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**Department of Immigration
and Border Protection**

**INSTRUCTIONS AND GUIDELINES
THAILAND-AUSTRALIA FREE TRADE AGREEMENT**

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**THAILAND-AUSTRALIA FREE TRADE
AGREEMENT**

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THIS INSTRUCTION AND GUIDELINE REFERS TO:

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SUBJECT: Origin issues as they relate to the Thailand–Australia Free Trade Agreement.

PURPOSE: To specify the rules that need to be satisfied under the Thailand-Australia Free Trade Agreement which are used to determine if goods are Thai originating goods and therefore eligible for a free or preferential duty rate under the Agreement.

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CATEGORY: Operational Procedures

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The electronic version published on the intranet is the current Instruction and Guideline.

SUMMARY OF MAIN POINTS

This Instruction and Guideline specifies all the rules of origin under the Thailand-Australia Free Trade Agreement.

INTRODUCTION

This Instruction and Guideline deals with origin issues as they relate to the Thailand-Australia Free Trade Agreement (TAFTA), which was signed in July 2004, and commenced on 1 January 2005.

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Division 1: Instructions and Guidelines - TAFTA

1. Coverage of Instruction and Guideline

- (1) This Instruction and Guideline deals only with Origin issues as they relate to the Thailand - Australia Free Trade Agreement (the Agreement or TAFTA). This Agreement was done at Canberra, on 5 July 2004 and came into force on 1 January 2005.

2. Abbreviations

The following abbreviations are used throughout this Instruction and Guideline:

Agreement	Thailand-Australia Free Trade Agreement
TAFTA	Thailand-Australia Free Trade Agreement
TAFTA regulations	<i>Customs (Thailand-Australia Free Trade Agreement) Regulations 2004</i>
CTC	change in tariff classification
Customs Act	<i>Customs Act 1901</i>
HS	Harmonized System
ROO (ROOs)	Rule(s) of Origin
RVC	regional value content

Division 2: Legislation

1. General outline of legislation

The ROO requirements of TAFTA are contained within the following provisions:

- ***Combined Australian Customs Tariff Classification and Statistical Nomenclature "Introduction"***
 - pages 1 and 2 (Application of Rates of Duty)
- ***Customs Tariff Act 1995 (the Customs Tariff)***
 - Part 1 - Preliminary: sections 3, 9, 11, 12, and 13
 - Part 2 - Duties of Customs: sections 16, 16A, 18 and 19
 - Schedule 4 (general and preferential rates for concessional items)
 - Schedule 6 (Thai originating goods)
- ***Customs Act 1901 (the Customs Act)***
 - Division 1D of Part VIII (sections 153Z to 153YH) – "Thai originating goods"
- ***Customs (Thailand-Australia Free Trade Agreement) Regulations 2004***

2. Operation of the legislation

The Agreement was implemented into Australian legislation by the following legislation:

- *Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Act 2004* (incorporated into the Customs Act)
- *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004* (the TAFTA regulations)
- *Customs Tariff Amendment (Thailand-Australia Free Trade Agreement Implementation) Act 2004* (incorporated into the Customs Tariff Act)

Division 3: Overview of TAFTA

1. Geographical area covered by the Agreement

The Agreement covers the Kingdom of Thailand and Australia.

2. Overview of goods covered by TAFTA

- (1) All goods imported into Australia from Thailand are covered by TAFTA. Preferential rates of duty applicable to Thai originating goods commence on 1 January 2005.
- (2) Section 16 of the *Customs Tariff Act 1995* (the Customs Tariff) provides that the rates of customs duty for Thai originating goods are Free unless the tariff classification is specified in Schedule 6.
- (3) Section 16A of the Customs Tariff provides for special safeguards for Thai originating goods. This provision is fully addressed in Division 10 of this Instruction and Guideline.
- (4) Annex 2 of TAFTA requires that the rates of customs duty for certain Thai originating goods are to be phased to Free over a specified period. Schedule 6 to the Customs Tariff sets out the timing of those phasings and the rates of customs duty that will apply to Thai originating goods at each step of that phasing.
- (5) The phasing rates of customs duty on Thai originating textile and apparel goods are generally in line with Australian TCF phasing. Generally the rates are 3% (2005), 2% (2006) and Free (2008) or 12.5% (2005), 5% (2010) and Free (2015).
- (6) Footwear goods have phasing rates of customs duty on Thai originating goods. The rates are 9% (2005), 8% (2008), 5% (2009), and Free (2010).
- (7) Certain alcohol, tobacco and petroleum products have had the 5% customs duty removed in accordance with the Agreement. However, Schedule 6 of the Customs Tariff still imposes a customs duty on those products which are Thai originating goods at a rate equivalent to the excise duty imposed on domestically produced goods under the *Excise Tariff Act 1921*.
- (8) Certain Thai originating passenger motor vehicle parts have phasing rates of customs duty imposed. The rates are 5% (2005) and Free (2010).

Division 4: Principles of Rules of Origin

1. Explanation of concept of Thai originating good

- (1) ROO are necessary to provide objective criteria for determining whether or not imported goods are eligible for the preferential rates of duty available under TAFTA.
- (2) TAFTA grants benefits to a variety of goods that “originate” in Thailand, or in Thailand and Australia. “Originating” is a term used to describe goods that meet the requirements of Article 402 of the Agreement. Article 402 establishes which goods originate and precludes goods from other countries from obtaining those benefits by merely passing through Australia or Thailand.
- (3) The ROO define the methods by which it can be ascertained that a particular good has undergone sufficient work or processing, or has been subject to substantial transformation, to obtain the benefits under TAFTA.
- (4) Article 402 of the Agreement states that originating goods are those that:
 - are wholly obtained in Thailand or Australia, such as minerals extracted there, vegetable goods harvested there, and live animals born and raised there; or
 - are produced in Thailand, or in Thailand and Australia, partly from non-originating materials. In this case, the non-originating materials must meet the requirements of the product specific rules in the Annex 4.1. This annex contains:
 - the requirement for changes in tariff classification that non-originating materials must satisfy; and
 - the regional value content (RVC) and any other requirement that the goods must satisfy to be classed as originating goods.

NOTE: The concept of RVC is explained in Section 3 of Division 6 in this Instruction and Guideline.
- (5) Non-originating goods or materials are those which originate from outside Australia or Thailand, or which are produced in Australia or Thailand but, because of a high level of offshore material used to produce them, do not meet the ROO.

2.

Harmonized System of tariff classification

- (1) Product specific ROO are based on tariff classifications under the internationally accepted Harmonized System (HS). The HS organises products according to the degree of production, and assigns them numbers known as tariff classifications. The HS is arranged into 97 chapters covering all products. Each chapter is divided into headings. Headings can be divided into subheadings, and subheadings are divided into tariff classifications.

Example:

Chapter 62Articles of apparel and clothing accessories, not knitted or crocheted

Heading 6209.....Babies' garments and clothing accessories

Subheading 6209.10.....Of wool or fine animal hair

Tariff classification 6209.10.20.....Clothing accessories

- (2) As shown above, Chapter means the two-digit Chapter number. Headings are identified with a four-digit number, subheadings have a six-digit number, and tariff classifications have an eight-digit number. Subheadings give a more specific description than headings, and tariff classifications give a more specific description than subheadings.
- (3) Under the HS, the Chapter, heading, and subheading numbers for any good are identical in any country using the HS. However, the last two digits of the tariff classification are not harmonized - each trading nation individually assigns them.
- (4) The product specific rules in Annex 4.1 of the Agreement are organised using the HS classification numbers. Therefore, importers determine the HS classification of the imported good and use that classification to find the specific ROO in the applicable Annex to the Agreement. If the good meets the requirements of the ROO, it is an originating good.

3.

Change in Tariff Classification (CTC)

- (1) When a ROO is based on a CTC, each of the non-originating materials used in the production of the goods must undergo the applicable change as a result of production occurring entirely in Thailand or in Thailand and Australia.

- (2) This means that the non-originating materials are classified to one tariff classification prior to processing and classified to another upon completion of processing. This approach ensures that sufficient transformation has occurred within Thailand or Australia to justify a claim that the goods are originating goods of Thailand, or of Thailand and Australia.

Example: product specific rule requiring a CTC

Newsprint (HS 4801) is produced in Thailand from mechanical wood pulp (4701) imported from Malaysia.

The product specific rule for 4801 is:

A change to heading 4801 from any other heading.

In the production of newsprint in Thailand, from wood pulp imported from Malaysia, the CTC is from 4701 to 4801.

The product specific rule for 4801 requires a CTC from any other chapter. As 4701 is a different chapter to 4801, the good satisfies the CTC requirement and is therefore a Thai originating good.

4. Regional Value Content

- (1) For a proportion of goods, the CTC rule is supported by a local content threshold component called the RVC requirement. The purpose of the RVC is to ensure that a good is produced with a specified proportion of the final value of the good coming from Thailand or Thailand and Australia.
- (2) The RVC requirement can take the form of either an additional requirement to the specified CTC, or can provide an optional test, allowing the product to meet a lesser degree of tariff shift if the threshold is reached.
- (3) Article 403 of the Agreement provides the formula to determine RVC.
- (4) Section 3 in Division 6 of this Instruction and Guideline provides a full explanation of RVC.

5. Classes of originating goods under TAFTA

- (1) The classes of Thai originating goods under TAFTA are dealt with in Division 5 to 7 of this Instruction and Guideline as outlined below:
 - goods wholly obtained in Thailand (**Division 5**);
 - goods produced entirely in Thailand or in Thailand and Australia (**Division 6**);
 - other Thai originating goods (**Division 7**).

(2) In deciding whether goods are Thai originating goods the following concepts are also explained in this Instruction and Guideline as follows:

- CTC - (**Division 6, Section 2.1**);
- Accumulation - (**Division 6, Section 2.2**);
- *De minimis* rule - (**Division 6, Section 2.3**);
- RVC (**Division 6, Section 3**);
- Goods that are chemicals, plastic or rubber (**Division 6, Section 7**);
- Accessories, spare parts and tools (**Division 7, Section 1**);
- Packaging materials and containers (**Division 7, Section 2**);
- Consignment provisions (**Division 7, Section 3**);
- Fungible goods and materials (**Division 9**); and
- Certificate of origin (**Division 11**).

6. Origin Advice

Written advice on any origin matter will be provided in the form of an Origin Advice (OA). The OA exists to advise Australian importers, Thai producers and Thai exporters on specific issues relating to the origin of their goods for the purposes of determining eligibility for preferential duty rates for goods imported into Australia (**Division 8**).

