Australian Government

Department of Immigration and Border Protection

INSTRUCTIONS AND GUIDELINES

AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT

FILE NO: 2008/041987-01

AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT

April 2009

THIS INSTRUCTION AND GUIDELINE REFERS TO:

PRACTICE STATEMENT NO: 2009/13

PUBLISHED DATE: 4 MARCH 2009

AVAILABILITY: Internal and External

SUBJECT:	Origin issues as they relate to the Australia-United States Free Trade Agreement.
PURPOSE:	To specify the rules that need to be satisfied under the Australia-United States Free Trade Agreement which are used to determine if a good is a United States originating good and therefore eligible for the 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 outlines all the rules of origin under the Australia-United States Free Trade Agreement.

INTRODUCTION

This Instruction and Guideline deals with origin issues as they relate to the Australia-United States Free Trade Agreement (AUSFTA). This agreement was done at Washington DC, the United States of America (US), on 18 may 2004 and came into force on 1 January 2005.

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Division 1: Instructions and Guidelines - AUSFTA

1. Coverage of Instructions and Guidelines

1.1. This Instruction and Guideline deals only with origin issues as they relate to the Australia-United States Free Trade Agreement (the Agreement or AUSFTA). This Agreement was done at Washington DC, United States of America (US), on 18 May 2004 and came into force on 1 January 2005.

2. Abbreviations

The following abbreviations are used throughout this Instruction and Guideline:

ABF	Australian Border Force
Agreement	Australia-United States Free Trade Agreement
AUSFTA	Australia-United States Free Trade Agreement
AUSFTA Tariff Regulations	*Customs Tariff Regulations 2004*
AUSFTA Regulations	*Customs (Australia-US Free Trade Agreement) Regulations 2004*
CTC	change in tariff classification
Customs Act	*Customs Act 1901*
HS	Harmonized System
ROO (ROOs)	Rule(s) of Origin
RVC	regional value content
US	United States of America

Division 2: Legislation

1. General Outline of Legislation

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

- ***Combined Australian Customs Tariff Nomenclature and Statistical Classification "Introduction"***
  - pages 1 and 2 (Application of Rates of Duty)
- ***Customs Tariff Act 1995***
  - Part 1 - Preliminary: sections 3, 9, 11, 12, 13, and 14
  - Part 2 - Duties of Customs: sections 16, 18 and 19
  - Schedule 4 (general and preferential rates for concessional items)
  - Schedule 5 (US originating goods)
- ***Customs Act 1901***
  - Division 1C of Part VIII (sections 153Y to 153YL) – "US originating goods"
- ***Customs (Australia—US Free Trade Agreement) Regulations 2004***
- ***Customs Tariff Regulations 2004***

2. Operation of Legislation

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

- *US Free Trade Agreement Implementation Act 2004* (incorporated into the Customs Act);
- *Customs (Australia—US Free Trade Agreement) Regulations 2004* (the AUSFTA regulations);
- *US Free Trade Agreement Implementation (Customs Tariff) Act 2004* (incorporated into the Customs Tariff Act); and
- *Customs Tariff Regulations 2004* (AUSFTA Tariff Regulations).

Division 3: Overview of the AUSFTA

1. Geographical Area Covered by the AUSFTA

The Agreement covers the following geographical areas:

1.1. with respect to Australia:

the territory of the Commonwealth of Australia:

(i) excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) including Australia's territorial sea, contiguous zone, exclusive economic zone and continental shelf.

1.2. with respect to the US:

(i) the customs territory of the US which includes the 50 states, the District of Columbia and Puerto Rico;

(ii) the foreign trade zones located in the US and Puerto Rico; and

(iii) any areas beyond the territorial seas of the US within which, in accordance with international law and its domestic law, the US may exercise rights with respect to the seabed and subsoil and their natural resources.

2. Overview of Goods Covered by the AUSFTA

1.1. All goods imported into Australia from the US are covered by the AUSFTA. Preferential rates of duty applicable to US originating goods commenced on 1 January 2005.

1.2. Section 16 of the *Customs Tariff Act 1995* (the Customs Tariff) provides that the rate of customs duty for US originating goods is Free on 1 January 2005 unless the tariff classification is specified in Schedule 5.

1.3. Annex 2B of AUSFTA requires that the rates of customs duty for certain US originating goods are to be phased to Free over a specified period. Schedule 5 to the Customs Tariff sets out the timing of those phasings and the rates of customs duty that will apply to US originating goods at each step of that phasing.

1.4. The phasing of rates of customs duty on US originating textile and apparel goods are in line with Australia's general phasing of customs duty on textiles, clothing and footwear, i.e. 2005, 2010 and 2015. Generally the rates are either 8% (2005), 3% (2010) and Free (2015) or 15.5% (2005), 8% (2010) and Free (2015).

1.5. For certain US originating footwear goods, the rate of customs duty phases by 1 percentage point each year from 2005, when the rate will be 9%, until 2014 when the rate will be Free. Other footwear will be Free from 2005. These phasing rates apply only to goods prescribed in the AUSFTA Tariff regulations.

1.6. Certain alcohol, tobacco and petroleum products have had the 5% customs duty removed in accordance with the Agreement. However, Schedule 5 of the Customs Tariff still imposes a customs duty on those products which are US originating goods at a rate equivalent to the excise duty imposed on domestically produced goods under the *Excise Tariff Act 1921*.

1.7. Certain US originating passenger motor vehicle goods have phasing rates of customs duty imposed. The rates are 8% (2005), 6.5% (2006), 5% (2007), 3% (2008), 1.5% (2009) and Free (2010).

Division 4: Principles of Rules of Origin

1. Explanation of concept of US originating good

1.1. ROO are necessary to provide objective criteria for determining whether imported goods are eligible for the preferential rates of duty available under AUSFTA.

1.2. AUSFTA grants benefits to a variety of goods that "originate" in the US, or in the US and Australia. "Originating" is a term used to describe goods that meet the requirements of Article 5.1 of the Agreement. Article 5.1 establishes which goods originate in the US, or in the US and Australia, and precludes goods from other countries from obtaining those benefits by merely passing through Australia or the US.

1.3. 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 AUSFTA.

1.4. Article 5.1 states that:

*For the purposes of this agreement, **originating good** means:*

(a) A good wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) A good covered by the rules in Annex 5-A, for which each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification as set out in Annex 5-A (Product-Specific Rules of Origin) as a result of production occurring entirely in the territory of one or both of the Parties, and which satisfies all other applicable requirements;

(c) A good covered by the rules in Annex 4-A (Textile and Apparel Specific Rules of Origin), for which each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 4-A as a result of production occurring entirely in the territory of one or both of the Parties, and has satisfied all other applicable requirements of this Chapter, Chapter 4 (Textiles and Apparel) and Annex 4-A;

(d) A good that has been produced entirely in the territory of one or both of the Parties exclusively from originating materials; or

(e) A good otherwise provided as an originating good under this Chapter.

1.5. Non-originating goods or materials are those which originate from outside Australia or the US or which are produced in Australia or US but, because of a high level of offshore material used to produce them, do not meet the ROO.

2. Harmonized System of tariff classification

2.1. 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 62 .....Articles 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

2.2. 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.

2.3. 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.

2.4. The product specific rules in Annex 4A and 5A 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 and all other requirements of the Agreement, it is an originating good.

3. Change in Tariff Classification (CTC)

3.1. 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 the US or in the US and Australia.

3.2. 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 the US or Australia to justify a claim that the good is a legitimate product of the US or of the US and Australia. The exact nature of the CTC required for a specific good can be found by referring to the product specific rule in Appendix 1 of this Instruction and Guideline.

Example: product specific rule requiring a CTC

Newsprint (HS 4801) is produced in the US from mechanical wood pulp (4701) imported from Brazil.

The product specific rule for 4801-4816 is:

A change to heading 4801 through 4816 from any other chapter.

In the production of newsprint in the US, from wood pulp imported from Brazil, 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 from 4801, the good satisfies the CTC requirement and is therefore a US originating good.

4. Regional Value Content (RVC)

4.1. 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 the US or from the US and Australia.

4.2. 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 an easier CTC if the threshold is reached.

4.3. Article 5.4 of the Agreement provides three formulas to determine RVC, the Build-Down Method, the Build-Up Method and the Net Cost method.

4.4. Section 3 of Division 7 of this Instruction and Guideline provides a full explanation of RVC.

5. Classes of originating goods under AUSFTA

5.1. The classes of US originating goods under AUSFTA are dealt with in Division 5 to 9 of this Instruction and Guideline as outlined below:

- goods wholly obtained or produced entirely in the US (**Division 5**);
- goods produced entirely in the US or in the US and Australia exclusively from originating materials (**Division 6**);
- goods (except clothing and textiles) produced entirely in the US or in US and Australia from non-originating materials or from non-originating materials and originating materials (**Division 7**);
- goods that are clothing or textiles produced entirely in the US or in US and Australia from non-originating materials or from non-originating materials and originating materials (**Division 8**);
- goods that are clothing or textiles classified to Chapter 62 of the HS (**Division 8, Section 5**); and
- other US originating goods (**Division 9**).

