origin rules, an allocation by country of origin can be made [for the relevant production period (US)] in accordance with an applicable recognised inventory management method.]

*Observations :*

*The Technical Committee has not reached a resolution on this issue. Some Members favour it, some oppose it, and others continue to study its utility. During the 15<sup>th</sup> Session Members noted that answers to the following questions would help the consideration:*

*To what products does this provision apply?*

*What is the inventory management method to be adopted?*

*Clarification on “applicable recognized inventory management method”.*

*Clarification on “for the purposes of the application of the origin rules”.*

*Is the provision also used for the purposes of clarifying the residual rule ?*

*The following Members indicated at the 17<sup>th</sup> Session that for them the text left uncertain what goods were considered fungible; what was an inventory management method. (HK, EGY, PHI)*

*The proposed method is considered to result in the arbitrary assignment of origin. (MAL)*

*The provision is beneficial when considering the commercial reality of trade. As well, it is not a rule of origin. (CAN)*

**(c) Putting up in sets [or kits (CAN)(NZ)(CH)]**

[For purposes of these rules and except as otherwise provided in this Appendix:

Goods put up in sets shall retain the origin of the individual articles in the set. (US)]

[For purposes of determining the origin of sets [kits] and except as otherwise provided in this Appendix:

- (1) [Merely putting articles into sets is not origin conferring.]
- (2) for [goods explicitly mentioned as sets in a heading of the HS *deletion proposed by PHI*] and for goods classified as sets by GIR 3(b) of the HS, the following rules shall apply:
  - (i) The country of origin of a set [or kit] put up from articles that originate in one country shall be that country;
  - (ii) [The country of origin of a set [or kit] put up from articles that originate in more than one country shall be that country of origin of the article or articles that confer the essential character of the set or kit as a whole. (CAN)(MAL) **(JPN)**]



[The country of origin of a set put up from articles that originate in more than one country shall be the country of the article(s) representing the highest value, the value of the articles having the same origin being taken together. (EC)]

[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. (CH)]*

- (3) for goods merely put together that are not classified together by GIR 3(b) and do not satisfy the requirements of GIR 3(b) of the Harmonized System, the following rule shall apply:

The origin of the goods shall be the origin of individual articles.]

*Observations :*

*The proposed rule should cover only sets defined under GIR 3(b) and 3(c); for sets explicitly mentioned in headings of the HS primary rules have been devised to address each case and should be retained. (PHI)*

*The proposed rule should cover all sets and provide the same rule for them. (CAN)*

*The term “essential character” is not appropriate as a criterion to determine the origin of sets because it might be subject to different interpretations. No satisfactory definition of this term has been established so far. (EC)*

**See Referral Issue No. 5**

**[Rule 6 DE MINIMIS]** *See also General Rule 8*

[In application of the primary rules in Appendix 2, non-originating materials that do not meet the primary rule set forth for the obtained good shall be disregarded in determining the country of origin provided these materials do not exceed the threshold of 20% of the ex-works price of such a good. (CH) (MAU)]

- [1. Non-originating materials that do not undergo an applicable change in tariff classification or satisfy any other applicable requirements of these Regulations shall be disregarded in determining the country of origin of the goods if:
  - (a) In the case of goods classified under any other chapter of the Harmonized System other than under any of Chapters 1 to 4, 6 to 8, 11, 12, 15, 17 and 20 the value of the non-originating materials is not more than 7% of the transactional value of the good, or 10% of the volume of the total alcoholic strength of the goods classified under Chapter 22; and
  - (b) [in the case of goods classified under Chapters 50 to 63, the combined weight of the non-originating materials does not exceed 7% of the total weight of the goods;]
2. For the purpose of paragraph 1, the value of the good or the material shall be:

(a) the transaction value of the good or material, determined in accordance with Article 1 of the Customs Valuation Agreement; or

(b) in the event that there is no transaction value or the transaction value of the good or material is unacceptable under Article 1 of the Customs Valuation Agreement, determined in accordance with Article 2 through 7 of the Customs Valuation Agreement.

3. For purposes of paragraph 1:

(a) the value of the good shall be adjusted to an f.o.b. basis, and

(b) the value of the material shall be adjusted to a c.i.f. basis.