Division 5: Goods wholly obtained in Thailand

1. Statutory provisions

- (1) Section 153ZB of the Customs Act contains provisions relating to goods wholly obtained in Thailand:

153ZB Wholly obtained goods of Thailand

- (1) Goods are ***Thai originating goods*** if:
- (a) they are wholly obtained goods of Thailand; and
 - (b) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (2) Goods are ***wholly obtained goods of Thailand*** if, and only if, the goods are:
- (a) minerals extracted in Thailand; or
 - (b) agricultural goods harvested, picked or gathered in Thailand; or
 - (c) live animals born and raised in Thailand; or
 - (d) products obtained from live animals in Thailand; or
 - (e) goods obtained directly from hunting, trapping, fishing, gathering or capturing carried out in Thailand; or
 - (f) fish, shellfish, plant or other marine life taken:
 - (i) within the territorial sea of Thailand; or
 - (ii) within any other maritime zone in which Thailand has sovereign rights under the law of Thailand and in accordance with UNCLOS; or
 - (iii) from the high seas by ships flying the flag of Thailand; or
 - (g) goods obtained or produced exclusively from goods referred to in paragraph (f) on board factory ships flying the flag of Thailand; or
 - (h) goods taken from the seabed or the subsoil beneath the seabed of the territorial sea of Thailand or of the continental shelf of Thailand:
 - (i) by Thailand; or
 - (ii) by a national of Thailand; or
 - (iii) by a body corporate incorporated in Thailand; or
 - (i) waste and scrap that has been derived from production operations in Thailand and that is fit only for the recovery of raw materials; or

- (j) used goods that are collected in Thailand and that are fit only for the recovery of raw materials; or
- (k) goods produced entirely in Thailand exclusively from goods referred to in paragraphs (a) to (j).

(2) In determining whether goods are wholly obtained or produced entirely in Thailand the following definitions in section 153ZA will also need to be considered:

produce means grow, raise, mine, harvest, fish, trap, hunt, manufacture, process, assemble or disassemble. **Producer** and **production** have corresponding meanings.

2. Policy and practice – wholly obtained goods

Section 153ZB determines that goods are Thai originating goods if they are wholly obtained in Thailand because the goods fall into one of the following categories and the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods:

- minerals extracted in Thailand (for example, silver mined in Thailand); or
- plants grown in Thailand or products obtained from such plants (for example fruit from fruit trees); or
- live animals born and raised in Thailand, or products obtained from live animals in Thailand; or
- goods obtained directly from hunting, trapping, fishing or gathering and capturing conducted in Thailand; or
- fish, shellfish, plant or other marine life taken:
 - within the territorial sea of Thailand; or
 - within any other maritime zone in which Thailand has sovereign rights under the law of Thailand and in accordance with UNCLOS; or from the high seas by ships flying the flag of Thailand; or
- goods obtained or produced exclusively from goods referred to in the paragraph above on board factory ships flying the flag of Thailand; or
- goods taken from the seabed or the subsoil beneath the seabed of the territorial sea of Thailand or of the continental shelf of Thailand;
- waste and scrap (see example #3 in Policy and practice below) that has been derived from production operations in Thailand and that is fit only for the recovery of raw materials; or
- used goods that are collected in Thailand and that are fit only for the recovery of raw materials
- goods produced entirely in Thailand exclusively from goods referred to in the points above.

3.

Policy and practice - waste and scrap

- (1) There are two categories of waste and scrap type goods which qualify as “wholly obtained goods” under section 153ZB.
- (2) The first category is waste and scrap that results from production or manufacturing operations in Thailand.

Example #1: waste and scrap

Galvanised pipe imported into Thailand from Japan is used in the production of elbows and flanges.

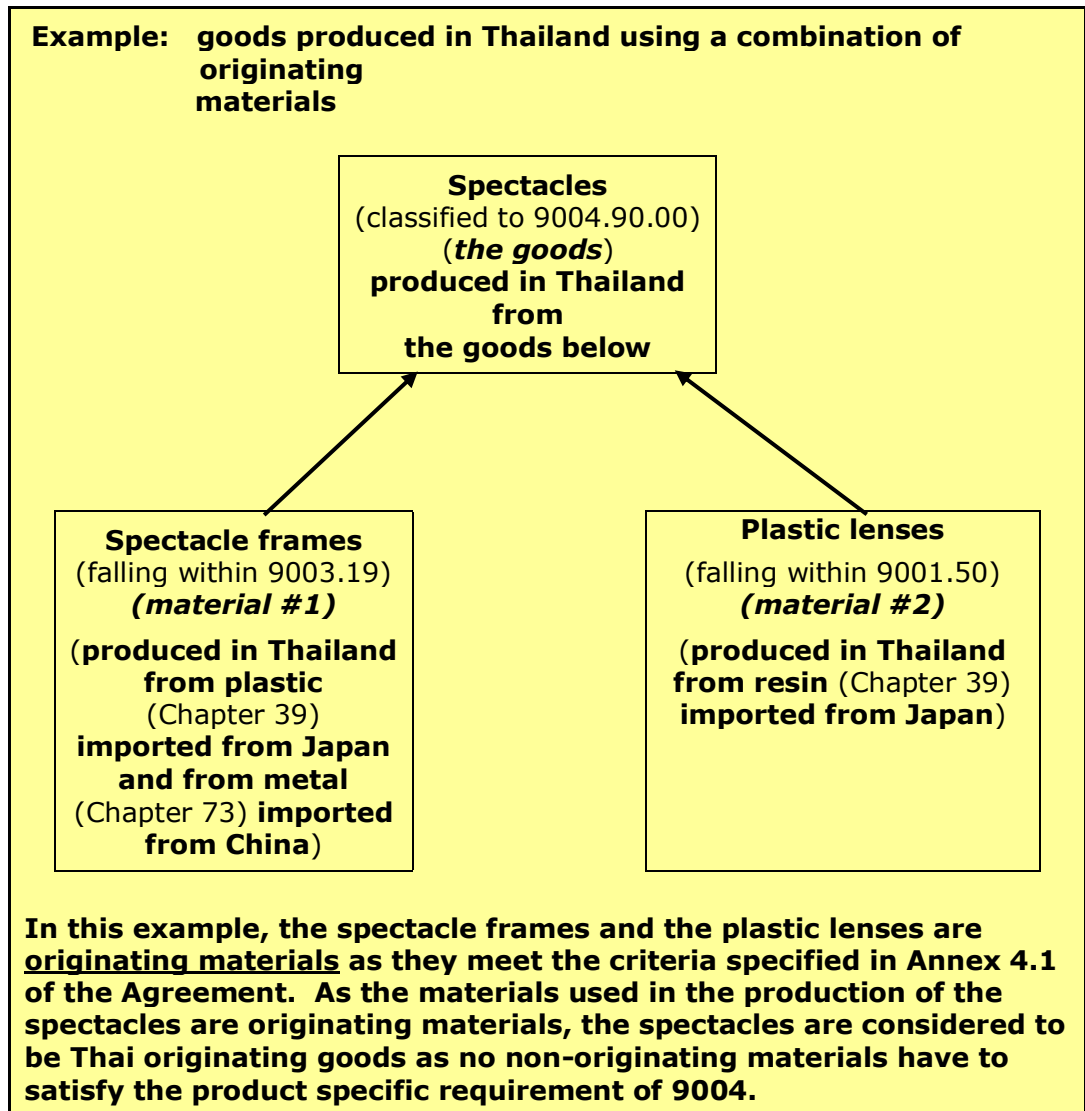
The off-cuts and metal filings resulting from such a production process in Thailand are waste and scrap that is fit only for the recovery of raw materials. Therefore, under 153ZB(2)(i), the off-cuts and filings are considered to be “wholly obtained” goods and thus are Thai originating goods.

- (3) The second category is used goods that are collected in Thailand and those goods are only fit for the recovery of raw materials.

Example #2: waste and scrap

Insulated copper wire is recovered in Thailand from scrap telephone or electrical cables. This scrap wire is, vide 153ZB(2)(j), considered to be Thai originating regardless of where the cable was produced.

- (4) Article 402 of the Agreement states that particular goods shall originate in Thailand if they satisfy any applicable requirements of Annex 4.1, as a result of processes performed entirely in the territory of one or both of the Parties by one or more producers.



- (5) Article 402, states that originating materials from Australia, used in the production of particular goods in Thailand, shall be considered to originate in Thailand.

Example: goods produced in Thailand using a combination of Australian and Thai originating materials

A Thai producer imports tanned leather produced in Australia. This leather is a Thai originating material. The leather is used in Thailand to produce handbags and wallets using a number of other Thai originating materials (metal clasps, plastic zippers, cotton thread, etc). The finished handbags and wallets are Thai originating goods because they are produced from originating materials.

Division 6:

Goods produced entirely in Thailand or in Thailand and Australia

Section 1: Statutory provisions and overview

1. Statutory provisions

- (1) Section 153ZD of the Customs Act contains provisions relating to goods produced entirely in Thailand or in Thailand and Australia:

153ZD Goods produced entirely in Thailand or in Thailand and Australia

- (1) Subject to subsection (6), goods are **Thai originating goods** if:
 - (a) they are classified to a heading or subheading of the Harmonized System that is specified in column 1 or 2 of the Tariff table; and
 - (b) they are produced entirely in Thailand, or entirely in Thailand and Australia, from originating materials or non-originating materials, or both; and
 - (c) the requirement or requirements that are specified in column 4 of the tariff table and that apply to the goods are satisfied; and
 - (d) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

Change in tariff classification

- (2) The regulations may make it a requirement (the **tariff change requirement**) that each non-originating material (if any) used to produce the goods must satisfy a particular change in tariff classification. The regulations may also set out when a non-originating material is taken to satisfy that change.
- (3) The tariff change requirement is also taken to be satisfied if the total value of all the non-originating materials used to produce the goods does not exceed 10% of the customs value of the goods.

Regional value content

- (4) The regulations may make it a requirement that the goods must satisfy a regional value content requirement. The regulations may prescribe different regional value content requirements for different kinds of goods.

No limit on paragraph (1)(c)

- (5) Subsections (2) and (4) do not limit the requirements the regulations may specify under paragraph (1)(c).

Dilution with water or another substance

(6) However, the goods are not Thai originating goods under this section if:

- (a) they are classified to any of Chapters 1 to 40 of the Harmonized System; and
- (b) they are produced merely as a result of non-originating materials being diluted with water or another substance; and
- (c) that dilution does not materially alter the characteristics of the non-originating materials.

(2) In determining whether goods are produced entirely in Thailand or in Thailand and Australia the following definitions in section 153ZA will also need to be considered:

Agreement means the Thailand-Australia Free Trade Agreement, done at Canberra on 5 July 2004, as amended from time to time.