5.2. In deciding whether goods are US originating goods, the following concepts are also explained in this Instruction and Guideline as follows:

- Transformation test - goods except clothing and textiles (**Division 7, Section 2**);
- Accumulation - goods except clothing and textiles (**Division 7, Section 2**);
- De minimis rule - goods except clothing and textiles (**Division 7, Section 2**);
- RVC (**Division 7, Section 3**);
- Goods that are chemicals, plastic or rubber (**Division 7, Section 6**);
- Yarn forward rule for clothing and textiles (**Division 8, Section 1**);

- Transformation test - for clothing and textiles (**Division 8, Section 2**);
- Accumulation - for clothing and textiles (**Division 8, Section 2**);
- De minimis - for clothing and textiles (**Division 8, Section 2**);
- Treatment of sets (**Division 8, Section 6**);
- Accessories, spare parts and tools (**Division 9, Section 1**);
- Packaging materials and containers (**Division 9, Section 2**);
- Consignment provisions (**Division 9, Section 3**); and
- Fungible goods and materials (**Division 11**).

6. Origin Advice Rulings

Written advice on any origin matter will be provided in the form of an Origin Advice Ruling. The Rulings exist to advise Australian importers, US producers and US 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 10).

Division 5: Goods Wholly Obtained or Produced Entirely in the US

1. Statutory Provisions

1.1. Section 153YB of the Customs Act contains provisions relating to goods wholly obtained or produced entirely in the US:

153YB Goods wholly obtained or produced entirely in the US

(1) *Goods are* US originating goods *if they are wholly obtained or produced entirely in the US.*

(2) *Goods are* wholly obtained or produced entirely in the US *if, and only if, the goods are:*

- *(a)* *minerals extracted in the US; or*
- *(b)* *plants grown in the US, or in the US and Australia, or products obtained from such plants; or*
- *(c)* *live animals born and raised in the US, or in US and Australia, or products obtained from such animals; or*
- *(d)* *goods obtained from hunting, trapping, fishing or aquaculture conducted in the US; or*
- *(e)* *fish, shellfish or other marine life taken from the sea by ships registered or recorded in the US and flying the flag of the US; or*
- *(f)* *goods produced exclusively from goods referred to in paragraph (e) on board factory ships registered or recorded in the US and flying the flag of the US; or*
- *(g)* *goods taken from the seabed, or beneath the seabed, outside the territorial waters of the US by the US or a person of the US, but only if the US has the right to exploit that part of the seabed; or*
- *(h)* *goods taken from outer space by the US or a person of the US; or*
- *(i)* *waste and scrap that*
  - *(i)* *has been derived from production operations in the US; or*
  - *(ii)* *has been derived from used goods that are collected in the US and that are fit only for recovery of raw materials; or*
- *(j)* *recovered goods derived in the US and used in the US in the production of remanufactured goods; or*
- *(k)* *goods produced entirely in the US exclusively from goods referred to in paragraphs (a) to (i) or from their derivatives.*

1.2. In determining whether goods are wholly obtained or produced entirely in the US, the following definitions in section 153YA 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.*

recovered goods *means goods in the form of individual parts that:*

- *(a)* *have resulted from the complete disassembly of goods which have passed their useful life or which are no longer useable due to defects; and*
- *(b)* *have been cleaned, inspected or tested (as necessary) to bring them into reliable working condition.*

remanufactured goods *means goods that:*

(a) are produced entirely in the US; and
(b) are classified to:
(i) Chapter 84, 85 or 87 (other than heading 8418, 8516 or 8701 to 8706), or to heading 9026, 9031 or 9032 of Chapter 90, of the Harmonized System; or
(ii) any other tariff classification prescribed by the regulations; and
(c) are entirely or partially comprised of recovered goods; and
(d) have a similar useful life, and meet the same performance standards, as new goods:
(i) that are so classified; and
(ii) that are not comprised of any recovered goods; and
(e) have a producer's warranty similar to such new goods.

1.3. According to Section 153YA, the term "used" referred to in Section 153YB means *"used or consumed in the production of goods."*

1.4. The definition of "person of the US" in section 153YA and the corresponding reference in Annex 1-A to Chapter 1 of the Agreement are also relevant in determining if goods are wholly obtained or produced entirely in the US. Those definitions, respectively, are:

person of the US means a person of a Party within the meaning, in so far as it relates to the US, of Article 1.2 of the Agreement.

And:

person of a party means a national or an enterprise of the party.

2. Policy and Practice – Wholly Obtained Goods

Section 153YB determines that goods are US originating goods if they are wholly obtained or produced entirely in the US because the goods fall into one of the following categories:

- minerals extracted in the US (for example, silver mined in the US); or
- plants grown in the US, or in the US and Australia, or products obtained from such plants (for example fruit from fruit trees); or
- live animals born and raised in the US, or in the US and Australia, or products obtained from such animals (for example, cows and hens, and milk or eggs from those animals); or

Example:

Chickens are incubated and raised in Mexico and exported to the US at an age of 6 weeks.

Any eggs laid by those chickens in the US are NOT US originating goods as the laying hens were not born and raised in the US (see paragraph 153YB(2)(c)).

- goods obtained from hunting, trapping, fishing or aquaculture conducted in the US; or
- fish, shellfish or other marine life taken from the sea by ships registered or recorded in the US and flying the flag of the US (for example tuna caught by a US registered fishing vessel); or

- goods produced exclusively from goods referred to immediately above on board factory ships registered or recorded in the US and flying the flag of the US (for example, tuna that is processed and stored aboard a US registered ship servicing a fleet of fishing vessels); or
- goods taken from the seabed, or beneath the seabed, outside the territorial waters of the US by the US or a person of the US, but only if the US has the right to exploit that part of the seabed; or
- goods taken from outer space by the US or a person of the US; or
- waste and scrap (see policy and practice at #3 below) that has either:
  - been derived from production operations in the US; or
  - been derived from used goods that are collected in the US and that are fit only for the recovery of raw materials; or
- recovered goods (see policy and practice at #4 below) derived in the US and used in the US in the production of remanufactured goods (see policy and practice at #5 below); or
- goods produced entirely in the US exclusively from goods referred to in the points above, or from their derivatives.

3. Policy and practice - waste and scrap

3.1. There are two categories of waste and scrap which qualify as "goods wholly obtained or produced entirely in the US" under section 153YB.

3.2. The first category is waste and scrap that results from production or manufacturing operations in the US.

Example #1: waste and scrap

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

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

3.3. The second category is waste and scrap that has been derived from used goods that are collected in the US and those goods are fit only for the recovery of raw materials.

Example #2: waste and scrap

Insulated copper wire is recovered in the US from scrap telephone or electrical cables. This scrap wire is, vide paragraph 153YB(i)(ii), considered to be US originating regardless of where the cable was produced.

4. Policy and Practice - Recovered Goods

4.1. This provision relates to goods that are in the form of individual parts that have been obtained from the complete disassembly of goods which have passed their useful life, or which are no longer usable due to defects.

4.2. To be considered to be US originating goods, such parts must have been cleaned, inspected or tested (as necessary) to bring them to a reliable working condition.

Example: recovered goods

A coin-operated CD playing jukebox, imported from Japan, has passed its useful life and is faulty. It is disassembled in the US, and the individual components are cleaned, tested and brought to working condition.

These individual components are now "recovered goods" if they are used in the production of remanufactured goods.

5. Policy and Practice - Remanufactured Goods

5.1. This provision covers goods produced entirely in the US from either 100% recovered goods or from a combination of recovered goods and other originating materials. Those remanufactured goods must have a similar useful life and meet the same performance standards as new goods of that kind. They must also have a producer's warranty similar to new goods of that kind.

5.2. An additional restriction to this provision is that it applies only if the remanufactured goods are classified to Chapter 84, 85 or 87 (other than headings 8418, 8516 or 8701 to 8706), or to headings 9026, 9031 or 9032.

Example: remanufactured goods

The "recovered goods" from the jukebox in the example above are used, in conjunction with other originating materials, to produce another jukebox (classified to 8519.99.00 in the Australian tariff) which the producer supplies to purchasers with a warranty similar to a new jukebox.

This "remanufactured" jukebox is, by virtue of the definition of "remanufactured goods" in section 153YA and paragraph 153YB(2)(j), considered to be a US originating good.

Division 6: Goods produced entirely in the US or in the US and Australia exclusively from originating materials

1. Statutory provisions

1.1. Section 153YC of the Customs Act contains provisions relating to goods produced entirely in the US or in the US and Australia from originating materials:

153YC Goods produced entirely in the US or in the US and Australia exclusively from originating materials

Goods are US originating goods *if they are produced entirely in the US, or entirely in the US and Australia, exclusively from originating materials.*

1.2. In determining whether goods are produced entirely in the US or in the US and Australia from originating materials the following definitions in section 153YA will also need to be considered:

originating materials *means:*

(a) goods that are used in the production of other goods and that are US originating goods; or
(b) goods that are used in the production of other goods and that are Australian originating goods; or
(c) indirect materials.

Example: This example illustrates goods produced from originating materials.

Pork sausages are produced in the US from US cereals, Hungarian frozen pork meat and Brazilian spices.

The US cereals are originating materials since they are goods used in the production of other goods (the sausages) and they are US originating goods under Subdivision B.

The Hungarian frozen pork meat and Brazilian spices are non-originating materials since they are produced in countries other than the US and Australia.

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

indirect materials *means:*

(a) goods used in the production, testing or inspection of other goods, but that are not physically incorporated in the other goods; or
(b) goods used in the operation or maintenance of buildings or equipment associated with the production of other goods;

including;

(c) fuel; and
(d) tools, dies and moulds; and
(e) lubricants, greases, compounding materials and other similar goods; and
(f) gloves, glasses, footwear, clothing, safety equipment and supplies for any of these things; and
(g) catalysts and solvents.