4. For purposes of applying the Customs Valuation Agreement under this General Rule, the principles of the Customs Valuation Agreement shall apply to domestic transactions, with such modifications as may be required by the circumstances, as would apply to international transactions. (CAN)]

*Observations : A de minimis rule, if adopted, should not be applicable to origin determination for goods of Chapters 9 or 21. (COL)*

*Subparagraph 3 of the Canadian proposal is not consistent with the WTO Valuation Agreement. (JPN)*

*De minimis rules should be articulated on a Chapter or product sector basis. (JPN)  
(KOR)(EGY)(COL)*

*A de Minimis rule is not necessary. (PHI) (SEN)(IND)(MAL)(NZ)*

***See Referral Issue No. 4***

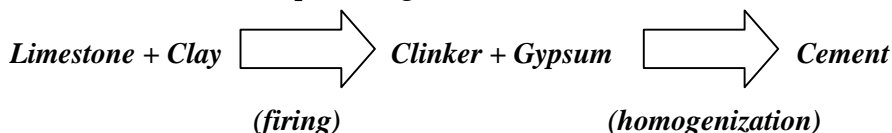
***Observations (PHI):***

1. *Some delegations have proposed a de minimis provision in the architecture of the rules of origin because such a provision could in some way facilitate the determination of the origin of good. It is the view of the Philippines that such a provision could on the other hand, pose more problems than facilitate the determination of origin of a good.*
2. *There are "minor" components in the production of a good which could easily fall within the threshold or tolerance of value of de minimis. Such "minor" components, however, are very important if not crucial in the production of the good as the following examples show:*
  - (a) *The use of FLUX in the production of iron ore agglomerates. The flux (either limestone or dolomite) is a minor component, but without the flux which serves as the binder, one can not have the agglomerate.*
  - (b) *The use of CATALYST is in many industrial processes, as in petrochemical production. The catalyst is the most important component of production in the conversion of olefin to polymer. But, the catalyst is only a "minor" component in the production and can easily fall within the threshold value established by the de minimis rule.*

- (c) *The use of ENZYMES in biotechnology or in food production. The enzymes normally operate similarly as the catalysts but they are "minor" components. And yet without these elements, one cannot produce the good.*
- (d) *The use of gypsum in cement production. Without the gypsum added to the clinker, one cannot have cement. At the same time, the value of gypsum may fall within the threshold level of de minimis.*

3. *It may be argued that de minimis provision will apply only to non-originating materials that do not meet the primary rules or that did not undergo an applicable change in tariff classification or satisfy any other applicable requirements of the rules of origin. Hence, the so-called non-originating "minor" components in the examples given above would have satisfied the primary rules. Take the case of gypsum (HS 25.20). Assume that the rule for cement is CTH. Gypsum, although a "minor" component in cement (HS 25.23) as a good, would meet the primary rule and will not be subject to the de minimis rule.*

4. *At face value, the foregoing conclusion may be correct. On the other hand, did "gypsum" per se, become "cement"? The simplified process in cement manufacturing as shown below will illustrate the preceding concern:*



*Gypsum in the finishing process is homogenized with clinker to produce cement. But the gypsum in cement remains gypsum, i.e. no chemical reaction. Therefore, gypsum in this particular case did not change classification if one were to look at the individual component of cement, i.e., clinker and gypsum. Gypsum remains as gypsum!*

*With a de minimis rule, the gypsum (in value, in volume or in weight) per se may easily fall within the threshold value of de minimis. Is the value of gypsum then disregarded in the determination of the origin of cement? Certainly, it may be argued that this is not the case.*

5. *In the case of catalysts and enzymes, in many instances, they do not become part of the finished good. They serve mainly as triggering elements to start or hasten a reaction, say from olefins to polymers. The catalysts in most instances undergo no chemical change. Thus, they do not undergo change in classification, nor do they satisfy the primary rule in the production of a good. Are they then disregarded in the determination of the origin of the good simply because they are within the de minimis value? Again, it may be argued that this is not the case.*
6. *Notwithstanding the examples given above, a de minimis rule may not have much value in the primary rule environment. This is the scenario on the assumption that in many instances, the non-originating materials (minor or major components) to produce the good would satisfy the primary rule.*
7. *On the other hand, the de minimis value would play a very important role in the residual rule environment because the criteria to be used in most instances, at the chapter level, would either be weight, volume or value. The de minimis provision will also impact on the general residual rule, depending on how it will be worded, i.e., non-originating materials only (by EC), only materials that did not satisfy the primary rule, whether or not originating (by U.S.), or all materials (by India).*

8. *Even in the proposals for de minimis rule, there appears to be no agreement as to what value to use and to which products it will apply.*

*Canada, for example, uses 7% for Chapters 1-4, 6-8, 1-12, 15, 17, 20 and 50-63, and 10% for Chapter 22. What about the other Chapters?*

*Morocco and Switzerland recommend 20% for all goods.*

*Colombia proposes exception for Chapters 9 and 21.*

*Japan, Korea and Egypt would want it on a chapter by chapter basis, with Japan further stating that it could go on a product by product basis.*