Note: In 2004 the text of the Agreement was accessible on the Internet through the web site of the Department of Foreign Affairs and Trade.

Australian originating goods means goods that are Australian originating goods under a law of Thailand that implements the Agreement.

Certificate of Origin means a certificate that is in force and that complies with the requirements of Annex 4.2 of the Agreement.

Convention means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983.

Note: The text of the Convention is set out in Australian Treaty Series 1988 No. 30. In 2004 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

customs value, in relation to goods, has the meaning given by section 159.


Harmonized System means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

Interpretation Rules means the General Rules for the Interpretation of the Harmonized System provided for by the Convention.

non-originating materials means goods that are not originating materials.

originating materials means:

- (a) goods that are used in the production of other goods and that are Thai originating goods; or
- (b) goods that are used in the production of other goods and that are Australian originating goods.



tariff table means the table in Schedule 1 to the *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004*.

Thai originating goods means goods that, under this Division, are Thai originating goods.

(3) Value is further defined in subsection 153ZA(2), which states:

Value of goods

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

(4) Also relevant is Regulation 4.1 of the TAFTA regulations which states:

4.1 Value

- (1) For Division 1D of Part VIII of the Act, and for the definition of value of non-originating materials in regulation 3.1, the value of non-originating materials is to be worked out:
- (a) in accordance with Articles 1 to 8, Article 15 and the corresponding interpretative notes of the World Trade Organization Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade, done at Marrakesh in 1994; and
 - (b) with any reasonable modifications of those provisions as may be required to reflect the fact the non-originating materials were not imported.
- (2) The value of non-originating materials must also include the cost of:
- (a) the transportation of the non-originating materials to Thailand from their country of export; and
 - (b) insurance related to the transportation of the non-originating materials to Thailand from their country of export; and
 - (c) other services related to the transportation of the non-originating materials to Thailand from their country of export;
- to the extent that these costs have not already been included.

2. Policy and practice - general

- (1) Section 153ZD of the Customs Act sets out the general rules for determining whether goods are Thai originating goods, namely those goods that are produced entirely in Thailand, or entirely in Thailand and Australia.
- (2) Goods are Thai originating goods if all the requirements of subsection 153ZD(1) have been met. The requirements of this subsection, simply put, are:
- the goods are classified to a heading or subheading of the HS that is specified in Column 1 or Column 2 of the tariff table;
 - all production of the final good occurs entirely in Thailand or in Thailand and Australia; and
 - the requirement or requirements that are specified in column 4 of the tariff table and that apply to the goods are satisfied; and
 - the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

- (3) The tariff table is the table in Schedule 1 to the TAFTA regulations. The tariff table sets out the product specific ROO. The product specific ROO specify the CTC requirement, RVC and any other requirements for the purpose of determining whether a good is a Thai originating good.
- (4) Column 1 or 2 of the tariff table sets out the heading or subheading reference of goods in the HS. Column 3 lists the description of the goods, and Column 4 sets out the product specific ROO relevant to the tariff classification in Column 1 or Column 2.
- (5) Some examples to illustrate the different types of ROO appearing in the tariff table are:

Simple rule

= a change of tariff classification only

Tariff item	Description of products	Specific Rule
900510	- Binoculars	Change to subheading 900510 from any other subheading.

Simple rule with exceptions

= a change of tariff classification **except from** certain specified classifications

Tariff item	Description of products	Specific Rule
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products.	Change to heading 1601 from any other chapter except from Chapter 2.

Simple rule with provisions

= a change of tariff classification **provided that** certain requirements have been met

Tariff item	Description of products	Specific Rule
3915	Waste, parings and scrap, of plastics.	Change to heading 3915 from any other heading provided that the regional polymer content is no less than 40 percent by weight of the total polymer content.

Headnote 7, states that for the purposes of Chapter 39, regional polymer content means the proportion by weight of the polymer that was formed or modified in the territories of the Parties.

Simple rule with an RVC requirement

= a change of tariff classification **provided** that an RVC requirement is also met

Tariff item		Description of products	Specific Rule
	640219	- Sports footwear: other	Change to subheading 640219 from any other heading, provided there is a regional value content of not less than 55 percent.

Simple rule with exception requirements

= a change of tariff classification **except when** certain requirements have been met

Tariff item		Description of products	Specific Rule
4503		Articles of natural cork.	Change to heading 4503 from any other heading, except when resulting from simple cutting.

Choice of rule

= a simple change of tariff classification rule **or** a simpler change of tariff classification rule **with provisions**

Tariff item		Description of products	Specific Rule
	270710	- Benzyl (benzene)	Change to subheading 270710 from any other heading; or Change to subheading 270710 from any other subheading provided that the good classified in subheading 270710 is the product of a chemical reaction.

Choice of rule

= a simple change of tariff classification rule **or** a RVC

Tariff item		Description of products	Specific Rule
	841391	- Parts: of pumps	Change to subheading 841391 from any other



			heading; or A regional value content of not less than 40 percent, whether or not there is a change in tariff classification.
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Choice of rule

= a simple change of tariff classification rule **or** a process rule

Tariff item	Description of products	Specific Rule
7506	Nickel plates, sheets, strip and foil.	Change to heading 7506 from any other heading; or Change to foil, not exceeding 0.15mm in thickness, from any other good of heading 7506, provided that there has been a reduction in thickness of no less than 50 percent.

Choice of rule


= a simple change of tariff classification rule **or** a simpler change of tariff classification

rule **with provisions** such as a RVC requirement

Tariff item	Description of products	Specific Rule
732111	- Cooking appliances and plate warmers: for gas fuel or for both gas and other fuels	Change to subheading 732111 from any other heading; or Change to subheading 732111 from subheading 732190, whether or not there is also a change from any other heading provided there is a regional value content of not less than 45 percent.

3. The requirements

- (1) As stated in paragraph 4 of part 2 above, Column 4 of the tariff table sets out the product specific ROO relevant to the heading or subheading in Column 1 or 2.
- (2) The product specific ROO will specify one or more requirements and each requirement specified must be satisfied for the good to be a Thai originating good. If the ROO provides a choice of rule, only the requirements of the choice selected have to be satisfied.
- (3) If any relevant requirement is not satisfied, the good is a non-originating good.
- (4) These rules are specifically referred to in the Act as "requirements".

- 
- (5) Provided the criteria specified in paragraphs 153ZD(1)(a), 153ZD(1)(b), and 153ZD(1)(d) are satisfied, and the criteria specified in 153ZD(1)(c) is also satisfied, the good will be a Thai originating good (provided all other provisions in Division 1D are complied with). The criterion, as detailed in paragraph 153ZD(1)(c), is the satisfying of the requirements detailed in Section 2, Section 3 and Section 4 of this Division respectively.

Section 2: Change in tariff classification

1. Requirement - change in tariff classification

- (1) Subsection 153ZD(2) of the Customs Act states that the regulations may make it a requirement (the **tariff change requirement**) that each non-originating material (if any) used to produce a good must satisfy a particular CTC. The regulations may also set out when a non-originating material is taken to satisfy that change.
- (2) Also relevant is Regulation 2.1 of the TAFTA regulations which states:

2.1 Tariff change requirement for non-originating materials

- (1) For subsection 153ZD (2) of the Act, each non-originating material used to produce the goods must satisfy a particular change in tariff classification.
- (2) A non-originating material is taken to satisfy a particular change in tariff classification if:
 - (a) it satisfies the change in tariff classification mentioned in column 4 of the tariff table opposite the heading or subheading that applies to the goods; or
 - (b) it does not satisfy the change in tariff classification mentioned in paragraph (a), but:
 - (i) it was produced entirely in Thailand or in Thailand and Australia from other non-originating materials; and
 - (ii) each of those materials satisfies the change in tariff classification mentioned in paragraph (a), including by 1 or more applications of this subregulation.
- (3) The concept of CTC only applies to non-originating materials and means that non-originating materials that are sourced from outside or within Thailand or Australia which are used to produce another good, must not have the same classification under the HS as the final good into which they are incorporated. This approach ensures that sufficient transformation of the materials has occurred within Thailand, or Thailand and Australia, to justify the claim that the goods are the produce of Thailand.

Example:

Orange marmalade is classified under heading 2007. Fresh oranges are classified under heading 0805. The specific rule of origin under the TAFTA for orange marmalade requires a heading change. If fresh oranges from Brazil are transformed into orange marmalade in Thailand, the orange marmalade is an originating good under TAFTA, because a change from heading 0805 to heading 2007 has occurred.

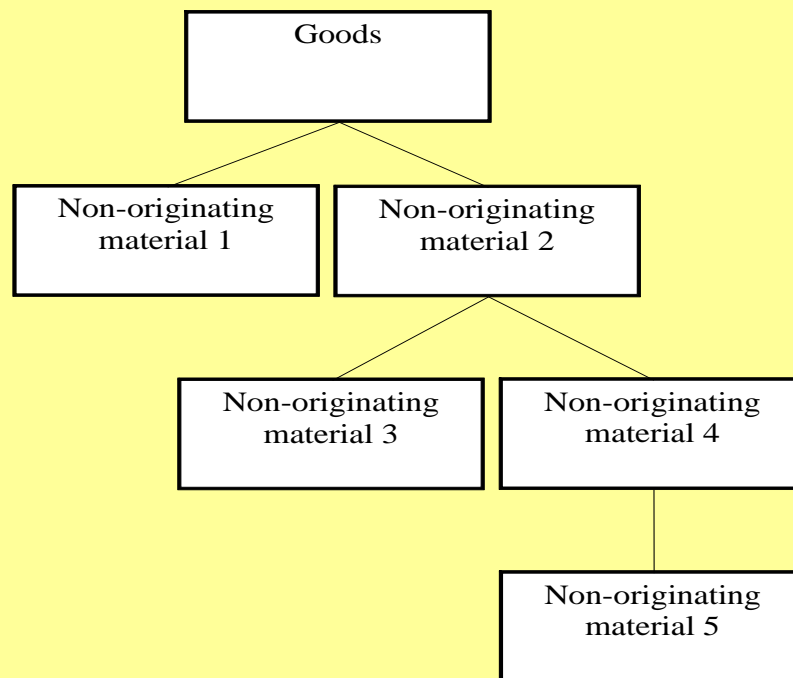
2.