2. Policy and practice - combination of Australian and US originating materials

If Australian originating materials are imported into the US and used in the production of a good also incorporating US originating materials, the good produced is a US originating goods in accordance with section 153YC of the Customs Act because of paragraph (b) of the definition of "originating materials" above.

Example: goods produced in the US using a combination of Australian and US originating materials

A US producer imports tanned sheep leather (classified to 4105.30.00) from Australia. This leather is an Australian originating material.

The leather is used in the US to produce handbags and wallets using a number of US originating materials (metal clasps, plastic zippers, cotton thread, etc).

The finished handbags and wallets (classified within heading 4202) are US originating goods because they are produced from originating materials.

3. Policy and practice – US originating materials

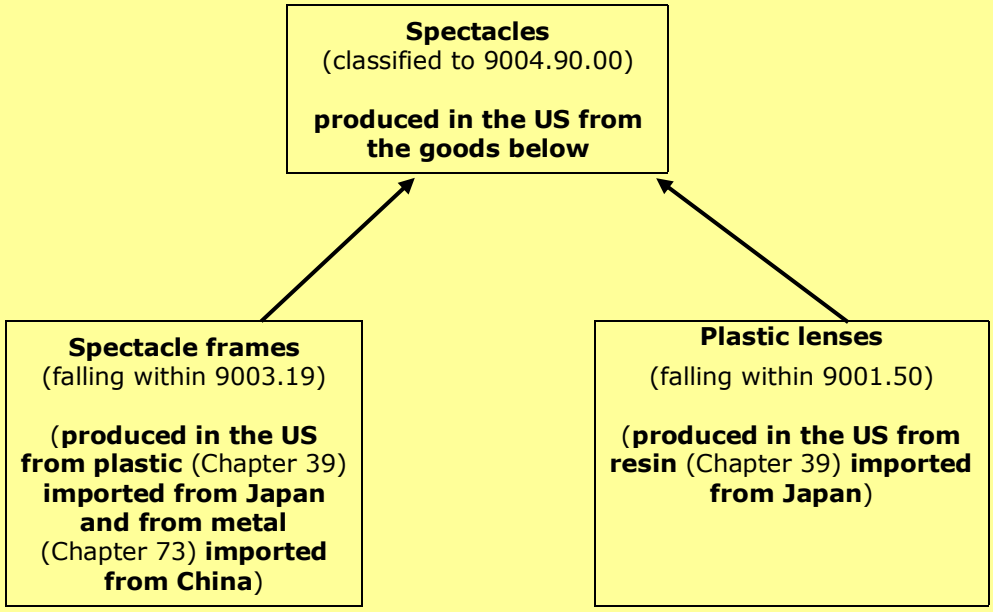
Section 153YC replicates the effect of paragraph 153YB(2)(k) to the extent that if a good is produced entirely in the US from a good referred to in paragraph 153YB(2)(a) to paragraph 153YB(2)(i), inclusive (in other words, from wholly obtained US goods), then that good is a US originating good in accordance with paragraph (a) of the definition of "originating materials" above.

4. Policy and practice - goods produced in the US using a combination of originating materials

4.1. Section 153YC is broader than paragraph 153YB(2)(k) because, in addition to the above production scenarios, it also allows the production of goods to occur from materials that are originating materials because they have met the requirements of the "Schedule 1 tariff table" or the "Schedule 2 tariff table".

4.2. Full explanations of the operation of the "Schedule 1 tariff table" and the "Schedule 2 tariff table" are contained in Division 7 and Division 8, respectively, of this Instruction and Guideline.

Example: goods produced in the US using a combination of originating materials



In this example, the spectacle frames and the plastic lenses are originating materials as they meet the criteria specified in the "Schedule 1 tariff table" (see Division 7 of this Instruction and Guideline).

As the materials used in the production of the spectacles are originating materials, the spectacles are, in accordance with section 153YC, also considered to be US originating goods.

5. Policy and practice – indirect materials

5.1. All "indirect materials" which fall within the meaning conferred by paragraphs (a) and (b) in the definition of that term, used in the production of "originating materials", are themselves considered to be originating materials regardless of the origin of those indirect materials.

5.2. The list of indirect materials given in paragraphs (c) to (g) in the definition is not to be construed as an exhaustive list of such materials.

Example: indirect materials

Tools and safety equipment, produced in Brazil, are used by workers in the US during the production of the spectacles in the above example. Such tools and safety equipment meet the conditions imposed by paragraphs (a) and (b) of the definition of "indirect materials" and are thereby considered to be "indirect materials".

The use of such indirect materials in the production of goods in the US is permitted by virtue of paragraph (c) of the definition of "originating materials" and such goods are deemed to be US originating materials.

Division 7: Goods (except clothing and textiles) produced entirely in the US or in the US and Australia from non-originating materials

Section 1: Statutory provisions and overview

1. Statutory provisions

1.1. Section 153YE of the Customs Act contains provisions relating to goods produced entirely in the US or in the US and Australia from non-originating materials only, or from a combination of non-originating materials and originating materials:

153YE Goods (except clothing and textiles) produced entirely in the US or in the US and Australia from non-originating materials

(1) Goods are US originating goods if:
- *(a) a tariff classification (the* final classification*) that is specified in column 2 of the Schedule 1 tariff table applies to the goods; and*
- *(b) they are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only or from non-originating materials and originating materials; and*
- *(c) if any of the following 3 requirements apply in relation to the goods—that requirement is satisfied.*

First requirement

(2) Subject to subsection (3), the first requirement applies only if a change in tariff classification is specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods. The first requirement is that:
- *(a) each of the non-originating materials satisfies the transformation test (see subsection (8)); or*
- *(b) the following are satisfied:*
  - *(i) the total value of all the non-originating materials, that do not satisfy the transformation test (see subsection (8)), does not exceed 10% of the customs value of the goods;*
  - *(ii) if one or more of the non-originating materials are prescribed for the purposes of this paragraph—each of those non-originating materials satisfies the transformation test (see subsection (8)).*

Note 1: Paragraph 2(b) relates to Article 5.2 (De Minimis) of the Agreement.

Note 2: The value of the non-originating materials is to be worked out in accordance with the regulations: see subsection 153YA(2).

(3) However, the first requirement does not apply if:
(a) an alternative requirement to the change in tariff classification is also specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods; and
(b) that alternative requirement is satisfied.

Second requirement

(4) Subject to subsection (5), the second requirement applies only if a regional value content requirement is specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods. The second requirement is that the goods satisfy that regional value content requirement.

(5) However, the second requirement does not apply if:
(a) an alternative requirement to the regional value content requirement is also specified in column 3 of the Schedule 1 tariff table opposite the final classification of the goods; and
(b) that alternative requirement is satisfied.
(6) The regulations may prescribe different regional value content requirements for different kinds of goods.

Third requirement

(7) The third requirement is that the goods satisfy any other requirement that is specified in, or referred to in, column 3 of the Schedule 1 tariff table opposite the final classification for the goods.

Transformation Test

(8) A non-originating material satisfies the transformation test if:
(a) it satisfies the change in tariff classification that is specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods; or
(b) it does not satisfy the change in tariff classification mentioned in paragraph (a), but it was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials, and each of those materials satisfies the transformation test (including by one or more applications of this subsection).

Note 1: Paragraph (8)(b) relates to paragraph 2 of Article 5.3 (Accumulation) of the Agreement.

Note 2: Subsection (8) operates in a recursive manner; a non-originating material may satisfy the transformation test in its own right, or it may satisfy it because each non-originating material used to produce it satisfies the transformation test (whether because each of those materials does so in its own right, or because each non-originating material used to produce the material does so), and so on.

1.2. In determining whether goods (except clothing and textiles) are produced entirely in the US or in the US and Australia from non-originating materials only or from a combination of non-originating and originating materials, the following definitions in section 153YA will also need to be considered:

Agreement *means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.*

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.*

fuel *has its ordinary meaning. This ordinary meaning includes electricity which would not otherwise be covered by the definition of "goods" in section 4 of the Customs Act.*

indirect materials *means:*

(a) goods used in the production, testing or inspection of other goods, but that are not physically incorporated in the other goods; or

(b) goods used in the operation or maintenance of buildings or equipment associated with the production of other goods;

including

(c) fuel; and
(d) tools, dyes and moulds; and
(e) lubricants, greases, compounding materials and other similar goods; and
(f) gloves, glasses, footwear, clothing, safety equipment and supplies for any of these things; and
(g) catalysts and solvents.

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 US originating goods; or
(b) goods that are used in the production of other goods and that are Australian originating goods; or
(c) indirect materials.

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

1.3. Value is further defined in subsection 153YA(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.*

2. Policy and practice - general

2.1. Section 153YE of the Customs Act sets out the general rules for determining whether a good (except clothing and textiles) is a US originating good, namely those goods that are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only, or from non-originating materials and originating materials.

2.2. Goods are US originating goods if all the requirements of subsection 153YE(1) have been met. The first two requirements of this subsection, simply put, are:

- that the tariff classification of the goods as entered on a customs entry corresponds with a heading or subheading in Column 2 of the Schedule 1 tariff table; and
- production of the final good occurred entirely in the US or in the US and Australia.