9. *A provision for de minimis is therefore not necessary and not advisable as negotiating such provision will be counterproductive to the difficult progress achieved so far.*

## Unresolved issues submitted for decision by the CRO

### ISSUE No. 1: Content of the General Rule on Minimal Operations and Processes

- A. *Definitions only; No list . (CAN)(US)(PHI)(NOR)(SEN)(CH)(HK)*

*The list of examples is not appropriate because the listed processes are not all related to any common definition, and in a number of cases are at odds with product-specific rules. As a general matter, a list of examples should not appear in a legal text, and it would not be possible to arrive at a permanent list; adjustment to the list would always be needed. The list might mislead the user to think that the listed operations never confer origin, when in fact they are not taken into account for origin determination when done for the purposes set out in the definition.*

- B. *List only, no definitions (IND)*

*Minimal operations and processes have already been taken into account in the preparation of the product-specific rules. Appendix-level exclusions would override rules at the chapter and matrix level which have been agreed to confer origin. The list is a practical way to indicate with specificity what does not confer origin.*

- C. *Both the definitions and list should be retained (EGY)(CHI)(MOR)*

*The debate on minimal operations or processes has demonstrated that there can be great uncertainty as to the actual operations within the scope of the definitions. Because it is not yet known whether the harmonized rules of origin might include explanatory notes or other guidance, it is useful for the understanding to include an indicative list of operations or processes. The preparation of an appropriate list requires the selection of examples which are not open to doubt.*

- D. *Both the definitions and list, but the list could be in form of legally non-binding explanatory notes or user's guidelines (EC)(JPN)*

### ISSUE No. 2: Scope of application of the General Rule on Minimal Operations or Processes

- A. *Applicable to Appendix 1 only (PHI) (IND) (CH)*

*In Appendix 2 the issue of minimal operations or processes is addressed by a Chapter Note (negative standards) or an individual primary rule, where appropriate. Therefore, there is no need to set forth a general provision in General Rules. Otherwise, origin conferred by such a primary rule, which has already taken into account whether that rule may confer origin on a good by a minimal operation or process, will be overruled by the general provision. This will jeopardise the intent of the rules concerned and make the determination of origin unpredictable.*

*The reference to Appendix 2, Rule 3(d) should be deleted.*

- B: *Applicable to both Appendices 1 and 2*

*Article 9.2(c)(i) of the Agreement provides that the Technical Committee shall develop harmonized definitions of minimal operations or processes that do not by themselves confer origin to a good. This is understood to mean that these definitions must apply to the whole non-preferential rules of origin. Negative standards elaborated at the Chapter level do not*

*have the same characteristics as the definitions of minimal operations or processes, i.e., not necessarily the cases of facilitating transportation or packaging for retail sale only. Thus the General Rules must have a safety valve to prevent minimal operations or processes from conferring origin on a good.*

*B/1: In Appendix 2, should be applicable to the change of classification rules only (EC)*

*General Rule 5 is applicable to Appendix 2. However, this General Rule should not overrule the origin determination made by a specific process rule provided in Appendix 2. The process rules are articulated to confer origin on the particular good in any condition, if the specified process requirements are satisfied.*

*B/2: Applicable to all the rules (US) (CAN)(MOR)*

*General Rule 5 is applicable to any single rule set forth in Appendix 2 or in the Annex as a whole. There is no reason to distinguish between Appendix 1 or Appendix 2 or between kinds of origin rules.*

### **ISSUE No. 3: Inclusion of a Provision on Neutral Elements**

*A : This provision is necessary. ( MEX)(MOR)*

*By indicating elements which are never to be taken into account in the determination of origin this text adds certainty and clarity.*

*B : This provision is not necessary. (PHI) (HK) (SEN) (IND) (NZ)(MAL)*

*It is understood and agreed that the elements described are not a part of origin determination; the Agreement and the entire structure of the origin Annex are formulated on this understanding. To include such a reference is superfluous and potentially raises uncertainty.*

### **ISSUE No. 4: Should a de Minimis Rule be included in the Harmonized Rules of Origin?**

- (a) A de minimis approach is familiar to a number of Customs Administrations as a way to disregard materials which otherwise would prevent an origin rule from being met. In this respect de minimis rules, or tolerances, give greater possibilities for primary rules to be satisfied. They should be a part of the harmonized rules of origin.(EC, CH, MOR, CAN)*
- (b) The de minimis approach is a feature of preferential rules of origin and has no place in these MFN non-preferential rules. The administrative apparatus and recordkeeping needed to administer de minimis rules are prohibitively costly, and certainly too costly in relation to the supposed benefits of such an approach. It would be extremely difficult to set a universal threshold, or product-specific thresholds, which reasonably identify the amount of materials considered sufficiently unimportant to be disregarded. (PHI, SEN, IND MAL)*
- (c) The de minimis approach, with its requirements to calculate the value of materials of every good, might not facilitate origin determination. If Rule 2 is well formulated, the need for a de minimis rule could be minimized. A de minimus rule could be successfully discussed after the completion of Rule 2 (US)*