Accumulation

- (1) If non-originating materials do not satisfy the CTC test for the final good, it is still possible for the first requirement to be satisfied if the material was produced entirely in Thailand, or entirely in Thailand and Australia, from other non-originating materials and each of those materials satisfies the same CTC for the final good.
- (2) In producing the final good that is to be imported into Australia, a Thai producer may use materials that have been produced in Thailand by another producer. The components of these materials may have been produced by yet another producer in Thailand or imported into Thailand.
- (3) In such circumstances, it is necessary to examine each step in the production process of each non-originating material that occurred in Thailand or Australia in order to determine whether a step satisfied the required CTC rule for the final good directly from that step to the final good. If this does occur, the material will be an originating material and the final good may be a Thai originating good (subject to satisfying all other requirements).
- (4) It is possible that the required CTC may not be satisfied at any step in the production process from the imported materials to the final good, which may mean that the final good is non-originating.

- (5) The examples below illustrate the concept where the non-originating material does not satisfy the CTC but the materials from which it is produced do.

Example: the following diagram relates to the production of particular goods that occurred entirely in Thailand. The diagram and the accompanying text illustrate the application of the phrase “entirely in the territory of one or both of the Parties by one or more producers”.



The goods are produced from non-originating materials 1 and 2.

Non-originating materials 1 and 2 must satisfy the requirement of Article 402, 1(b) of the Agreement. Under that requirement, non-originating material 1 does satisfy the relevant change in tariff classification, and non-originating material 2 does not satisfy the relevant change in tariff classification, but it has been produced by non-originating materials 3 and 4.

Non-originating materials 3 and 4 must satisfy the requirement of Article 402, 1(b). Under that requirement, non-originating material 3 does satisfy the relevant change in tariff classification, and non-originating material 4 does not satisfy the relevant change in tariff classification, but it has been produced by non-originating material 5.

Non-originating material 5 must satisfy the requirement of Article 402, 1(b). Under that requirement, non-originating material 5 does satisfy the relevant change in tariff classification.

Final result

The result of the 3 applications of the requirement of Article 402, 1(b) is that non-originating material 2 does satisfy the requirement.

Example:

A Thai producer imports uncoated kraft paper of heading 4804 from Malaysia to make kraft paper lightly coated with plastics of subheading 4811.59. The specific rule of origin for goods of subheading 4811.59 allows a change from any other heading except from heading 4804. The imported uncoated kraft paper is non-originating and was classified in excepted heading 4804. Therefore, the kraft paper lightly coated with plastics is non-originating.

The non-originating kraft paper lightly coated with plastics of subheading 4811.59 is then forwarded to another producer within the TAFTA region. That producer coats the goods with another plastic material, producing kraft paper heavily coated with plastics of subheading 4811.51. The specific rule for that subheading is a change from any other heading. As the change from 4811.59 to 4811.51 is not a change in heading, the goods would normally be non-originating.

However, the producer of the kraft paper heavily coated with plastics can accumulate the production of the kraft paper lightly coated with plastics from uncoated kraft paper, because that process also occurred within the TAFTA region. The change in classification becomes a change from uncoated kraft paper of 4804 to kraft paper heavily coated in plastics of subheading 4811.51. As this is a change in heading, the goods meet the specific rule for 4811.51. The kraft paper heavily coated in plastics is therefore Thai originating.

3.

De Minimis

- (1) The CTC requirement is also taken to be satisfied if the good meets the requirement of paragraph 153ZD(3). This is termed the *de minimis* rule.
- (2) Although the requirement of a CTC is a very simple principle, it necessitates that all non-originating materials undergo the required change. A very low percentage of the materials used to produce a good may not undergo the required CTC, thus preventing the goods from being a Thai originating good. Therefore, the Agreement incorporates a *de minimis* provision that allows a good to qualify as a Thai originating good provided the total value of all non-originating materials which do not satisfy the transformation test used to produce the good does not exceed 10% of the customs value of the final good.

Example: *De Minimis* rule

A Thai company produces wristwatches (HS 9102) for export to Australia. It produces the watches from textile watchstraps made in China (HS 9113) combined with Thai originating watch movements of HS 9108 and Thai originating cases of HS 9111. Such watch movements and cases are originating materials. The value of a strap is \$6 while the customs value of the finished watch is \$100.

The product specific rule for tariff headings 9102 states:

**Change to heading 9102 from any other chapter; or
Change to heading 9102 from heading 9114, whether or not there is also a change from any other chapter provided there is a regional value content of not less than 45 percent.**

Only the non-originating materials need to satisfy the change in tariff classification requirement – in this case, the textile watchstraps. The straps do not satisfy either of the indicated changes in tariff classification. The value of all non-originating materials used to produce the watches is \$6, and this represents 6% of the customs value of the finished good. Therefore the *de minimis* rule can be applied to the non-originating watchstraps to determine then to be originating.

The result is that the watches are now considered to be made from 100% Thai originating materials, i.e.

- Thailand watch movement
- Thailand watch cases
- watchstraps ex China = Thailand originating *de minimis* rule.

Therefore, the watch is considered to be a Thai originating good.

Section 3: Regional value content

1. Statutory provisions

- (1) In calculating the RVC of goods, the definition of value in subsection 153ZA(2) of the Customs Act is relevant. This provision states:

Value of goods

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

- (2) The definition of customs value in section 153ZA provides:

customs value, in relation to goods, has the meaning given by section 159.

- (3) Also relevant is subsection 153ZD(4), which states:

Regional value content

- (4) The regulations may make it a requirement that the goods must satisfy a regional value content requirement. The regulations may prescribe different regional value content requirements for different kinds of goods.

- (4) The TAFTA regulations prescribe the RVC requirements as follows:

3.1 Regional value content

- (1) For the purposes of the tariff table, the regional value content (**RVC**) is determined using the formula:

$$\text{RVC} = \frac{\text{customs value} - \text{value of non-originating materials}}{\text{customs value}} \times 100$$

where:

customs value means the customs value of the goods, determined in accordance with Division 2 of Part VIII of the Act.

value of non-originating materials means each of the following:

- (a) the value of non-originating materials imported into Thailand by the producer of the goods and used in the production of the goods;
- (b) the value of non-originating materials imported into Thailand, and acquired by the producer of the goods in the form in which they were imported into Thailand, and used in the production of the goods;

- (c) the value of non-originating materials imported into Thailand by the producer in Thailand of other non-originating materials that are used in the production of the goods, and that are:
 - (i) produced using the imported non-originating materials; and
 - (ii) supplied directly to the producer of the goods;
 - (d) the value of non-originating materials imported into Thailand, and acquired, in the form in which they were imported into Thailand, by the producer in Thailand of other non-originating materials that are used in the production of the goods, and that are:
 - (i) produced using the imported non-originating materials; and
 - (ii) supplied directly to the producer of the goods.
- (2) RVC is to be expressed as a percentage.

3.2 Non-originating materials produced in a developing country

- (1) This regulation applies to goods classified in chapters 50 to 64 (inclusive) of the Harmonized System, if:
- (a) non-originating materials produced in a country or place listed in Schedule 1 to the Customs Tariff Act 1995 on the date on which these Regulations commence (a developing country) are used in the production of the goods; and
 - (b) a regional value content requirement applies to the goods.
- (2) In calculating the regional value content, the value of non-originating materials produced in developing countries may be subtracted from the total value of the non-originating materials used in the production of the goods (up to an amount that is 25% of the customs value of the goods).

2. Policy and practice - product specific requirement

- (1) For a number of goods, the product specific ROO found in the tariff table may specify a RVC as:
- a requirement **additional to** the CTC requirement;
 - an **optional alternative to** a CTC requirement; or
 - the **solitary requirement**.

- (2) In cases where a RVC requirement is specified as **additional to** a CTC, goods need to satisfy both the CTC and the specified RVC requirement to qualify as Thai originating goods.

Example: RVC requirement additional to the transformation test

The product-specific rule for linoleum of HS 5904 in the tariff table is:

Change to heading 5904 from any other chapter, provided there is a regional value content of not less than 55 percent.

For goods falling to heading 5904 to be Thai originating goods they must satisfy two ROO, namely:

- (1) a change to heading 5904 from any other chapter; plus**
- (2) a RVC of not less than 55 percent.**

- (3) In cases where the product specific rule provides for **options** to determine origin, all the requirements of the option selected (i.e. the CTC only or a combination of RVC and CTC) must be met for the good to qualify as a Thai originating good.

Example: optional rules

The product-specific rule for padlocks (HS 8301.10) in the tariff table is:

**Change to subheading 8301.10 from any other chapter;
or**

Change to subheading 8301.10 from subheading 8301.60, whether or not there is also a change from any other chapter provided there is a regional value content of not less than 45 percent.

For a good falling within subheading 8301.10 to be a Thai originating good, it must satisfy either of the alternative ROO, namely:

- (1) a change to 8301.10, from any other Chapter; or**
- (2) a change to 8301.10 from subheading 8301.60, whether or not there is also a change from any chapter other than 83, plus an RVC of not less than 45%.**

- (4) In some instances the product specific ROO may specify that the only requirement for a good to qualify as a Thai originating good is the RVC requirement.

Example: product specific rule requiring RVC only

The product-specific rule of origin for glass fibres and articles thereof falling within 7019 is:

Change to heading 7019 from any other heading, provided there is a regional value content of not less than 55 percent.

- (5) Subsection 153ZD(4) provides that the TAFTA regulations may prescribe different RVC for different types of goods.

3.**RVC Method**

- (1) The RVC calculation set out at 3.1(4) above determines the percentage of non-originating materials which is used in the production of goods.

Example:

A Thai producer sells a good to an Australian importer for \$200 in an arm's-length sale. The value of non-originating materials imported into Thailand and used in the good is \$60. The producer calculates the RVC as follows:

$$\frac{\text{customs value} - \text{value of non-originating materials}}{\text{customs value}} \times 100 = \text{RVC}$$

$$\frac{\$200 - \$60}{\$200} \times 100 = 70\%$$

Therefore the RVC of the good is 70%.

4. **Example of an RVC calculation to determine if goods are Thai originating**

Example

Plastic spectacle frames (9003.11) are imported into Thailand from China and are used, in combination with Thai originating plastic spectacle lenses (9001.50), to produce sunglasses (9004.10).

The sunglasses have an FOB value of \$30. The value of the plastic spectacle frames from China (non-originating materials) is \$8.

The product-specific rule of origin for sunglasses of 9004.10 is:

A change to heading 9004 from any other chapter; or

A change to heading 9004 from any other heading within Chapter 90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 45 percent.

In this example the goods do not meet the CTC requirement of the first option but the product specific rule for 9004 provides an alternative requirement which has a different CTC plus an RVC requirement.

As the frames of 9003.11 change to sunglasses of 9004.10 they meet the CTC requirement of the second option but not the first option. That is, they satisfied the required change to subheading 9009.10 from any other heading within chapter 90.