2.3. The Schedule 1 tariff table is that table in Part 2 of Schedule 1 to the AUSFTA regulations. Schedule 1 incorporates the product specific rules for goods other than clothing and textiles. The product specific rules specify the CTC requirement, RVC and any other requirements for the purpose of determining whether a good (other than clothing and textiles) is a US originating good.

2.4. Column 1 of the Schedule 1 tariff table rules sets out the Chapter reference of goods in the HS. Column 2 lists tariff classifications at the heading or subheading level, and Column 3 sets out the product specific rule relevant to the tariff classification in Column 2.

2.5. Some examples to illustrate the different types of rules appearing in the Schedule 1 tariff table are:

SINGLE RULE

- ***Simple rule = change of tariff classification only***

  The rule may be at the heading level or at the subheading level and it may specify a change to a chapter, heading or subheading.

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 1 **Live animals**	0101 – 0106	A change to heading 0101 through 0106 from any other chapter.

- ***Simple rule = RVC only***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 87 **Vehicles other than railway or tramway rolling-stock, and parts and accessories thereof**	8706	No change in tariff classification is required, provided that there is a regional value content of not less than 50 percent based on the net cost method.

- ***Simple rule with exceptions = change of tariff classification except from certain classifications***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 9 **Coffee, tea, mate and spices**	0901.22	A change to subheading 0901.22 from any other subheading except from subheading 0901.21

- ***Simple rule with provisions = change of tariff classification provided certain requirements have been met***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 18 **Cocoa and cocoa preparations**	1806.10	A change to subheading 1806.10 from any other heading, provided that such products of 1806.10 containing 90 percent or more by dry weight of sugar do not contain non-originating material that is sugar of Chapter 17 and that products of 1806.10 containing less than 90 percent by dry weight of sugar do not contain more than 35 percent by weight of non-originating material that is sugar of Chapter 17.

CHOICE OF RULE

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

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 27 **Mineral fuels, mineral oils and products of their distillation; bituminous substances;**	2707	Either: (a) a change to subheading 2707.10 through 2707.99 from any other heading; or (b) a change to subheading 2707.10 through 2707.99 from any other subheading, provided that the good resulting from such change is the product of a chemical reaction.

mineral waxes		

- ***Choice of rule = simple change of tariff classification rule or a RVC only***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 81 **Other base metals; cermets; articles thereof**	8106	Either: (a) a change to subheading 8106 from any other chapter; or (b) no change in tariff classification is required, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

- ***Choice of rule = simple change of tariff classification rule or a simple change of tariff classification rule with RVC***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 83 **Miscellaneous articles of base metal**	8311.10 – 8311.30	Either: (a) a change to subheading 8311.10 through 8311.30 from any other chapter; or (b) a change to subheading 8311.10 through 8311.30 from any other subheading, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

MULTIPLE RULE

- ***Multiple rule = simple change of tariff classification rule with the addition of a RVC requirement***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 81 **Other base metals; cermets; articles thereof**	8112.19	A change to subheading 8112.19 from any other subheading, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

3. The requirements

3.1. As stated in paragraph 4 of part 2 above, Column 3 of the Schedule 1 tariff table sets out the product specific rule relevant to the tariff classification in Column 2.

3.2. The product specific requirement will specify one or more requirements and each requirement specified must be satisfied for the good to be a US originating good. If the ROO provides a choice of rule, only the requirements of the choice selected have to be satisfied.

3.3. If any requirement is not satisfied, the good is not a US originating good.

3.4. These rules are specifically referred to in the Act as "requirements" and are termed the first requirement, the second requirement and the third requirement.

3.5. Provided the criteria specified in paragraph 153YE(1)(a) and 153YE(1)(b) are satisfied, and the criteria specified in 153YE(1)(c) is also satisfied, the good will be a US originating good (if all other requirements of Division 1C are also satisfied). The third criterion, as detailed in paragraph 153YE(1)(c), is the satisfying of the three requirements detailed in Section 2, Section 3 and Section 4 of this Division respectively, if they apply to the goods.

Section 2: First requirement – change in tariff classification

1. First requirement

1.1. Subsection 153YE(2) of the Customs Act states that the first requirement applies only if there is a CTC requirement specified in Column 3 of the Schedule 1 tariff table.

1.2. The concept of CTC applies only to non-originating materials and means that non-originating materials that are sourced from outside or within the US 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 means that the tariff classification of the final good (after the production process) must be different to the tariff classification of each non-originating material (before the production process). This approach ensures that sufficient transformation of the materials has occurred within the US, or within the US and Australia, to justify the claim that the goods are US originating goods.

Example:

Frozen pork (HS 0203) is imported into the US from Hungary and combined with spices from the Caribbean (HS 0907-0910) and cereals produced in the

US to make pork sausages (HS 1601).

The applicable CTC (or product specific) rule for a good of 1601 is:

A change to heading 1601 through 1605 from any other chapter.

As the frozen meat is classified to Chapter 2 and the spices to Chapter 9, the non-originating materials meet the transformation (CTC) requirement (the cereal is the produce of the US and is therefore an originating material and is not required to change in classification). The pork sausages are therefore US originating goods.

1.3. Subsection 153YE(3) identifies the circumstances in which the first requirement does not apply. This means that if Column 3 allows a choice of rules and that choice is a requirement that does not include a CTC and that requirement has been satisfied, then the first requirement does not apply.

Example: the product specific rule for 8106

Either:

(a) a change to heading 81.06 from any other chapter; or

(b) no change in tariff classification is required, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

Explanation: If the goods meet the RVC requirement then, vide subsection 153YE(3), they do not have to meet the transformation test.

2. Transformation test – general outline

2.1. Subsection 153YE(8) sets out the transformation test for the purposes of subsection 153YE(2).

2.2. Broadly speaking, the transformation test is the CTC and, if required, the accumulation requirements of the Agreement. Non-originating materials satisfy the transformation test if:

- it satisfies the CTC that is specified in Column 3 of the Schedule 1 tariff table opposite the final classification of the goods; or
- it does not satisfy the CTC required above, but it was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials, each of which satisfies the transformation test (including by one or more applications of subsection 153YE(8)). This is called accumulation.

2.3 The CTC requirement and accumulation that form the transformation test are addressed in detail below.

3. Transformation test - CTC

3.1. Paragraph 153YE(8)(a) directly addresses the transformation test.

3.2. Non-originating materials used directly in producing a good will satisfy the transformation test if they satisfy the CTC requirement that is specified in Column 3 of the Schedule 1 tariff table opposite the final classification for the goods.

Explanation:

An example on page 24 addressed the production of pork sausages in the US from imported frozen pork (HS 0203) which is combined with imported spices (HS 0907-0910) and cereals produced in the US to make pork sausages (HS 1601).

The applicable product specific rule for a good of 1601 is:

> **A change to heading 1601 through 1605 from any other chapter.**

The non-originating materials satisfy the CTC requirement and therefore meet the transformation test and the pork sausages are to be US originating goods.

4. Transformation test - accumulation

4.1. If non-originating materials do not satisfy the specified CTC test for the final good, it is still possible for the first requirement to be satisfied if the material was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials and each of those materials satisfies the same transformation test for the final good.

4.2. Paragraph 153YE(8)(b) gives effect to the accumulation provisions contained in paragraph 2 of Article 5.3 of the Agreement and applies when the non-originating materials that are used directly in the production of the final good do not satisfy the required transformation test.

4.3. In producing the final good that is to be imported into Australia, a US producer may use materials that have been produced in the US by another producer. The components of these materials may have been produced by yet another producer in the US or imported into the US.

4.4. In such circumstances, it is necessary to examine each step in the production process of each non-originating material that occurred in the US 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 US originating good (subject to satisfying all other requirements).

4.5. 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.

4.6. The example overleaf illustrates the concept where the non-originating material does not satisfy the transformation test but the materials from which it is produced do (subparagraph 153YE(7)(b) refers).

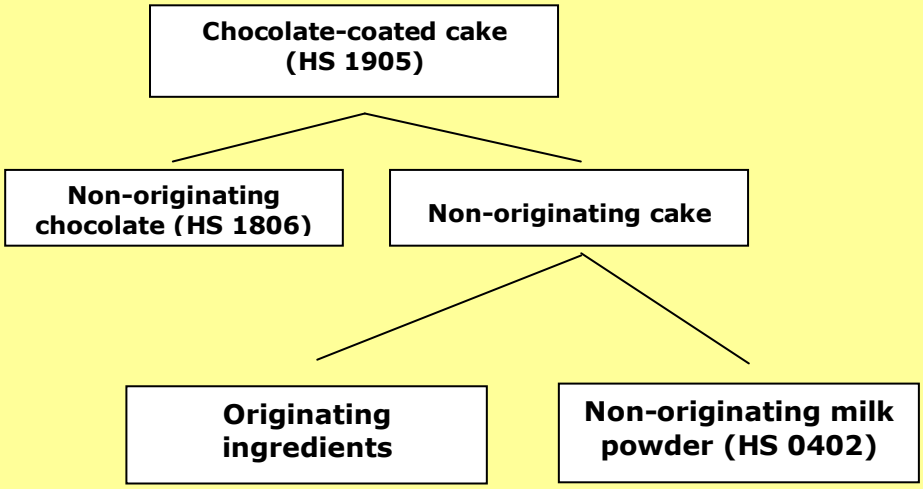
Example: accumulation

A US bakery produces chocolate-coated cakes (HS 1905) entirely in the US.