### **Issue No. 5: Single or Multiple Countries of Origin for Sets**

*There are two principal differing views in the Technical Committee concerning the origin of sets.*

- A. *Sets, being made up of multiple goods, are treated for origin purposes as separate goods and the origin of each constituent good is retained, as agreed by all Members that packaging is not origin-conferring. (US)*
- B. *A set has the origin of a single country. Proposed criteria by which this single country is determined are as set out in the text above: country of origin of the article that confers the essential character to the set (CAN)(JPN)(MOR); country of origin of the article in the set which represents the highest value (EC); country which contributes the country which contributes the most to the total value in terms of total value of parts and related processing activities.(CH). There is also a view in the TCRO that the making up alone of a set, without any production of constituent articles, can mean that the origin of a set is the country in which the set was put up.(IND, CH).*
- C. *There are three possible kinds of sets, as follows: (i) sets explicitly mentioned as such in a heading or subheading of the HS; (ii) sets classified in a heading or subheading of the HS by application of GIR 3(b) of the HS; and (iii) what could be called sets but classified in various headings or subheadings of the HS. There is agreement that the issue of sets under consideration does not cover the case (iii).*
- D. *For sets explicitly mentioned in headings of the HS primary rules have been devised to address each case and should be retained (PHI)*
- 

**Horizontal issues contained in Doc. OC0031 to be considered as relevant to Appendix 2 rules:**

ISSUE No.4 in doc. OC0031:

**CHANGE OF CLASSIFICATION BY VIRTUE OF THE APPLICATION OF THE SECOND PART OF GIR 2(A) - COLLECTION OF PARTS**

NOTE :

4. The General Rule for the Interpretation of the Harmonized System (GIR) 2(a) provides as follows:

“2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.”

5. This issue arises by virtue of the second part of GIR 2(a) when non-originating articles are presented unassembled or disassembled (a set of parts classified as articles). This issue is still valid even if some parts are missing from the set of parts when presented, as long as those presented parts as a whole have the essential character of the complete or finished article concerned (First part of GIR 2(a)). However, this issue is not valid when parts are separately presented to Customs, i.e., parts are classified as parts.

**OPTION A:** Yes, collecting parts is an origin conferring event under the specified conditions (IND) (SEN)

6. The legal requirements of the Harmonized System should be strictly observed in order to apply the Harmonized Rules of Origin. The Agreement provides that the change of tariff classification criterion should be based on the Harmonized System. This means that the HS is being used not only to identify a good by classification but also to judge whether or not a good undergoes a substantial transformation by a change of classification. Therefore if the HS is not sufficient for the origin determination purposes, supplementary criteria should be elaborated instead of modifying the HS. The Customs officials and traders are familiar with the current HS in force, thus if the HS is applied for the origin determination purposes different from the way which is applicable to the classification purposes, the Customs officials and traders would be confused.

7. A set of parts, which has the essential character of the complete or finished article, is considered to have substantially transformed from individual parts, when these parts collected take a form of a set with a manual or an instructional document for assembly and a guarantee by the supplier.

8. Similar to a do-it-yourself kit or unassembled furniture, handy electronics equipment is commonly found in this form in a market. Origin of these sets must be the country where they are collected and arranged as sets with a guarantee by the supplier; otherwise the same set would have different origin depending on the place where it is finally assembled.

**OPTION B:** No, collecting parts is not an origin conferring event (US) (AUS) (JPN) (EC) (BRA) (CAN)(MOR)

9. Collection of parts should not be considered as substantial transformation. Collection of parts requires storing and regrouping of goods only; thus assembly or working or processing on the parts are not necessary. Parts may be grouped together, but an individual part is still the same part.

10. The Chapter Note/Chapter Rule/Legal Note should be:

“[Where a change in classification results from the application of HS General Interpretative Rule 2(a) with respect to collections of parts that are presented as unassembled articles of another heading or subheading the individual parts shall retain their origin prior to such collection. (For goods assembled from collections of parts, Note 2.C shall apply.) (US) (AUS)]”

or

“[A change of classification which results from the application of Rule 2(a) of the General Rules for the Interpretation of the HS (GIR 2(a)), with respect to a collection of parts, shall not be considered as the change required by the rule set forth in the matrix. (Sec)]” Origin of the collected parts should be determined as a good by a [general] ~~[final]~~ residual rule (EC).