The RVC calculation, based on the FOB of \$30 for the sunglasses and a value of non-originating materials (the plastic spectacle frames) of \$8, is:

$$\frac{\text{customs value} - \text{value of non-originating materials}}{\text{customs value}} \times 100 = \text{RVC}$$

$$\frac{\$30 - \$8}{\$30} \times 100 = 73\%$$

The RVC, using the specified formula, is 73% and the sunglasses meet the provisions of both the CTC and the RVC requirement and **ARE** Thai originating goods.

Section 4: Other requirements

Subsection 153ZD(5) of the Customs Act does not limit the requirement to be satisfied to be a Thai originating good to just CTC and RVC. If Column 4 requires that a different criterion must be met by the good then, if that criterion has been met, then the requirement of 153ZD(1)(c) has been satisfied.

Example of the other requirement: the product specific rule for 7506

Change to heading 7506 from any other heading; or

Change to foil, not exceeding 0.15mm in thickness, from any other good of heading 7506, provided that there has been a reduction in thickness of no less than 50 percent.

Example: satisfying the third requirement

An ornamental fan is produced entirely in Thailand from feathers imported from Africa (6701.00) and a wooden frame originating in Thailand.

The product specific rule for 6701 is:

Change to heading 6701 from any other heading; or

Change to articles of feather or down of heading 6701 from feathers or down.

The product specific rule for 6701 is an optional rule. One option requires a CTC and the other option requires no CTC or RVC, but there is a process rule which must be satisfied.

In this example the ornamental fan does not satisfy the CTC requirement in the rule above.

The articles of feather do however satisfy the process rule above as they have been processed into an article of feather or down of heading 6701, namely an ornamental fan.

The ornamental fan is considered to be a Thai originating good as a result of satisfying any other requirements.

Section 5: Summary of section 153ZD

- (1) A good is a Thai originating good if the requirements of 153ZD are satisfied.
- (2) The following is a summary of the application of section 153ZD.

Must be satisfied in ALL instances	
153ZD(1)(a)	A tariff classification (final classification) specified in Column 1 or 2 of the tariff table applies, and
153ZD(1)(b)	the goods are produced entirely in Thailand, or entirely in Thailand and Australia, from non-originating materials of from non-originating and originating materials, or both; and
153ZD(1)(c)	the requirement or requirements that are specified in column 4 of the tariff table and that apply to the goods have been satisfied
153ZD(1)(d)	the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

Change in tariff classification		
A	153ZD(2)	Is there is a CTC in Column 4 of the tariff table opposite the final classification for the goods. If YES , go to B If NO , and there is another requirement - go to that requirement
B		Each of the non-originating materials must satisfy the CTC in Column 4 of the tariff table opposite the final classification for the goods. If YES , and there is no other requirement, the good is originating If YES , and there IS another requirement, go to that requirement If NO , go to C
C		Accumulation – non-originating material does not satisfy the CTC requirement but it was produced entirely in Thailand, or entirely in Thailand and Australia, from other non-originating materials and each of those materials satisfies the CTC. If YES , and there is no other requirement, the good is originating If YES , and there IS another requirement, go to that requirement If NO , go to D
D	153ZD(3)	De Minimis – the total value of non-originating materials that have not been prescribed does not exceed 10% of the customs value of the goods. If YES , and there is no other requirement, the good is originating If YES , and there IS another requirement, go to that requirement If NO , the good is not originating

Regional value content	
153ZD(4)	The RVC requirement applies only if a regional value content requirement is specified in column 4 of the tariff table opposite the final classification of the goods and the requirement is satisfied.
	If YES , and there is no other requirement, the good is originating If YES , and there IS another requirement, go to that requirement If NO , the good is not originating

Other Requirements	
153ZD(5)	Is there any other requirement that the goods must satisfy or that are referred to in, Column 4 of the tariff table opposite the final classification of the goods.
	If YES , and there is no other requirement, the good is originating If YES , and there IS another requirement, go to that requirement If NO , the good is not originating

Section 6: Dilution with water

1. Statutory provisions

- (1) Section 153ZD(6) of the Customs Act contains the provisions relating to goods which have been diluted with water.

Dilution with water or another substance

- (6) However, the goods are not Thai originating goods under this section if:
 - (a) they are classified to any of Chapters 1 to 40 of the Harmonized System; and
 - (b) they are produced merely as a result of non-originating materials being diluted with water or another substance; and
 - (c) that dilution does not materially alter the characteristics of the non-originating materials.

2. Policy and practice

- (1) Subsection 153ZD(6) sets out a specific rule for when goods will not be Thai originating goods.
- (2) It provides that goods are not Thai originating goods under the section if:
 - they are classified to any of the Chapters 1 to 40 of the Harmonized System; and
 - they are produced merely as a result of non-originating materials being diluted with water and another substance; and
 - that dilution does not materially alter the characteristics of the non-originating materials.
- (3) Therefore, even if the dilution of the non-originating materials with water to produce another good satisfies the CTC requirement, but the dilution does not materially alter the characteristics of the non-originating materials, the final good will not be a Thai originating good.

Section 7: Goods that are chemicals, plastics or rubber

1. Statutory provisions

- (1) Section 153ZE of the Customs Act contains the provisions relating to goods which are classified within Chapters 28 to 40, inclusive, of the HS.

153ZE Goods that are chemicals, plastics or rubber

- (1) Goods are **Thai originating goods** if:
- (a) they are produced entirely in Thailand, or entirely in Thailand and Australia; and
 - (b) they are classified to any of Chapters 28 to 40 of the Harmonized System; and
 - (c) they are the product of a chemical reaction (within the meaning of the *Customs (Thailand-Australia Free Trade Agreement) Regulations 2004*); and
 - (d) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (2) Also relevant is the rule in column 4 at the beginning of each chapter from 28 to 40 relating to a Chemical Reaction and Headnote 6 to the product specific ROO in the table which states:

Chapter Note

Any good of this Chapter that is the product of a chemical reaction, as defined in the Headnotes, shall be considered to be an originating good.

Headnote 6:

For purposes of Chapters 27-40, a "chemical reaction" is a process (including a biochemical process) which, results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.


The following are not considered to be chemical reactions for the purposes of this definition:

- (a) dissolving in water or other solvents;
- (b) the eliminating of solvents including solvent water; or
- (c) the addition or elimination of water of crystallization.

A chemical reaction as defined above is considered to result in an originating good.

Notwithstanding any of the product specific rules, the "chemical reaction" rule may be applied to any good classified in Chapters 28-40.

2. Policy and practice – process rules

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- (1) Section 153ZE sets out the circumstances in which a good that is classified within Chapters 28 to 40 of the HS, inclusive, can become a Thai originating good without having to fulfil the requirements of section 153ZD.

- (2) Preceding the product specific rules for Chapter 28 to Chapter 39 in the tariff table is a rule relating to all goods within these chapters. This rule is termed a “process rule” as it requires the material to undergo a certain process to obtain Thai origin.
- (3) The process rule, if met, takes precedent over the product specific rules for goods within these chapters. In other words, if the requirement of a particular process rule is met, then the goods are considered to be Thai originating goods and the product specific rule is not required to be met.

3. Chemical Reaction Origin Rule

- (1) This rule requires that a chemical reaction takes places in either Thailand or Australia. For the purposes of Chapters 28-40, a chemical reaction is a process, which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of the molecule.
- (2) Processes such as dissolving in water or other solvents, the elimination of solvents including solvent water, or the addition or elimination of water of crystallization, are not considered to be chemical reactions.

Example:

A good classified in chapter 28 is produced in Thailand through a chemical reaction between material A and material B, both of which are non-originating materials.

As the good was produced in Thailand through a chemical reaction, the good is a Thai originating good.

While the product specific rules are also specified and apply to the goods, those rules can be disregarded as the good meets the chemical reaction rule and is considered to be a Thai originating good under section 153ZE.

Division 7:

Other Thai originating goods

Section 1: Standard accessories, spare parts and tools

1. Statutory provisions

- (1) Section 153ZF of the Customs Act sets out the requirements that apply in respect of accessories, spare parts and tools imported into Australia with the goods for which they are accessories, spare parts and tools. That provision states:

153ZF Standard accessories, spare parts and tools

- (1) If goods (the ***underlying goods***) are imported into Australia with standard accessories, standard spare parts or standard tools, then the accessories, spare parts or tools are ***Thai originating goods*** if:
- (a) the underlying goods are Thai originating goods; and
 - (b) the accessories, spare parts or tools are not invoiced separately from the underlying goods; and
 - (c) the quantities and value of the accessories, spare parts or tools are the usual quantities and value in relation to the underlying goods

Exception

- (2) However, the accessories, spare parts or tools are not Thai originating goods under this section if:
- (a) the underlying goods must satisfy a regional value content requirement under section 153ZD to be Thai originating goods; and
 - (b) the accessories, spare parts or tools are imported solely for the purpose of artificially raising the regional value content of the underlying goods.

Underlying goods

- (3) If:
- (a) the underlying goods must satisfy a regional value content requirement under section 153ZD to be Thai originating goods; and
 - (b) the accessories, spare parts or tools are not imported solely for the purpose of artificially raising the regional value content of the underlying goods;

then the regulations must require the value of the accessories, spare parts or tools to be taken into account for the purposes of that requirement.

Note: The value of the accessories, spare parts or tools is to be worked out in accordance with the regulations: see subsection 153ZA(2).

- (2) The interpretation of value is relevant in the above definition. Section 153ZA defines value as:

Value of goods

- (2) The **value** of goods for the purposes of this Division is to be worked out in accordance with the regulations. The regulations may prescribe different valuation rules for different kinds of goods.

- (3) Also relevant are TAFTA regulations, which state:

3.3 Value of accessories, spare parts or tools

For subsection 153ZF (3) of the Act, if underlying goods mentioned in subsection 153ZF (1) of the Act must satisfy a regional value content requirement under the tariff table:

- (a) in working out the regional value content of the underlying goods, the value of standard accessories, standard spare parts or standard tools that are imported with the underlying goods and are not Thai originating goods must be included in the value of non-originating materials used in the production of the underlying goods; and
- (b) the value of the accessories, spare parts or tools is to be worked out under regulation 4.1 as if the accessories, spare parts or tools were non-originating materials used in the production of the underlying goods.