For the purposes of this example, the materials used are:

- **non-originating chocolate (HS 1806)**
- **non-originating cake mix (HS 1901.20), produced entirely in the US from a combination of**
  - **originating ingredients (including wheat flour, wheat starch and butterfat**
  - **non-originating milk powder**

This scenario is as shown below:



The product specific rule for cakes of 1905 is:

A change to heading 1902 through 1905 from any other chapter.

The non-originating chocolate and the non-originating cake mix must satisfy the transformation test.

Applying paragraph 153YE(8)(a), the chocolate satisfies the required CTC as it is a change from Chapter 18 to heading 1905. The cake mix however does not satisfy the transformation test as there is no change of Chapter.

Because the cake mix was produced in the US, 153YE(8)(b) allows the transformation test for 1905 (the final goods) to be applied against the materials that produced the non-originating cake mix.

The originating ingredients do not have to satisfy the transformation test because the transformation test is only applied to non-originating materials. Therefore, for the cake mix to satisfy the transformation test the non-originating milk powder must satisfy the requirement of a change to heading

1905 from any other Chapter. The milk powder does this as it changes from Chapter 4 to heading 1905.

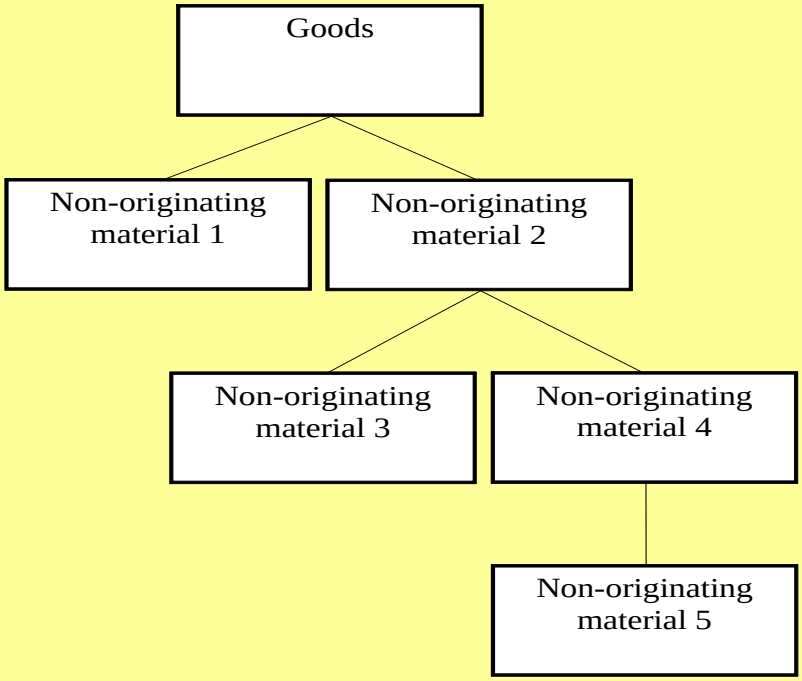
<u>Summary</u>:

- **the chocolate satisfies the transformation test vide 153YE(8)(a)**
- **the cake mix satisfies the transformation test vide 153YE(8)(b)**

Therefore the chocolate-coated cake is US originating because all the non-originating materials used to produce it satisfy the requirements of 153YE.

4.7. The following example, contained in the Explanatory Memorandum to the US Free Trade Agreement Implementation Bill 2004, demonstrates accumulation and the operation of paragraph 153YE(8)(b).

Example: the following diagram relates to the production of particular goods that occurred entirely in the US. The diagram and the accompanying text illustrate the application of subsection 153YE(8).



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

<u>First application of subsection 153YE(8)</u>

Non-originating materials 1 and 2 must satisfy the transformation test. Under paragraph 153YE(8)(a), non-originating material 1 does satisfy the relevant CTC. Under paragraph 153YE(8)(b), non-originating material 2 does not satisfy the relevant CTC, but it has been produced by non-originating materials 3 and 4.

<u>Second application of subsection 153YE(8)</u>

Non-originating materials 3 and 4 must satisfy the transformation test. Under paragraph 153YE(8)(a), non-originating material 3 does satisfy the relevant CTC. Under paragraph 153YE(8)(b), non-originating material 4 does not satisfy the relevant CTC, but it has been produced by non-originating material 5.

Third application of subsection 153YE(8)

Non-originating material 5 must satisfy the transformation test. Under paragraph 153YE(8)(a), non-originating material 5 does satisfy the relevant CTC.

Final result

The result of the 3 applications of subsection 153YE(8) is that non-originating material 2 does satisfy the transformation test.

5. De minimis

5.1. The first requirement also provides that a good can be a US originating good without meeting the requirement of paragraph 153YE(2)(a) if the good meets the requirement of paragraph 153YE(2)(b). This is termed the *de minimis* rule.

5.2. The *de minimis* rule for the purposes of paragraph 153YE(2)(b) applies only to goods listed in the Schedule 1 tariff table. The *de minimis* rule as it applies to goods covered in the Schedule 2 tariff table (clothing and textiles) is addressed at Section 2 of Division 8 of this Instruction and Guideline.

5.3. 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 US originating good. Therefore, the Agreement incorporates a *de minimis* provision that allows a good to qualify as a US originating good provided the total value of all non-originating materials that do not satisfy the transformation test, used to produce the good does not exceed 10% of the customs value of the final good.

5.4. The *de minimis* provision does not apply to all non-originating materials that may be used to produce a good listed in the Schedule 1 tariff table.

5.5. Regulation 5.1 of the AUSFTA regulations, in accordance with subparagraph 153YE(2)(b)(ii), prescribes certain non-originating materials (i.e. the exceptions to the *de minimis* rule).

5.6. The effect of prescribing a material is that each non-originating material prescribed, even though it may meet the *de minimis* requirement, must also satisfy the transformation test.

Example: *de minimis* rule for goods other than textiles and apparel

A US company produces wristwatches (HS 9102) for export to Australia. It produces the watches from textile watch straps made in China (HS 9113) combined with US originating watch movements of HS 9108 and US originating cases of HS 9111 which are both made in the US and are originating materials because they have met the requirement of 153YE(1). The value of a strap is $6 while the customs value of the finished watch is $100.

The product specific rule for tariff headings 9102–9107 states:

Either:

(a) a change to heading 9102 through 9107 from any other chapter; or

(b) a change to heading 9102 through 9107 from heading 9114, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

Only the non-originating materials need to satisfy the transformation test – in this case, the textile watch straps. 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 watch straps to determine them to be originating.

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

- **US watch movement = US originating vide 153YC**
- **US watch cases = US originating vide 153YC**
- **watch straps ex China = US originating vide 153YE(2)(b)(i).**

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

Example: *de minimis* rule for goods other than textiles and apparel

A small ornament of worked vegetable carving material (HS 9602) has been produced from an assortment of worked vegetable carving materials (9602). 95% by value of these worked vegetable carving materials are of US origin. 5% by value of these worked vegetable carving materials was imported.

The product specific rule for tariff headings 9601–9605 is:

A change to heading 9601 through 9605 from any other chapter.

In this example the ornament was produced entirely in the US.

Paragraph 153YE(2)(a) does not apply as the imported non-originating worked vegetable carving materials do not satisfy the transformation test as there has been no CTC.

However, as the total value of all non-originating materials does not exceed 10% of the customs value of the goods (the imported worked vegetable carving materials represent only 5% of the customs value), the first

requirement is met because of the *de minimis* provisions of subparagraph 153YE(2)(b)(i).

Section 3: Second requirement – regional value content

1. Statutory provisions

1.1. In calculating the RVC of goods, the definition of value in subsection 153YA(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.*

1.2. The definition of customs value in section 153YA provides:

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

1.3. Also relevant are subsections (1), (4), (5) and (6) of section 153YE which state:

> 153YE Goods (except clothing and textiles) produced entirely in the US or in the US and Australia from non-originating materials
>
> *(1) Goods are US originating goods if:*
> *(a) a tariff classification (the final classification) that is specified in column 2 of the Schedule 1 tariff table applies to the goods; and*
> *(b) they are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only or from non-originating materials and originating materials; and*
> *(c) if any of the following 3 requirements apply in relation to the goods—that requirement is satisfied.*
> *(2) ……*
> *(3) ……*
>
> *Second requirement*
>
> *(4) Subject to subsection (5), the second requirement applies only if a regional value content requirement is specified in column 3 of the Schedule 1 tariff table opposite the final classification for the goods. The second requirement is that the goods satisfy that regional value content requirement.*
> *(5) However, the second requirement does not apply if:*
> *(a) an alternative requirement to the regional value content requirement is also specified in column 3 of the Schedule 1 tariff table opposite the final classification of the goods; and*

(b) that alternative requirement is satisfied.

(6) The regulations may prescribe different regional value content requirements for different kinds of goods.

(7) ……

1.4. The AUSFTA regulations, at Parts 2 and 3, prescribe the different RVC requirements as follows:

Part 2 Regional value content requirement (build-up method and build-down method)

2.1 Regional value content

(1) For the purposes of the Schedule 1 tariff table, this Part explains how regional value content is determined using the build-down method and the build-up method.

Note For this Part, the value of materials is worked out using Part 4.

(2) In this Part, RVC means regional value content.

2.2 Build-down method

(1) The build-down method is the formula:

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

where:

adjusted value *means the customs value of the goods, as worked out under Division 2 of Part VIII of the Act.*

value of non-originating materials *means the value of non-originating materials that are acquired and used in the production of the goods.*

Note See Part 4 for further information about how to work out the value of materials.