ISSUE No.5 in doc. OC0031:

## **CHANGE OF CLASSIFICATION BY VIRTUE OF THE APPLICATION OF THE SECOND PART OF GIR 2(A) - ASSEMBLY OF THE COLLECTED PARTS**

**OPTION A:** Yes. (by an assembly definition)

Option A/1: (SG)

159. Any assembly from parts confers origin on the assembled goods.



160. The Chapter rule should be:

“Obtaining goods from parts by assembly, including sub-assembly, shall be considered as reflecting last substantial transformation.”

Option A/2: (MOR)

161. Any assembly resulting in a new good having new characteristics is considered to be substantial transformation.

162. The Chapter rule should be:

“An assembly operation resulting in a new good having new characteristics is considered to be substantial transformation.”

**OPTION B:** Yes, provided

Option B/1: (by a value added rule) (EC) (BRA – all goods of Chapters 84 and 86; Some goods of Chapters 85, 87 and 90) (TUR – some goods of Chapter 85) (AUS – goods of Chapter 87) (EGY – 85.28)

163. When the collected parts are assembled, provided that the required value added (40% (EGY), 45% (EC, BRA, TUR, AUS), 51% (BRA) or 60% (EC, BRA, AUS)) is achieved in that country as a result of working and processing and, if applicable, the incorporation of parts originating in that country, origin should be conferred on that article.

164. The proposed value added rules are as follows:

“the increase in value acquired as a result of working and processing and, if applicable, the incorporation of parts originating in the country of manufacture represents at least 60 (for some complete vehicles) or 45 (for others) percent of the ex-works price of the good is carried out” (EC) (TUR) (AUS)

“the increase in value acquired as a result of working and processing and, if applicable, the incorporation of parts originating in the country of manufacture represents at least 60% for all goods of Chapters 84 and 86; 60% for some goods of Chapter 85; 60% of some goods of Chapter 87; 45%, 51% or 60% for some goods of Chapter 90” (BRA)

“40% value added” (EGY) (SEN)

165. If neither the required value added nor the change of tariff classification rule is satisfied a [general] [final] residual rule is applied. (EC) (TUR) (BRA) (EGY)

166. Origin conferred by application of the value added rule should not be nullified by the negative standards for a non-origin-conferring assembly. When the required value added rule is not met or the value added rule is not set out, the “5 parts” rule, the specified process rule, the use of one originating part rule and a [general] [final] residual rule apply in sequence. (AUS)

Option B/2: (by a cascading approach) (US)

167. When a collection of parts occurred in one country, the individual parts shall retain their origin prior to such collection by application of a Chapter [Legal] Note. If the collected parts are assembled there is no change in classification after the assembly. Thus a change of classification rule

is not applicable. Origin of the assembled good from the collected parts is determined by application of the “5 parts” rule with negative standards for a non-origin-conferring assembly, the specified processes with negative standards for a non-origin-conferring assembly, or the use of at least one originating part with negative standards for a non-origin-conferring assembly.

168. The Chapter [Legal] Note should be:

“[Where a change in classification results from the application of HS General Interpretative Rule 2(a) with respect to collections of parts that are presented as unassembled articles of another heading or subheading the individual parts shall retain their origin prior to such collection. (For goods assembled from collections of parts, Note 2.C shall apply.)]”

Option B/3: (by a Chapter Note and a change of tariff classification rule) (JPN) (CAN) (HK) (CH)

169. Assembly of the collected parts should be treated the same as assembly of separately imported parts. Application of a change of tariff classification rule should not be foregone depending on whether or not parts are presented together and satisfy the requirements of GIR 2(a). Therefore, a Chapter Note should be set out to deal with this question first, and a change of tariff classification rule determines origin of the collected parts.

170. The Chapter Note should be:

“A good assembled from a collection of parts that are classified by virtue of the application of GIR 2(a) in the same heading or subheading as the good shall have origin in the country where, subject to paragraph *[next]*, the relevant rule or note set out in the Appendix is satisfied.

The change of classification that may be required by the relevant rule in the matrices is considered to have taken place in the country in which the good is assembled from the collection of parts.”

**OPTION C:** No (IND)

171. The legal requirements of the Harmonized System should be strictly observed in order to apply the Harmonized Rules of Origin. The Agreement provides that the change of tariff classification criterion should be based on the Harmonized System. This means that the HS is being used not only to identify a good by classification but also to judge whether or not a good undergoes a substantial transformation by a change of classification. Therefore if the HS is not sufficient for the origin determination purposes, supplementary criteria should be elaborated instead of modifying the HS. The Customs officials and traders are familiar with the current HS in force, thus if the HS is applied for the origin determination purposes different from the way which is applicable to the classification purposes, the Customs officials and traders would be confused.