2. Policy and practice

- (1) Section 153ZF provides that if an originating good is imported into Australia with standard accessories, standard spare parts or standard tools, then the accessories, spare parts or tools are also Thai originating goods if:
- the accessories, spare parts or tools have not been invoiced separately from the originating goods; and
 - the quantities and value of the accessories, spare parts or tools is customary for the goods.
- (2) If the above requirements have been met, then the accessories spare parts or tools do not have to undergo the transformation test that the originating goods had to undergo, or any other transformation test.
- (3) Subsection 153ZF(2) provides, that when working out if the a good is a Thai originating good, if the product specific ROO requires that a good must satisfy a RVC, the value of accessories, spare parts and tools must be taken into account for the purposes of that requirement. The value of the accessories, spare parts and tools must be taken into account as if they were non-originating materials.
- (4) Detailed information regarding RVC is to be found at Section 3 of Division 6 of this Instruction and Guideline.
- (5) Subsection 153ZF(2) is required to ensure that accessories, spare parts or tools that are of a kind normally provided with the underlying goods are not simply added to ensure one or both of the goods are originating by artificially raising the RVC of the underlying goods.

- (6) As an example, trousers are made in Australia and are to be sold to a buyer in Thailand for \$100 each. Amongst other requirements, trousers must have a RVC of 55% to be originating goods under TAFTA. Because these trousers comprise Italian fabric worth \$48 per pair, the RVC would be worked out as follows:

$$\frac{\$100 - \$48}{\$100} = 52\%$$

- (7) The trousers are non-originating, and ineligible for importation into Thailand at preferential rates of duty under TAFTA.
- (8) To get around this dilemma, the producer arranges for each pair of trousers to be sold with a belt and agrees to buy the belt back later to ensure the buyer ultimately pays no more than originally intended. On return of the belts to the producer, they could then be used for subsequent shipments under similar arrangements.
- (9) The belt is complete with a buckle, is classified to subheading 4203.30 and is sold to the producer for \$12. It is made from a pre-made belt without a buckle imported from Vietnam. The pre-made belt is classified to the same subheading as the complete belt, and is valued at \$2. The belt is non-originating because it did not undergo an appropriate CTC requirement.
- (10) Without subsection 153ZF(2), the addition of the belt to the trousers would mean that the RVC of the trousers would be worked out as follows:
- $$\frac{\$112 \text{ (trousers + belt)} - \$50 \text{ (imported fabric + belt without buckle)}}{\$112} = 55.35\%$$
- (11) Therefore, the artificial inclusion of the belt would raise the price of the goods (and to a lesser extent, the value of the imported content) to enable both goods to become originating. This paragraph in the Customs Act is required to deter traders from resorting to machinations of this kind.
- (12) The value of the accessories, spare parts and tools for the purposes of this section is to be worked out in accordance with the method that will be included in the TAFTA regulations

Section 2: Packaging materials and containers

1. Statutory provisions

- (1) Section 153ZG of the Customs Act sets out the requirements that apply in respect of packaging materials and containers when Thai originating goods are imported into Australia. That provision states:

153ZG Packaging materials and containers

- (1) If:
- (a) goods are packaged for retail sale in packaging material or a container; and
 - (b) the packaging material or container is classified with the goods in accordance with Rule 5 of the Interpretation Rules;
- then the packaging material or container is to be disregarded for the purposes of this Division (with 1 exception).
- (2) The exception is that in working out if the goods are Thai originating goods, if the goods must satisfy a regional value content requirement under section 153ZD, the regulations must require the value of the packaging material or container to be taken into account for the purposes of that requirement.

Note: The value of the packaging material or container is to be worked out in accordance with the regulations: see subsection 153ZA(2).

- (2) Also relevant is TAFTA regulation 3.4 which, states:

3.4 Value of packaging materials and containers

For subsection 153ZG (2) of the Act, if goods (the relevant goods) mentioned in subsection 153ZG (1) of the Act must satisfy a regional value content requirement under the tariff table:

- (a) in working out the regional value content of the relevant goods, the value of the packaging material or container in which the relevant goods are packaged, and that is not a Thai originating good, must be included in the value of non-originating materials used in the production of the relevant goods; and
- (b) the value of the packaging material or container in which the relevant goods are packaged is to be worked out under regulation 4.1 as if the packaging material or container were a non-originating material used in the production of the relevant goods.

2. Policy and practice

- (1) Determination of whether packaging materials and containers in which a good is packaged for retail sale, are originating or non-originating is not required. Such packaging materials and containers are not to be the subject of the transformation test requirement.

- (2) If a good is subject to a RVC, the value of the packaging materials and containers must be taken into account as non-originating materials in calculating the RVC of the good.

Example:

Ski-boots (6403.12) are made in Thailand. The boots are wrapped in tissue paper and packed in cardboard boxes described with the brand logo for retail sale. Both the tissue paper and the cardboard box are of China origin.

The specific origin criterion for tariff subheading 6403.12 is:

A change to subheading 640312 from any other heading, provided there is a regional value content of not less than 55%.

The tissue paper and cardboard box are disregarded for purposes of the transformation test requirement; their value though must be counted as non-originating materials when calculating the RVC.

Section 3: Consignment provisions

1. Statutory provisions

Section 153ZH of the Customs Act sets out the consignment provisions which apply to Thai originating goods imported into Australia, and states:

153ZH Consignment

- (1) Goods are not Thai originating goods under this Division if:
 - (a) they are transported through a country or place other than Thailand or Australia; and
 - (b) either:
 - (i) they undergo any process of production or other operation in that country or place (other than any operation to preserve them in good condition or any operation that is necessary for them to be transported to Australia); or
 - (ii) they are traded or used in that country or place.
- (2) This section applies despite any other provision in this Division.

2. Policy and practice

- (1) The consignment provision is not a mandatory direct shipment provision. The provision seeks to ensure that the benefits of the Agreement go to the seller in the exporting country. This may not be so if the goods are allowed to enter the commerce of another country before importation into Australia.
- (2) Exported goods will not be Thai originating goods if they undergoes any process of production en route from Thailand to Australia, other than necessary unloading or reloading. In other words, a partially completed product could not be completed in a third country following export from Thailand to Australia.

Example:

Surgical instruments, cotton gowns and bandages, made in Thailand from Thai originating materials, are sent to Singapore where they are packaged together and then sterilized for use in operating rooms. They are then sent to Australia.

Upon their arrival in Australia, the medical sets are not eligible for preferential treatment because they underwent operations in Singapore that were not necessary to preserve the goods in good condition or to transport them to Australia.

- (3) Section 153ZH also provides that operations to preserve goods or items in good condition during transportation, or any 'necessary' operations for transport to Australia are allowable.

Example:

Motor vehicles manufactured in Thailand are sent by ship to Australia. Before departure, they are coated with a protective veneer to inhibit damage to painted surfaces during transit on the vessel.

Due to severe weather conditions encountered during the voyage, the ship is required to stop in Singapore so that the protective veneer can be reapplied to ensure that the vehicles are preserved in good condition for the remainder of the voyage to Australia.

This process would not affect the origin status of the vehicles.

- (4) This provision recognises that geographical or logistical barriers to direct shipment may occur. It allows for situations where the goods are shipped to, and stored in, another country before the ultimate destination of the goods is known prior to being shipped to Australia.

Example:

Electronic parts manufactured in Thailand are sent to a hub distribution centre in Singapore.

This hub then supplies the electronic parts to several other countries as well as to Australia as orders are received. Goods from the hub centre are dispatched to Australia as required.

These electronic parts will be Thai originating goods if no production process or other operation is performed on these goods while in Singapore except storage.

Division 8: Origin Rulings

Section 1: Provision of binding origin rulings

1. Provisions

- (1) The Agreement does not require either Australia or Thailand to provide Origin Advices (OA).
- (2) Article 307 of the Agreement (which is not reproduced in this Instruction and Guideline) does provide for advance rulings in regard to the tariff classification of goods to be imported into either Australia or Thailand.

2. Policy and practice

- (1) Notwithstanding the above, Australian Border Force (ABF), on request, will provide written advice on origin matters through the provision of an OA. The OA exists to advise Australian importers, producers and exporters on specific issues relating to the origin of their goods for the purposes of determining eligibility for preferential duty rates for goods imported into Australia.
- (2) Assessments of the origin of a good will be issued as soon as possible but no later than 30 days after a request for such advice provided that all necessary documentation has been submitted.
- (3) Requests for an OA will be accepted before trade in the good concerned begins.

3. Adequate applications

- (1) An OA will only be given where:
 - evidence is presented of a commitment or firm intent to import or export;
 - the application contains adequate and correct information; and
 - supporting evidence of the facts of the application is provided with the application.
- (2) Inadequate applications will be rejected.

4. How to lodge an application

- (1) Application can be made by completing an OA application form which is available electronically on the Department of Immigration and Border Protection website at www.border.gov.au. An OA form is also available at section 2 of this Division, or can be requested from the Manager Origin Rulings on 02 6275 6666. The completed form (together with supporting documentation) can be lodged at any ABF office but should preferably be forwarded to:

National Trade Advice Centre

GPO Box 2809

Melbourne VIC 3001

- (2) At the time an application is made for an OA, ABF will register the application with a unique Origin Advice Number (OAN) and the applicant will be advised of this number.

5. Applications with more than one origin issue

Each application must be for a single origin issue. Where there is more than one issue, separate applications must be lodged for each.

6. Supporting information and documentation

- (1) It is unrealistic to expect a correct and binding origin advice if inadequate or incomplete information is provided to ABF. The essential principle to be followed is that all information that is relevant to the request for advice should be supplied with the application.
- (2) Section 3 of this Division sets out a guide to the minimum supporting documentation required to accompany an application for Thai origin rulings. The list is not exhaustive; if there are any other relevant documents and information, it must also be supplied with the application.

7. Advice conditional on data provided

- (1) The ABF decision will be made only on the basis of the statements and supporting documentation provided, and accordingly, the validity of the advice is conditional upon correct and complete information being provided.
- (2) In the course of processing an OA, ABF may request, at any time, additional information necessary to evaluate the application.

8. Administrative penalty – indemnity

- (1) From the time of registering an application until the decision of ABF the applicant will be indemnified from administrative penalty in respect of duty short paid in relation to the claimed issue.
- (2) However, the indemnity ceases when an application is withdrawn or where it is voided because of an inadequacy with the application or supporting documentation.
- (3) The quotation of an OAN on entries is optional. Failure to quote an OAN will not affect the indemnity.

- (4) When goods are being entered, the owners should not indicate or request “amber” treatment solely on the basis that it is the subject of an OA application or decision.

9. Withdrawal of application

An owner may withdraw an application by advising ABF at any time between registration of the application and the decision by ABF on the application. Withdrawal of the application has the effect of cancelling the application.

10. Payment of duty following advice

When ABF has finalised an OA application and notified the applicant of the decision and the reasons for that decision, any duty or GST short paid on entries becomes payable.