(2) RVC is to be expressed as a percentage.

2.3 Build-up method

(1) The build-up method is the formula:

$$RVC = \frac{\text{value of originating materials}}{\text{adjusted value}} \times 100$$

where:

adjusted value *means the customs value of the goods, as worked out under Division 2 of Part VIII of the Act.*

value of originating materials *means the value of originating materials that are acquired, or self-produced, and used in the production of the goods.*

Note See Part 4 for further information about how to work out the value of materials.

(2) RVC is to be expressed as a percentage.

Part 3 Regional value content requirement (net cost method)

3.1 Definitions for Part 3

In this Part:

automotive component *means a good classified in:*

(a) subheading 8408.20, 8407.31, 8407.32, 8407.33 or 8407.34 in the Harmonized System; or
(b) heading 8409, 8706, 8707 or 8708 in the Harmonized System.

class of motor vehicles *means any of the following classes of motor vehicles:*

(a) motor vehicles classified in subheading 8701.10, 8701.20, 8701.30–8701.90, 8703.21–8703.90, 8704.10, 8704.21, 8704.22, 8704.23, 8704.31, 8704.32 or 8704.90 in the Harmonized System;
(b) motor vehicles classified in heading 87.05 or 87.06 in the Harmonized System;
(c) motor vehicles for the transport of 16 or more persons, classified in subheading 8702.10 or 8702.90 in the Harmonized System;
(d) motor vehicles for the transport of 15 or fewer persons, classified in subheading 8702.10 or 8702.90 in the Harmonized System.

generally accepted accounting principles *means:*

(a) a recognised consensus in the US; or
(b) an opinion with substantial authoritative support in the US;

relating to:

(c) the recording of revenues, expenses, costs, assets and liabilities; and
(d) the disclosure of information; and
(e) the preparation of financial statements.

model line *means a group of motor vehicles that have the same platform or model name.*

motor vehicle *means a good classified in heading 8701, 8702, 8703, 8704 or 8705 in the Harmonized System.*

net cost *is the cost worked out using regulations 3.3, 3.4 and 3.5.*

non-allowable interest costs *means interest costs incurred by the manufacturer of a good that exceed 700 basis points above the US official interest rate for comparable maturities.*

value of non-originating materials *means the value of non-originating materials that are acquired and used in the production of the goods.*

3.2 Regional value content

(1) For the purposes of the Schedule 1 tariff table, this Part explains how regional value content is determined using the net cost method.
(2) In this Part, RVC means regional value content.

3.3 Net cost method

(1) The net cost method is the formula:

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

Note 1 See Part 4 for further information about how to work out the value of materials.

Note 2 The net cost method is applicable to certain goods, classified in any of the following headings or subheadings in the Harmonized System:

(a) subheading 8408.20;
(b) subheadings 8407.31–8407.34;
(c) heading 8409, 8706, 8707 or 8708;
(d) heading 8701, 8702, 8703, 8704 or 8705.

(2) RVC is to be expressed as a percentage.

3.4 Working out net cost

The net cost of a good is worked out using any of the methods in the following table.

Method	***Start by***	***Then***	***Then***
1	*Working out the total cost to produce all goods that are produced by the producer*	*Deduct the following costs that are included in the total cost to produce the goods:* *(a) sales promotion;* *(b) marketing;*	*Reasonably allocate the net cost to produce the goods to the relevant good*

Method	Start by	Then	Then
		(c) after-sales service; *(d) royalties;* *(e) packing and shipping;* *(f) non-allowable interest costs*	
2	*Working out the total cost to produce all goods that are produced by the producer*	*Reasonably allocate the total cost to the relevant good*	*Deduct the following costs that are included in the portion of the total cost allocated to the relevant good:* *(a) sales promotion;* *(b) marketing;* *(c) after-sales service;* *(d) royalties;* *(e) packing and shipping;* *(f) non-allowable interest costs*
3	*Reasonably allocating each cost that forms part of the total cost to produce the goods* *Do not include the following costs in relation to the relevant good:* *(a) sales promotion;* *(b) marketing;* *(c) after-sales service;* *(d) royalties;* *(e) packing and shipping;* *(f) non-allowable interest costs*		

3.5 Net cost calculations

(1) For the purpose of working out RVC under regulation 3.3, and working out the net cost of a good under regulation 3.4, in respect of a motor vehicle:

(a) a calculation may be averaged over a producer's fiscal year, using 1 of the following categories:

(i) the same model line of motor vehicle, in the same class of motor vehicles produced in the same factory in the US;

(ii) the same class of motor vehicles produced in the same factory in the US;

(iii) the same model line of motor vehicle produced in the same factory in the US; and

(b) the averaging may be done using:

(i) all motor vehicles in a category; or

(ii) all motor vehicles in a category that are exported to Australia.

For the purpose of working out RVC under regulation 3.3, and working out the net cost of a good under regulation 3.4, in respect of automotive components that are produced in the same factory:

(a) a calculation may be averaged over the fiscal year of the motor vehicle producer to which the automotive component is sold if the automotive component was produced during that fiscal year; and

(b) the calculation may be averaged over any quarter or month of the fiscal year of the motor vehicle producer to which the automotive component is sold if the automotive component was produced during that quarter or month; and

(c) the calculation may be averaged over the fiscal year of the producer of the motor vehicle component if the automotive component was produced during that fiscal year; and

(d) the averaging mentioned in paragraph (a), (b) or (c) may be done separately for automotive components sold to 1 or more motor vehicle producers; and

(e) the averaging mentioned in paragraph (a), (b), (c) or (d) may be done separately for all automotive components that are imported into Australia.

1.5. Part 4 of the AUSFTA regulations specifies the principles to be used when the value of materials are determined. That Part states:

Part 4 Determination of value (Act, subsection 153YA (2))

4.1 Definition for Part 4

In this Part:

***materials** means originating materials and non-originating materials.*

4.2 Value

(1) For Division 1C of Part VIII of the Act, and these Regulations, the value of materials is to be worked out using the principles set out in the following table.

Item	***Materials***	***Principles***
1	*Materials imported into the US by the producer of goods that are produced using the materials*	*The value is the value (the US adjusted value) worked out under Section 402 of the Tariff Act of 1930 of the US, as amended by the Trade Agreements Act of 1979*

2	*Materials:* *(a) acquired by the producer of goods that are produced using the materials; and* *(b) not imported into the US by the producer of the goods*	*The value is the US adjusted value, worked out as if the materials had been imported into the US and as if the producer of goods that are produced using the materials were the importer*
3	*Materials that are self-produced*	*The value is the sum of all costs incurred by the producer of the materials in producing the materials, including:* *(a) the producer's general expenses; and* *(b) an amount for profit that is the equivalent of the amount of profit that the producer would make in respect of the materials in the ordinary course of trade*

(2) If the materials are originating materials, the value of the originating materials may include the costs of the following matters, to the extent that they have not been taken into account under subregulation (1):

(a) freight, insurance, packing, shipping and any other transportation of the materials to the producer:

(i) in the US; or

(ii) between Australia and the US;

(b) duties, taxes and customs brokerage fees on the materials that:

(i) have been paid in either or both of Australia and the US; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) waste and spoilage resulting from the use of the materials in the production of goods, reduced by the value of renewable scrap or by-products.

(3) If the materials are non-originating materials, the value of the non-originating materials may include the costs of the following matters, to the extent that they have not been taken into account under subregulation (1):

(a) freight, insurance, packing, shipping and any other transportation of the materials to the producer:

(i) in the US; or

(ii) between Australia and the US;

(b) duties, taxes and customs brokerage fees on the materials that:

(i) have been paid in either or both of Australia and the US; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) waste and spoilage resulting from the use of the materials in the production of goods, reduced by the value of renewable scrap or by-products;

(d) originating materials that are used in the production of the non-originating materials in the US;

(e) other costs incurred in Australia or the US in the production of the non-originating materials, reduced by the cost of materials used in their production.

2. Policy and practice - product specific requirement

2.1. For a number of goods, the product specific ROO found in the Schedule 1 tariff table may specify a RVC as:

- a requirement **additional to** the transformation test;
- an **optional alternative to** a transformation test; or
- the **solitary** requirement.

2.2. In cases where a RVC requirement is specified as additional to a transformation test, goods need to satisfy both the transformation test and the specified RVC requirement to qualify as US originating goods.

Example: RVC requirement <u>additional to</u> the transformation test

The product-specific ROO for metals of 8112.19 in the Schedule 1 tariff table is:

A change to subheading 8112.19 from any other subheading, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

For goods falling to subheading 8112.19 to be US originating goods they must satisfy two ROO, namely:

(1) a change to subheading 8221.19 from any other subheading; <u>plus</u>

(2) either:

(a) a RVC of not less than 35 percent based on the Build-Up Method;

<u>or</u>

(b) a RVC of not less than 45% based on the Build-Down Method.

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

Example: optional rules

The product-specific ROO for firearms (HS classification 9301-9304) in the Schedule 1 tariff table is:

Either:

(a) a change to heading 9301 through 9304 from any other chapter; or

(b) a change to heading 9301 through 9304 from any other heading, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

For goods falling within heading 9301 to 9304, inclusive, to be US originating goods they must satisfy either of the alternative ROO, namely:

(1) a change to 9301 to 9304, inclusive, from any other Chapter; or

(2) either:

(a) change to 9301 to 9304 from any other heading plus an RVC of not less than 35% under the Build-Up Method; or

(b) a change to 9301 to 9304 from any other heading plus an RVC of not less than 45% under the Build-Down Method.