172. A collection of parts, which has the essential character of the complete or finished article, is considered to have substantially transformed from individual parts, when these parts collected take a form of a set with a manual or an instructional document for assembly and a guarantee by the supplier.

173. Origin of these collections, even though finally assembled elsewhere, must be the country where they are collected and arranged as sets with a guarantee by the supplier; otherwise the same set would have different origin depending on the place where it is finally assembled.

ISSUE No.6 in doc. OC0031:

## CHANGE OF CLASSIFICATION BY VIRTUE OF PACKAGING OR REPACKAGING OF GOODS

### NOTE:

11. It should be noted that the proposed General Rule 5 (minimal operations or processes) provides one of the minimal operations or processes as follows:

“[(iii) operations or processes that concern the packaging or presentation of goods for sale.]”

12. This issue refers to a change of classification by virtue of packaging or repackaging. Therefore, this issue does not cover whether or not the “value acquired as a result of working or processing” includes the cost of packaging or repackaging. It should also be noted that the Secretariat (Tariff and Trade Affairs Directorate) is of the view (NC0008E1) that a repackaging would not lead to a change of classification. At its 23<sup>rd</sup> Session the HS Committee took note of this. However, to ensure that in all cases a packaging or repackaging cannot be considered as an origin conferring event a Chapter Note is proposed.

**OPTION A:** Yes.

13. If a change of classification by virtue of packaging ~~and repackaging~~ is not an origin conferring event, such a change should be explicitly excluded from a change of classification rule. Otherwise, once a change of tariff classification rule is set forth in the matrix and the rule is satisfied by any cause, origin should be conferred. *(PHI reserved its position on this general observation on packaging)*

**OPTION B:** No. (US) (AUS) (SEN) **(EC)(MOR)**

14. A change of classification by virtue of packaging and repackaging should not be considered as substantial transformation. Packaging and repackaging does not require any assembly or working or processing on the good itself. A good may be packed or repacked, but the good is still the same good.

15. The Chapter Note/Chapter Rule/Legal Note should be:

[Where a change in classification results from packaging or repackaging the origin of the good shall be the origin prior to such packaging or repackaging. (US) (AUS)] *(EC stated that discussion on this issue unnecessary)*

**ISSUE No.9 in doc. OC0031:**

CHANGE OF CLASSIFICATION BY VIRTUE OF: CHANGE OF USE

### NOTE

16. It is understood that application of the HS GIR and other legal notes provides that the actual use of a good would not result in a re-classification. It should also be noted that the Secretariat (Tariff and Trade Affairs Directorate) is of the view (NC0008E1) that a change of use of a good would not lead to a change of classification. At its 23<sup>rd</sup> Session the HS Committee took note of this. However, to ensure that in all cases a change of use cannot be considered as an origin conferring event a Chapter Note is proposed.

17. This issue is different from the issue of modification of goods. Modification is considered as part of assembly processes; a change of use is considered to be a case caused by a cross-boarder transfer of goods which might be classified in a different heading or subheading depending on the intended use in the importing country.

**OPTION A: Yes.**

~~18. — So far there is no Member who supports this option. However, the TCRO has not decided yet that a change of classification by a change of use is not an origin conferring event.~~

**OPTION B: No.**

19. A change of classification by virtue of a change of use is not considered as substantial transformation.

20. The Chapter Note/Chapter Rule/Legal Note should be :

[a change of classification which results from the change of use of the good shall not be considered as the change required by the rule set forth in the matrix. (SEN)]

**\* It has been suggested that general discussion of this matter should be postponed until completion of discussion on Rule 2.**

ISSUE No.11 in doc. OC0031:

**ORIGIN OF A DISASSEMBLED OR RECOVERED PART OR A REMOVED ARTICLE FROM THE GOOD THAT WOULD HAVE PERFORMED ITS ORIGINAL PURPOSE OR WOULD HAVE BEEN RESTORED OR REPAIRED**

NOTE

21. It has been agreed that disassembly is not an origin conferring event. This issue deals with origin of a disassembled (recovered) part or a removed article from the good that would have performed its original purpose or would have been restored or repaired. Thus this issue covers parts or articles which are not subject to Definitions f), g) and h) of the wholly obtained goods.