11. Validity of advice

- (1) Advices are valid for all ports in Australia for five (5) years from the date of notification of the advice. After that time the OA will be cancelled. If an advice is still required a new application must be made.
- (2) ABF may cancel or amend an OA within its five-year life, where particular circumstances warrant. Such circumstances include, but are not limited to:
 - an amendment is made to the legislation which has relevance to the advice;
 - incorrect information was provided to ABF or relevant information was withheld;
 - ABF’s decision is changed as a result of legal precedent;
 - the facts and conditions of the origin application have changed;
 - ABF has issued conflicting advices.

12. Cancelled or amended advice

Where ABF cancels or amends an OA, in-transit provisions may be applied at the discretion of ABF.

13. In-transit provisions

Where in-transit provisions apply, the cancelled or amended OA continues to apply in relation to goods that:

- were imported into Australia on or before the date on which the cancellation or amendment came into effect and were entered for home consumption before, on, or within 30 days after that date; or

- had left the place of export on or after that date and were entered for home consumption before, on, or within 30 days after the date on which they were imported into Australia.

14. ABF to honour advice

An OA is not legally binding on ABF. However, ABF will honour an OA unless it was provided on the basis of false or misleading information or where the applicant failed to provide all the relevant information and documentation that was available.

15. Conflicting advice

Should an applicant hold or be aware of any conflicting OA from ABF for an origin issue, they are to be treated as being void and ABF is to be notified immediately.

16. Appeals against ABF advice

- (1) Where a ABF decision in an OA is disputed, it should first be discussed with the decision maker. If the advice is still disputed, a further appeal to the Director Valuation and Origin, Canberra may be requested.
- (2) This appeal mechanism does not preclude the right to external review – for example, to the Administrative Appeals Tribunal (AAT), after there has been a payment under protest. It should be noted that an OA in itself is not a decision which is reviewable by the AAT or the Federal Court.

Section 2: Application for origin rulings

APPLICATION FOR ORIGIN RULING

THAILAND-AUSTRALIA FREE TRADE AGREEMENT

The *Privacy Act 1988* requires us to tell you why we are collecting this information, how we will use it and whether we will disclose it.

Australian Border Force (ABF) will use this information to determine whether your goods are Thai originating goods (in accordance with the Thailand-Australia Free Trade Agreement) and are therefore eligible to be imported at a preferential rate of customs duty. ABF is not permitted to disclose this information except when required or authorised to do so by law.

A P P L I C A N T	1. APPLICANT NAME:		C U S T O M S		ADVICE NUMBER	
	2. ADDRESS:				[]	
	3. ABN:		C U S T O M S		DATE LODGED	
	4. TELEPHONE NO:				_ _ / _ _ / _ _	
	5. CONTACT NAME:				(DD / MM / YY)	
A P P L I C A N T O R B R O K E R T O C O M P L E T E	6. DOCUMENTATION YES <input type="checkbox"/> NO <input type="checkbox"/>		7. TARIFF CLASSIFICATION OF GOODS:			
	8. DESCRIPTION OF GOODS, DESCRIPTION OF MATERIALS USED IN THEIR MANUFACTURE (INCLUDING WHETHER THOSE MATERIALS ARE US/AUSTRALIAN ORIGINATING), THE TARIFF CLASSIFICATION OF ANY NON-ORIGINATING MATERIALS (IF KNOWN) AND THE PROCESS USED TO MANUFACTURE THE GOODS					
	MORE: Y / N					
	9. PREVIOUS ADVICE FOR THESE GOODS YES <input type="checkbox"/> NO <input type="checkbox"/>			10. ADVICE NUMBER		
	11. SUPPLIER'S CUSTOMS CLIENT ID NUMBER:			12. BROKER'S REF:		
	13. NAME AND ADDRESS OF SUPPLIER:					
	14. BROKER'S NAME:					
	15. BROKER COMPANY:			16. BROKER ABN:		
	17. Signature of BROKER / APPLICANT				DATE: / /	
	C U S T O M S	RESULT:				
FILE NO:		DECISION DATE: / /		OFFICER NAME:		
OFFICER'S SIGNATURE:		TELEPHONE:	DESIGNATION:			
ADVICE STATUS:			DATE:			
NOTE: Before completing this form, you should read Section 3 of Division 8 of Instructions and Guidelines – TAFTA, titled “Origin Rulings – information requirements” which has full details of information required to be provided on this Application for Origin Ruling form.						

Section 3: Origin Rulings - information requirements

1. The application

- (1) An Origin Advice (OA) will be issued to importers, exporters or any other person who require an OA on goods imported into Australia under the TAFTA ROO provisions. Division 8 sets out the procedures for lodging an OA.
- (2) Requests for an Origin Ruling should be submitted on the approved form, B1184.

2. Subject matter of advance rulings

Advance rulings may be sought on various TAFTA issues including, but not limited to:

- (a) whether a good qualifies as an originating good being wholly obtained in Thailand;
- (b) whether non-originating materials used in the production of a good imported into Australia undergo the applicable CTC;
- (c) whether a good satisfies a RVC requirement;
- (d) the appropriate basis for determining the value of originating and non-originating materials;
- (e) the application of *de minimis* provisions.

3. Content of application - general

The following relevant information should be attached to the OA application form:

- the specific subject matter to which the request relates;
- a complete statement of all relevant facts relating to the TAFTA transaction which must state that the information presented is accurate and complete;
- the names, addresses and other identifying information of all interested parties;

- copies of any other origin advice, tariff classification advice or valuation advice that has been issued in relation to the imported good.

4. Content of application – specific

(i) Goods wholly obtained or produced entirely in Thailand

Where a goods has been obtained in Thailand a complete description of the good shall be supplied, including:

- a description of how the good was obtained;
- details of all processing operations employed in the production of the good;
- the location where each operation was undertaken;
- the sequence in which the operations occurred;
- a list of all materials used in the production of the good; and
- evidence of the origin of materials used in the production of the good.

(ii) Change in tariff classification of a material

Where the request for an OA involves the application of a ROO that requires an assessment of whether the materials used in the production of the imported good undergo an applicable CTC, the advice must list each material used in the production of the good and must:

- identify each material which is claimed to be an originating material, providing a complete description of each such material including the basis for claiming origin status;
- identify each material which is a non-originating material, or for which the origin is unknown, providing a complete description of each such material, including its tariff classification; and
- describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

(iii) Regional Value Content

Where the origin advice involves the issue of whether a good satisfies a RVC the advice must:

- provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act. This information is of the type outlined in Division 7 of Instructions and Guidelines - Valuation;
- provide information which is sufficient to identify and calculate the value of each non-originating material, or material the origin of which is unknown, used in production of the good.

(iv) De Minimis

If a *de minimis* exception to a HS classification is claimed, the advice must:

- provide information sufficient to determine the customs value of the goods in accordance with Division 2 of Part VIII of the Customs Act. This information is of the type outlined in Division 7 of Instructions and Guidelines - Valuation;
- identify each material which is claimed to be an originating material and provide a complete description of each such material, including the basis for the claim as to originating status;
- identify each material which is a non-originating material, or for which the origin is unknown, and provide a complete description of each such material, including its tariff classification if known.



(v) Tariff Classification

Where no tariff ruling has been made by ABF in relation to the goods, sufficient information must be supplied to enable tariff classification of the goods. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation. Where product literature, drawings, photographs or other material are available they should accompany the application.

Division 9: Fungible goods and materials

1. Provisions

- (1) There is no Australian legislation in regard to fungible goods and materials.
- (2) Fungible goods are generally accepted as those goods and materials that are interchangeable for commercial purposes and whose properties are essentially identical.
- (3) The treatment of fungible goods and materials is covered by Article 402 to the Agreement, which states:

ARTICLE 402

Originating Goods

.....

.....

6. The determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each of the goods or materials or through the use of any inventory management method, such as averaging, last-in, first-out, or first-in, first out, recognised in the generally accepted accounting principles of the Party in which the production is performed or otherwise accepted by the Party in which the production is performed.

7. An inventory management method selected under Paragraph 6 for particular fungible goods or materials shall continue to be used for those fungible goods or materials throughout the fiscal year of the person that selected the inventory management method.

2. Policy and practice

- (1) Many goods and materials involved in production processes are interchangeable for commercial purposes, in that they have essentially identical properties (e.g. ball bearings, nuts, bolts, screws etc). These goods are considered to be fungible goods or materials.
- (2) A producer may choose to physically separate in different containers the fungible goods obtained from different countries. In many cases this may not be practical and the producer stores all the fungible goods in one container.
- (3) When a producer mixes originating and non-originating fungible goods, so that physical identification of the actual goods used is impossible, the producer may determine the origin of the goods used based on one of the standard inventory accounting methods (e.g. last-in first-out, or first-in first-out) allowed under generally accepted accounting principles.

- (4) These provisions apply equally to fungible materials that are used in the production of a good.
- (5) It is important to note that once a party has decided on an inventory management method for a particular fungible good or material, that method must continue to be used throughout the whole of the financial year.

Example #1:

Amongst the materials used by a Thai producer of machinery parts are ball bearings. Depending on pricing and supply availability, it may source the ball bearings from within Thailand, from Malaysia, or from China. All of the ball bearings are of identical size and construction.

On January 1, the producer buys 1 tonne of ball bearings of Thai origin, and on January 3 buys 1 tonne of ball bearings of Chinese origin.

The ball bearings have been stored in the one container at the producer's factory. The form of storage of the intermingled ball bearings makes those of Thai origin indistinguishable from those sourced from China.

An Australian company places an order on Thailand producer for machinery parts which require the use of 800kgs of ball bearings.

If the producer elects "first-in first-out" inventory procedures, the 800kgs of ball bearings used to fill the Australian order are considered to be Thai originating, regardless of their actual origin.

Example #2:

Continuing the above scenario, a second Australian company places an order on the same Thai producer for machinery parts which requires the use of 500kgs of the same ball bearings.

The producer, as stated above, has elected to adopt a "first-in first-out" inventory procedure.

In this example, the first 200kgs of ball bearings used are considered to be Thai originating materials. The remaining quantity of ball bearings used (300kgs) are considered to be non-originating materials and the ball bearings must undergo the transformation requirement specified in the product specific rule for the final good.

- (6) In considering the origin of fungible goods, if, after applying Article 402 of the Agreement, the producer determines that they are Thai originating goods, they do not need to undergo any transformation.
- (7) Alternately, if the origin of fungible goods used in a production process is non-originating, those fungible goods must undergo the transformation test appropriate for the goods being produced.

Division 10: Special safeguard action

1. Statutory provisions

- (1) Section 16A of the Customs Tariff Act contains provisions relating to the application of special safeguard action for certain Thai originating goods.