2.4. In some instances the product specific ROO may specify that the only requirement for a good to qualify as a US originating good is the RVC requirement.

Example: product specific rule requiring RVC only

The product-specific ROO for parts for aircraft engines falling within 8409 in the Schedule 1 tariff table is:

No change in tariff classification is required, provided that there is a regional value content of not less than 50 percent based on the net cost method.

2.5. Subsection 153YE(6) provides that the AUSFTA regulations may prescribe different RVC for different types of goods.

2.6. Article 5.4 of the Agreement and Parts 2 and 3 of the AUSFTA regulations provide for three different formulas that may be used to determine the RVC – the **Build-Down Method**, the **Build-Up Method** and the **Net Cost Method**. The product specific ROO will indicate which formula is to be used. The threshold applicable to each of the methods varies but in most instances the

threshold is 35% using the Build-Up Method, 45% using the Build-Down Method and 50% using the Net Cost Method.

Build-Down Method

Under the Build-Down Method, the RVC calculation determines the percentage of non-originating materials which are used in the production of goods.

Build-Down Method

$$RVC = \frac{AV - VNM}{AV} \times 100$$

Where:

RVC is the regional value content, expressed as a percentage

AV is the adjusted value (customs value)

VNM is the value of non-originating materials that are acquired and used by the US producer in the production of the good. VNM does not include the value of a material that is self-produced

Example: Build-Down Method

A US producer sells a good to an Australian importer for $200 in an arm's-length sale. The value of non-originating materials used in the good is $60. Using the Build-Down Method, the producer calculates the RVC as follows:

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

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

Therefore, using the Build-Down Method, the RVC of the good is 70%.

Build-Up Method

Under the Build-Up Method, the RVC calculation determines percentage of US originating materials which are used in the production of goods.

Build-Up Method

$$RVC = \frac{VOM}{} \times 100$$

AV

Where:

RVC is the regional value content, expressed as a percentage

AV is the adjusted value (customs value)

VOM is the value of originating materials that are acquired or self-produced, and are used by the US producer in the production of the goods

Example: Build-Up Method

A US producer sells a good to an Australian importer for $200 in an arm's-length sale. The value of US originating materials used in the good is $120. Using the Build-Up Method, the producer calculates the RVC as follows:

$$\frac{\text{value of originating materials}}{\text{adjusted value}} \times 100 = \text{RVC}$$

$$\frac{\$120}{\$200} \times 100 = 60\%$$

Therefore, using the Build-Up Method, the RVC of the good is 60%.

Option of RVC calculation methods

(1) The majority of the product specific ROO in the Schedule 1 tariff table provide a choice of RVC methods, namely the Build-Up Method or the Build-Down Method.

(2) If a product specific ROO contains such an option, only one of the RVC requirements needs to be met, together with any other requirement specified in the product specific rule, for the good to be a US originating good.

(3) Having an option of two RVC methods offers a producer, whose good is non-originating because it has failed to meet the specified RVC percentage under one method, a second chance of having the good determined as US originating by meeting the specified RVC for the second method.

The product-specific rule for golf clubs of 9506.31 in the Schedule 1 tariff table is:

Either:

(a) a change to heading 9503 through 9508 from any other chapter; or

(b) a change to subheading 9506.31 from subheading 9506.39,
whether or not there is a change from another chapter, provided that there is a region value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

In this example, the non-originating materials used to produce the golf clubs are golf club heads (HS 9506.39) imported from Japan.

The golf club heads do not meet the transformation test required under paragraph (a) because they did not change chapter.

The golf club heads do meet the transformation test requirement of (b) because they have been transformed from 9506.39 (parts for golf clubs) to 9506.31 (complete golf clubs).

Under paragraph (b), in addition to meeting the transformation test, the golf club must also satisfy a RVC requirement to be considered to be US originating goods.

The golf clubs were sold for $100, the value of the golf club heads was $40 and the value of originating materials used was $30.

The calculation of the RVC using the Build-Up Method is:

$$\frac{\text{value of originating materials}}{\text{adjusted value}} \times 100 = \text{RVC}$$

$$\frac{\$30}{\$100} \times 100 = 30\%$$

The RVC, using this method, is 30%. Therefore the golf clubs ARE NOT US originating goods as the product specific rule requires a RVC of 35% using the Build-Up Method.

However, as stated above, the producer has, under this product specific rule, the choice of using either the Build-Up Method OR the Build-Down Method.

Calculating the RVC using the Build-Down Method would provide the following result:

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

$$\frac{\$100 - \$40}{\$100} \times 100 = 60\%$$

The RVC, using this method, is 60% and the golf clubs ARE US originating goods as the product specific rule of a change to subheading 9506.31 from subheading 9506.39 has been met and the requirement of a RVC of at least 45% using the Build-Down Method has also been met.

Net Cost Method

The Net Cost Method is used to determine the RVC of selected automotive products as specified in the AUSFTA regulations (Part 3 of the AUSFTA regulations are duplicated at part 1 (4) above).

Net Cost Method

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

Where:

RVC is the regional value content, expressed as a percentage

NC is the net cost of the goods

VNM is the value of non-originating materials acquired and used by the US producer in the production of the good. VNM does not include the value of a material that is self-produced

Example: Net Cost Method

A US producer sells a good, which cost $240 to produce, to an Australian importer.

The value of relevant non-originating materials used in the good is $60.

The total cost to produce the goods includes $20 for sales promotion and $20 for after sales service costs. In working out the Net Cost of the goods as directed by AUSFTA regulation 3.4, these costs are to be deducted from the total cost of the good, leaving a net cost total of $200.

Using the Net Cost Method, the producer calculates the RVC as follows:

$$\frac{\text{net cost of the good} - \text{value of non-originating materials}}{\text{net cost of the good}} \times 100 = RVC$$

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

Therefore, using the Net Cost Method, the RVC of the goods is 70%.

3. Another example of an RVC calculation to determine if goods are US originating

Example #1

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

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

The product-specific ROO for sunglasses of 9004.10 in the Schedule 1 tariff table is:

Either:

(a) a change to subheading 9004.10 from any other chapter; or

(b) a change to subheading 9004.10 from any other heading within Chapter 90, whether or not there is also a change from any other chapter, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.

Of note is that 153YE(3) states that the first requirement does not need to be met if:

(a) an alternative requirement to the CTC is also specified in Column 3 of the Schedule 1 tariff table opposite the final classification for the goods; and

(b) that alternative requirement is satisfied.

In this instance, the product specific rule for 9004.10 does provide an alternative to the transformation test.

In this example both the first and the second requirements apply as there is an option of either a transformation test or a RVC.

As the frames of 9003.11 change to sunglasses of 9004.10 they meet the transformation test of a change to subheading 9009.10 from any other heading within chapter 90.

Under the Build-Down Method, the RVC calculation, based on the adjusted value of $30 for the sunglasses and a value of non-originating materials (the plastic spectacle frames) of $8, is:

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

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

The RVC, using this method, is 73% and the sunglasses meet the provisions of both the first and the second requirement (even though only one requirement was needed to be met) and ARE US originating goods.

Section 4: Third Requirement

Subsection 153YE(7) sets out the terms of the third requirement (that does not relate to a CTC or RVC requirement) and states that the third requirement is that the goods satisfy any other requirement that is specified in, or referred to in column 3 of the Schedule 1 tariff table opposite the final classification for goods.

Example of the third requirement

The product specific rule for 7506 is:

Either:

(a) a change to heading 7506 from any other heading; or

(b) a change to foil, not exceeding 0.15 mm 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 the US from feathers imported from Africa (6701.00) and a wooden frame originating in the US.

The product specific rule for 6701 is:

Either:

(a) a change to heading 6701 from any other heading; or

(b) a change to articles of feather or down of heading 6701 from any other product, including a product in that heading.

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

In this example the ornamental fan does not satisfy the transformation test requirement of (a) in the rule above.

The articles of feather do however satisfy the process rule (b) 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 US originating good as a result of satisfying the third requirement.

Section 5: Summary of Section 153YE

1. A good is a US originating good if the requirements of 153YE are satisfied.

2. The following is a summary of the application of section 153YE.

Must be satisfied in ALL instances	
153YE(1)(a)	A tariff classification (final classification) specified in Column 2 of the Schedule 1 tariff table applies, and
153YE(1)(b)	the goods are produced entirely in the US, or entirely in the US and Australia, from non-originating materials of from non-originating and originating materials; and
153YE(1)(c)	any of the three requirements that need to be satisfied have in fact been satisfied

First Requirement		
A	153YE(2)	There must be a CTC in Column 3 of the Schedule 1 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	153YE(2)(a) and 153YE(8)(a) apply	Each of the non-originating materials must satisfy the transformation test in Column 3 of the Schedule 1 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	153YE(2)(a) and 153YE(8)(a) apply	Accumulation – non-originating material does not satisfy the CTC requirement but it was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials and each of those materials satisfies the transformation test (including by one or more applications of this section). 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	153YE(2)(b)(i)	*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

Second Requirement	
153YE(3) and 153YE(4)	The second requirement applies only if a regional value content requirement is specified in column 3 of the Schedule 1 tariff table opposite the final classification of the goods 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

Third Requirement	
153YE(5) and 153YE(7)	The third requirement is that the goods satisfy any other requirement that is specified in, or referred to in, Column 3 of the Schedule 1 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: Goods that are chemicals, plastics or rubber

1. Statutory provisions

1.1. Section 153YF of the Customs Act contains the provisions relating to goods which are classified within Chapters 28 to 40, inclusive, of the HS.