22. Chapter Note/Rule was proposed to cover this issue as follows:

**“Disassembly (*not origin conferring*)**

A change of classification which results from the disassembly of the good shall not be considered as the change required by the rule set forth in the matrix. (Basket 1)

[(1) A change of classification which results from the disassembly of the good that can perform its original purpose shall not be considered as the change required by the rule set forth in the matrix. The parts recovered from the good shall retain the country of origin of the good prior to disassembly.

(2) A change of classification which results from the disassembly of the good that cannot perform its original purpose without being restored or repaired shall not be considered as the change required by the rule set forth in the matrix. The country of origin of the recovered parts shall be (one among the following options (US):

- [(a) the country where the parts are recovered] (SEN)
- [(b) the country of origin of the good from which the parts are recovered] (CAN)
- [(c) the initial country of origin of the parts]. (IND)]”

**OPTION A:** (by Chapter Note/Rule (a)) (SEN)

23. A change of classification which results from the disassembly of the good that would have performed its original purpose or would have been restored or repaired shall not be considered as the change required by the rule set forth in the matrix. However, the parts recovered from the good or the articles removed from the good should have origin in the country where the parts or the articles are recovered. This approach is the most practical and administratively less burdensome. This approach is the same as Definition (h), Alternative 1 of the wholly obtained goods. (*Disassembly confers origin on the disassembled goods.*)

**OPTION B:** (by Chapter Note/Rule (b)) (CAN)

24. A change of classification which results from the disassembly of the good that would have performed its original purpose or would have been restored or repaired shall not be considered as the change required by the rule set forth in the matrix. The parts recovered from the good or the articles removed from the good shall retain the country of origin of the good prior to disassembly. If disassembly does not confer origin on a disassembled good this approach should be taken. The proposed rule (c) is difficult to implement, due to the fact that not all parts or articles have the marking of the country of origin.

**OPTION C:** (by Chapter Note/Rule (c)) (IND)

25. A change of classification which results from the disassembly of the good that would have performed its original purpose or would have been restored or repaired shall not be considered as the change required by the rule set forth in the matrix. The parts recovered from the good or the articles removed from the good shall retain the initial country of origin of the parts or the articles. If disassembly does not confer origin on a good this approach is theoretically correct. When the country of origin of the part or article is marked on its surface, this approach does not confuse the manufacturers or traders.

**OPTION D:** (by application of Appendix 2, Rule 2) (EC)

26. A change of classification which results from the disassembly of the good that would have performed its original purpose or would have been restored or repaired shall not be considered as the change required by the rule set forth in the matrix. It is not necessary to have a provision in the Chapter Notes/Rules to deal with this issue. The origin of the parts recovered from the good or of the articles removed from the good is determined by a [general] [final] residual rule set forth in Appendix 2, Rule 2. [A rule to be finalised]

**Attachment I**

**APPENDIX 2 – Product-specific rules of origin**

**Draft by India**

**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 Determination of origin**

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

- (a) 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 country in which that good was obtained in that condition;
- (b) The country of origin of a good is the last country of production where a primary rule applicable to the good was satisfied;
- (c) When a good undergoes a non-origin-conferring operation, the origin of the good is the country from which the good originated immediately prior to such an operation;
- (d) The country of origin shall be determined as indicated in the applicable residual rule specified at the chapter level;
- (e) When the good is produced from materials originating in a single country, the country of origin of the good is 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 countries equally contributing major portions of those materials, the good shall be assigned a multi-country origin].

**Rule 3 Rules of application**

- (a) Origin shall be determined according to the rules provided for goods based upon their classification in the Harmonized System and any additional subdivisions created thereunder, and subject to other rules or chapter notes provided in this Annex.
- (b) Rules of origin that refer to change in classification require that each non-originating material in the good undergoes the change of classification specified in the rule, other than by any minimal operations or processes defined in the Chapter Rules or by any other applicable non-origin conferring process.
- (c) For the purposes of this Appendix, a minimal operation or process referred to in the Chapter Rules or a combination of them shall not preclude conferring origin on a good, if origin is conferred as a result of other operations or processes.

**Rule 4 Special provisions**

(a) Accessories and spare parts and tools

Accessories, spare parts, tools and instructional or other information material classified and presented with a good shall be disregarded in determining the origin of that good under General Rule 4, provided they are imported and normally sold therewith and correspond, in kind and number, to the normal equipment thereof.

(b) Fungible goods and materials

When it is necessary to determine the origin of interchangeable goods or materials which are commingled in inventory so that it is not practical to segregate the goods or materials by the country of origin, for purposes of the application of the origin rules, an allocation by country of origin can be made in accordance with an applicable recognized inventory management method.

(c) Putting up in sets or kits

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.