16A Special safeguards for Thai originating goods

- (1) If the Agricultural Minister is satisfied that the quantity of safeguard goods imported into Australia during a calendar year specified in column 3 of an item of the following table exceeds:
- (a) the quantity specified in that column for that year in relation to the goods; or
 - (b) if the regulations specify another quantity for that year in relation to the goods—the other quantity;

the Agricultural Minister may publish a notice in the *Gazette* in relation to the goods.

NOTE: *Table is reproduced, in amended format, under 'Policy and practice' below.*

- (2) In applying subsection (1) to item 3 of the table, the quantity applicable for a calendar year applies to the sum of the quantities of the following goods imported in that year:
- (a) Thai originating goods classified to subheading 2009.41.00;
 - (b) Thai originating goods classified to subheading 2009.49.00.

Example: In 2005 the quantity applicable under item 3 of the table is 2,080,116 litres.

On 1 August 2005, 1,500,000 litres of Thai originating goods classified to subheading 2009.41.00 have been imported into Australia and 580,117 litres of Thai originating goods classified to subheading 2009.49.00 have been imported into Australia.

On 1 August 2005 the quantity is exceeded and the Agricultural Minister may publish a notice covering both kinds of goods.

Content of notice

- (3) The notice must specify:
- (a) the safeguard goods; and
 - (b) that the quantity of the goods imported into Australia during the applicable calendar year exceeds the quantity applicable for that year.

The notice may contain any other information that the Agricultural Minister considers appropriate.

- (4) A notice under this section may specify one or more safeguard goods.

Duty rates

- (5) If:
- (a) the Agricultural Minister publishes a notice under this section; and
 - (b) any safeguard goods specified in the notice are imported into Australia during the period beginning on the day after the publication day and ending on 31 December of the calendar year concerned;

then the duty in respect of the goods must be worked out by reference to the general rate set out in the third column of the tariff classification under which the goods are classified (and not under paragraph 16(1)(l)).

- (6) Subsection (5) does not apply to goods exported from Thailand on or before the publication day under a contract entered into on or before the publication day. However, the quantity of those goods must be counted towards the quantity applicable for the next calendar year in relation to goods of that kind.

Definitions

- (7) In this section:

Agricultural Minister means the Minister administering the Primary Industries (Excise) Levies Act 1999.

safeguard goods means Thai originating goods that:

- (a) are classified to a subheading in Schedule 3 that is specified in column 2 of item 1 or 3 of the table in this section; or
- (b) are classified to a subheading in Schedule 3 that is specified in column 2 of item 2 of the table in this section and are canned; or
- (c) are classified to a subheading in Schedule 3 that is specified in column 2 of item 2 of the table in this section and are not canned.

2. Policy and practice

- (1) Special safeguards are a mechanism for protecting industries in both Australia and Thailand from injury from increased imports during the transition period (the transition period is the period during which tariffs are being reduced to zero under the Agreement).
- (2) Australia has claimed special safeguards for four tariff items covering certain tuna (including canned tuna) and pineapple products and pineapple juice for the period from entry into force until 31 December 2008.
- (3) Special safeguard action on these products can be taken without demonstrating damage to local industry: all that is required is that a specified volume of imports is exceeded in a given (calendar) year. If the volume level is triggered, the action that is allowed is the levying of customs

duties at the current DCS tariff rate or at the base tariff rate for the balance of the year.

- (4) Chapter 5 of TAFTA allows special safeguard action to be applied to sensitive products, as listed in the following table.

Tariff Reference	Description	Unit	2005	2006	2007	2008
1604.14.00	Prepared or preserved tunas, skipjack and bonito (<i>Sarda spp.</i>).	kilograms	21,366,277	22,434,591	23,556,320	24,734,136
2008.20.00 (stat codes 26 & 27)	Pineapples, otherwise prepared or preserved, canned.	litres	6,083,197	6,387,357	6,706,725	7,042,061
2008.20.00 (stat code 28)	Pineapples, otherwise prepared or preserved, not canned.	kilograms	2,137,189	2,244,048	2,356,251	2,474,063
2009.41.00 and 2009.49.00 (combined)	Pineapple juice, unfermented and not containing added spirit.	litres	2,080,116	2,184,122	2,293,328	2,407,994

3. Determination of safeguard action

- (1) Safeguard action can be taken without demonstrating damage to local industry if a specified volume of imports is exceeded in a given calendar year
- (2) The decision to impose special safeguards rests with the Minister for Agriculture, Fisheries and Forestry, and commences the day after the decision is notified in the *Gazette*. The Department of Agriculture, Fisheries and Forestry will advise ABF when a determination has been made to apply the special safeguard action.

- (3) Safeguard action is applied when the Agricultural Minister is satisfied that the quantity of safeguard goods imported into Australia during a calendar year exceeds the quantity allowed to be imported at preferential rates of duty during that year, in relation to the goods.
- (4) When special safeguards are imposed, the duty rate for Thai originating goods imported after that time, and before the next calendar year, will revert to the general rate, unless the goods meet in-transit provisions (see paragraph 5(2) below).

4. Requirements before safeguards are applied

- (1) Special safeguard provisions apply only to goods that are Thai originating goods.
- (2) For goods classified to subheading 2008.20.00, there are two classes of safeguard goods - canned and not canned. Each statistical code has a separate trigger.
- (3) In relation to pineapple juice, the quantity applicable for a calendar year applies to the sum of the quantities of both tariff items in the table.

5. Effect of the safeguard notice

- (1) Subsection 16A(5) of the Tariff Act, provides that if any safeguard goods specified in the notice are imported into Australia during the period beginning on the day after the publication day and ending on 31 December of the calendar year concerned, then the duty in respect of those goods must be worked out by reference to the general rate of duty. Therefore, despite the safeguard goods the subject of the notice being Thai originating goods, they shall have to pay the general rate of customs duty, and are no longer eligible for a "Free" rate of duty.
- (2) Subsection 16A(6) of the Tariff Act, sets out an exception to subsection 16A(5) and provides that subsection (5) does not apply to goods exported from Thailand on or before the publication day under a contract entered into on or before the publication day, i.e. goods that are en route on the basis of a settled contract.
- (3) However, the quantity of the goods to which subsection (6) applies must be counted towards the quantity applicable to the same kind of goods for the next calendar year.

Division 11: Certificate of Origin

1. Statutory provisions

- (1) Section 153ZD of the Customs Act contains provisions relating to goods requiring a certificate of origin as a requirement to be classed as Thai originating goods.

153ZD Goods produced entirely in Thailand or in Thailand and Australia

- (1) Subject to subsection (6), goods are **Thai originating goods** if:
 - (a); and
 - (b); and
 - (c); and
 - (d) the importer of the goods holds, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- (2) In determining whether goods are wholly obtained or produced entirely in Thailand the following definitions in section 153ZA will also need to be considered:

Certificate of Origin which means a certificate that is in force and that complies with the requirements of Annex 4.2 of the Agreement.

2. Policy and practice

- (1) Paragraph 153ZD(1)(d) makes it a requirement that for the goods to be classed as Thai originating goods the importer of the goods must hold at the time the goods are imported a certificate of origin (or a copy thereof) for the goods.
- (2) The certificate has to be issued in accordance with Annex 4.2 of TAFTA.
- (3) Goods imported from Thailand will not be eligible for the TAFTA preferential duty rates if the importer does not hold at the time the goods are imported a certificate of origin (or a copy thereof) for the goods.

3. Thailand exporter requirements

- (1) In order to bolster compliance with the ROO, detailed requirements must be met by exporters who wish to export goods under TAFTA.
- (2) Firstly, an exporter must register with an authorised body as an exporter of a certain product. The authorised body will then conduct any examinations of the exporter's operations it considers necessary to determine whether the product the exporter wishes to export would in fact qualify as originating. If the authorised body considers the product would comply, it will register the exporter as entitled to export that product.
- (3) In addition to the requirement for registration as an exporter for a certain product, an exporter must also obtain from the authorised body a certificate of origin for each shipment of that product. Australia will grant the tariff

preference only to goods for which the importer of the goods hold at the time the goods are imported a certificate of origin (or a copy there of) for the goods.

4. Certificate of Origin requirements

- (1) Annex 4.2 of TAFTA sets out the data that is to be included in a Certificate of Origin.
- (2) The table below lists the bodies that are authorised to certify origin for the purposes of TAFTA.

Australia	Thailand
Australian Chamber of Commerce and Industry and affiliated bodies	Department of Foreign Trade Ministry of Commerce
Australian Industry Group	Department of Foreign Trade, Ministry of Commerce, and any government body authorised to issue certificates of origin in accordance with the laws, regulations and policies applying to that Department.
Any body authorised by the Government of Australia, subject to agreement between the Parties	Any body authorised by the Government of Thailand, subject to agreement between the Parties

- (3) The minimum data to be included in an application for a Certificate of Origin are.

1. Registered Exporter details	The name, address and business number of the Registered Exporter.
2. Shipment details (a separate application must be made for each shipment)	<ul style="list-style-type: none"> • Consignee name and address (if known) • Sufficient details to identify the consignment, such as importer's purchase number, invoice number and date and Air/Sea Way Bill/of Lading • Export Entry/Declaration • Port of Discharge
3. Full Description of the Registered Goods	Detailed description of the goods, including harmonised system code, and if applicable, product number and brand name.
4. Registered Exporter Declaration	<p>Declaration completed by a competent representative of the Registered Exporter, signed and dated by that representative and annotated with the representative's name and designation, that includes a statement that to the effect that:</p> <ul style="list-style-type: none"> • there has been no significant change in the basis for the registration of the goods described in 3. above; or • there has been a significant change in the basis for the registration of the goods described in 3. above, as detailed in full in the attached documentation, <p>as well as a statement that the details provided in the application are true and correct.</p>

RELATED POLICIES AND REFERENCES

Practice Statement – Rules of Origin

Instructions and Guidelines – ANZCERTA

Instructions and Guidelines – AUSFTA

Instructions and guidelines – Preferential Rules of Origin (General)

Instructions and guidelines – SAFTA

Instructions and Guidelines – ACI-FTA

KEY ROLES AND RESPONSIBILITIES

The policy owner of this Instruction and Guideline is:

Director Valuation and Origin Section

Trade Services Branch

Department of Immigration and Border Protection

CONSULTATION

Industry Consultation

Not required.

Internal Consultation

The following internal stakeholders have been consulted in the development of this Instruction and Guideline:

- Customs Legal Unit

- Compliance Division

APPROVAL

Approved on 2009 by:

Sue Pitman
National Director Trade
Australian Customs and Border Protection Service