(d) Collection of parts

Collection of parts shall retain the origin of the individual parts except when such collection satisfies GIR 2(a) of the HS by acquiring the essential characteristics of a complete or finished article, in which case the origin of such a collection shall be the country where it satisfies GIR 2(a) of the HS.

**Attachment II**

**APPENDIX 2 – Product-specific rules of origin**

**Draft by the United States**

**Rule 2 Determination of origin**

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

- (a) 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 country in which the good was obtained in that condition;
- (b) the country of origin of a good is the last country of production, provided a primary rule applicable to the good was satisfied in that country;
- (c) when no applicable primary rule was satisfied in the last country of production, the country of origin shall be determined as indicated in the applicable residual rule as specified at the chapter level;
- (d) when no applicable primary rule was satisfied in the last country of production and no applicable chapter residual rule was satisfied, but the good has been produced in that country by further processing of a material classified in the same provision as that of the good, the country of origin of the good is the country in which that material originated, provided that any material subsequently added to the good has undergone the change of classification or has otherwise satisfied any other requirement specified in the primary rule applicable to the good;
- (e) when no applicable primary rule was satisfied in the last country of production and no applicable chapter residual rule was satisfied, and the good is produced from material originating in a single country that did not undergo the change of classification or did not otherwise satisfy the primary rule applicable to the good, the country of origin of the good is the country in which that material originated;
- (f) when no applicable primary rule was satisfied in the last country of production and no applicable chapter residual rule was satisfied, and the good is produced from materials (whether or not originating) of more than one country that did not undergo the change of classification or did not otherwise 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.



**Attachment III**

**APPENDIX 2 – Product-specific rules of origin**

**Draft by the European Communities**

**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 Determination of origin**

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

- (a) 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 country in which that good was obtained in that condition;
- (b) the country of origin of a good is the last country of manufacture or processing, provided a primary rule applicable to the good was satisfied in that country;
- (c) when no applicable primary rule was satisfied in the last country of manufacture or processing, the country of origin shall be determined as indicated in the applicable residual rule specified at the chapter level;
- (d) when in the last country of manufacture or processing the good is produced by further processing of an article that is already classified in the same (sub)heading as that of the good, the country of origin of that good is the country in which that article originated [, provided that any materials subsequently added to the article have undergone the change of classification or have otherwise satisfied any other requirement specified in the primary rule applicable to the good];
- (e) when in the last country of manufacture or processing the good is produced from materials originating in a single country, the country of origin of the good is the country in which those materials originated;
- (f) when in the last country of manufacture or processing the good is produced from {non-originating}\* materials 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.
- [(g) when no manufacture or processing takes place, the good retains its origin.]

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\* Still under consideration.

Attachment IV

**APPENDIX 2 – Product-specific rules of origin**

**Draft by India and Hong Kong, China**

**Rule 2: Determination of origin**

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 country; otherwise the good shall retain the origin it possesses before processing in the last country of production.

**Rule 2(c):**

*Observation:*

*Discussions in the past two weeks (12-22 July 1999) relating to Rule 2(b) and Rule 2(c) of Appendix 2 have recognized that both "provided" and "where" will achieve the similar, if not same, result. There is also a common understanding among Members that:*

- (a) primary rules should reflect the production processes required to effect substantial transformation (Article 9(b));*
- (b) if so, residual rules reflect less than substantial transformation and should be intended for use as a last resort only when origin cannot be determined by primary rules;*
- (c) in which case, origin should always be determined by primary rules, whether or not satisfied in the last country of production, whenever possible, either to reflect wholly obtained or last substantial transformation (Article 3(b)); and*
- (d) in light of the foregoing, we seek to contribute to the Committee's discussion of these issues by offering a new draft text for replacing Rule 2(b) and Rule 2(c) of Appendix 2 (HK).*

**Attachment V**

**APPENDIX 2 – Product-specific rules of origin**

**Draft by the Philippines**

**Rule 2: Determination of Origin**

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

- (a) When a primary rule specifies that the origin of a good in which the good was obtained in its natural or unprocessed state, the country of origin of the good shall be in the country in which that good was obtained in that condition;
  - (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 country; provided further that when a good undergoes a non-origin conferring operation in that country, the origin of the good is the country where the last substantial transformation of the good has taken place prior to such an operation;
  - (c) When no applicable primary rule has been satisfied, the country of origin shall be determined as indicated in the applicable residual rule specified at the chapter level;
  - (d) When no applicable primary rule was satisfied and no applicable chapter residual rule was satisfied, and the good is produced from materials originating in a single country, the origin of the good is the country in which those materials originated;
  - (e) When no applicable primary rule was satisfied and no applicable chapter residual rule was satisfied, and 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, by weight or volume as applicable, of those materials originated.
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