153YF Goods that are chemicals, plastics or rubber

(1) Goods are **US originating goods** *if:*

(a) they are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only or from non-originating materials and originating materials; and

(b) they are goods that are classified to any of Chapters 28 to 40 of the Harmonized System; and

(c) tariff classification (the **final classification***) that is specified in column 2 of the Schedule 1 tariff table applies to the goods; and*

(d) before the tariff classifications in column 2 of that table in relation to Chapter 28 or 39 of the Harmonized System, the regulations specify particular rules in column 3 of that table; and

(e) those rules apply in relation to the final classification for the goods; and

(f) the goods satisfy those rules.

1.2. Also relevant is Section VI (Products of the chemical or allied industries (Chapter 28-38)) of Part 2 of Schedule 1 to the AUSFTA regulation which states:

Rules for Section VI

1. Chemical Reaction Origin Rule

Any good of Chapters 28 through 38, except a good of heading 3823, that is the product of a chemical reaction satisfies the chemical reaction origin rule if the chemical reaction occurred in the US or Australia. Notwithstanding any of the product-specific requirements, the chemical reaction origin rule may be applied to any good classified in these Chapters.

Note For the purposes of this section, 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 the molecule.

The following are not chemical reactions for the purpose of this section:

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

2. Purification Origin Rule

For the purposes of Chapters 28 through 35, and Chapter 38, a good satisfies the purification origin rule if the good is the result of either of the following:

(a) purification of a good resulting in the elimination of 80 percent of the content of existing impurities;

(b) the reduction or elimination of impurities resulting in a good suitable for one or more of the following applications:
(i) pharmaceutical, medicinal, cosmetic, veterinary, or food grade substances;
(ii) chemical products and reagents for analytical, diagnostic or laboratory uses;
(iii) elements and components for use in micro-elements;
(iv) specialized optical uses;
(v) non toxic uses for health and safety;
(vi) biotechnical use;
(vii) carriers used in a separation process;
(viii) nuclear grade uses.

3. Mixtures and Blends Origin Rule

For the purposes of Chapters 30 and 31, heading 3302, subheading 3502.20, headings 3506 through 3507 and heading 3707, a good satisfies the mixtures and blends origin rule if the good is the result of the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications which results in the production of a good having physical or chemical characteristics which are relevant to the purposes or uses of the good and are different from the input materials.

4. Change in Particle Size Origin Rule

For the purposes of Chapters 30 and 31, a good satisfies the change in particle size origin rule if the good is the result of either of the following:

(a) the deliberate and controlled reduction in particle size of a good, other than by merely crushing (or pressing) resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials;

(b) the deliberate and controlled modification in particle size of a good, other than by merely pressing, resulting in a good having a defined particle size, defined particle size distribution or defined surface area, which are relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials.

5. Standards Materials Origin Rule

For the purposes of Chapters 28 through 32, Chapter 35 and Chapter 38, a good satisfies the standards materials origin rule if the good is the result of the production of standards materials. For the purpose of this rule, **standards materials** *(including standard solutions) are preparations suitable for analytical, calibrating or referencing uses having precise degrees of purity or proportions which are certified by the manufacturer.*

6. Isomer Separation Origin Rule

For the purposes of Chapters 28 through 32 and Chapter 35, a good satisfies the isomer separation origin rule if the good is the result of the isolation or separation of isomers from mixtures of isomers.

7. Separation Prohibition

A non-originating material will not be taken to have satisfied all applicable requirements of these rules by reason of a change from one classification to another merely as the result of the separation of one or more individual materials from a man-made mixture, unless the isolated material itself also underwent a chemical reaction.

2. Policy and practice – process rules

2.1. Section 153YF sets out the circumstances in which a good that is classified within Chapters 28 to 40 of the HS, inclusive, can become a US originating good without having to fulfil the requirements of section 153YE.

2.2. Preceding the product specific rules for Chapter 28 and Chapter 39 in the AUSFTA regulations are rules relating to all goods within these chapters. These rules are termed "process rules" as they require the materials to undergo a certain process to US originating goods.

2.3. These process rules, if met, take precedent over the product specific rules for goods within these chapters because of section 153YF. In other words, if the requirement of a particular process rule is met, then the goods are considered to be US originating goods and the product specific rule is not required to be met.

2.4. Each of the six process rules for goods classified within Chapters 28 to 40 of the HS is briefly explained below:

Chemical Reaction Origin Rule

(1) This rule requires that a chemical reaction takes places in either the US or Australia. For the purposes of Chapters 28-38, except for goods falling within 3823, a chemical reaction is a process resulting from materials being mixed 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: chemical reaction rule

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

The "chemical reaction rule", found in the preface for Chapter 28, requires a chemical reaction to take place in the territory of one or both parties to the Agreement for the good to be originating.

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

While the product specific rules are also specified and apply to the goods, those rules can be disregarded as the goods meet the chemical reaction rule and are considered to be US originating goods under section 153YF.

Purification Origin Rule

(1) This rule applies only to goods falling within Chapter 28 to 35 and Chapter 38.

(2) The country where purification is undertaken is the country which confers origin on the goods, providing that one of the following criteria is met:

- the purification results in the elimination of 80 percent of the content of existing impurities; or
- the purification causes a reduction or elimination of impurities which results in a good being suitable for one or more of the following applications:
  - pharmaceutical, medicinal, cosmetic, veterinary, or food grade substances;
  - chemical products and reagents for analytical, diagnostic or laboratory uses;
  - elements and components for use in micro-elements;
  - specialised optical uses;
  - non toxic uses for health and safety;
  - biotechnical use;
  - carriers used in a separation process; or
  - nuclear grade uses.

Mixtures and Blends Origin Rule

(1) The mixtures and blends origin rule applies only to goods falling within Chapters 30 and 31, heading 3302, subheading 3502.20, headings 3506 to 3507, inclusive and heading 3707.

(2) When goods falling within the specified chapters, headings and subheadings specified above, are formed by the deliberate and proportionally controlled mixing or blending (including dispersing) of materials to conform to predetermined specifications which results in the production of a good having physical or chemical characteristics which are relevant to the purposes or uses of the good, and are different from the input materials, this process is considered to be origin conferring if this process occurs in the US, or in Australia.

Change in Particle Size Origin Rule

(1) This rule applies only to goods falling within Chapters 30 and 31.

(2) To satisfy this rule, goods must have undergone a deliberate and controlled reduction or modification in particle size, other than by merely crushing (or pressing). This process must result in a good having a defined particle size, defined particle size distribution or defined surface area, which is relevant to the purposes of the resulting good and have different physical or chemical characteristics from the input materials. Such a process is considered to be origin conferring if this process occurs in the US, or in Australia.

Standard Materials Origin Rule

(1) This rule applies only to goods falling within Chapters 28 to 32, inclusive, Chapter 35 and Chapter 38.

(2) For the purposes of this rule "standards materials" are those materials, including "standard solutions", which are suitable for analytical, calibrating or referencing uses and have precise degrees of purity or proportions which are certified by the manufacturer. If a material meets this rule it is considered to be origin conferring if this process occurs in the US, or in Australia.

Isomer Separation Origin Rule

This rule applies only to goods falling within Chapters 28 to 32, inclusive, and Chapter 35 and allows the process whereby individual isomers which are isolated or separated from mixtures of isomers to be considered as origin conferring if this process occurs in the US, or in Australia.

3. Separation prohibition

3.1. The AUSFTA regulations place limitations on the breadth of deeming if a material/ component has satisfied all the requirements of these rules.

3.2. The AUSFTA regulations state that processes such as merely separation of one or more individual materials or components from a man-made mixture does not qualify the goods as US originating goods unless the material/component which has been separated has itself also undergone a chemical reaction.

Division 8: Goods that are clothing or textiles produced entirely in the US or in the US and Australia from non-originating materials

Section 1: Statutory provisions and overview

1. Yarn forward rule

1.1. AUSFTA imposes on clothing and textiles a very strict ROO called the 'yarn forward requirement'. To qualify as US originating goods, clothing and textiles must have been cut (or knit to shape) and sewn or otherwise assembled in the US from yarn, or fabric made from yarn, that originates in the US or Australia, or both.

1.2. The yarn forward rule is a stringent test. Put simply, the rule requires that:

(a) fabrics produced for export be made up of yarns wholly formed in the US or Australia, or both; and
(b) apparel for export be produced from fabrics entirely formed in the US or Australia, or both. The apparel must also be cut or knit to shape or otherwise assembled in the US or Australia, or both.

1.3. There are exceptions to the yarn forward rule. For example, cotton and man made fibre spun yarns and knitted fabrics must be produced from fibres grown or formed in the US or Australia, or both.

1.4. The textile and apparel ROO are product specific and vary greatly depending on the particular good. For example, the Chapter Rules in Annex 4A to the Agreement allow for specific non-originating fabrics to be used in the production of apparel providing the fabrics are both cut and sewn or otherwise assembled in the US or Australia, or both. Examples of these special fabrics include Harris Tweed, velveteen and corduroy fabrics and some woven woollen fabrics.

1.5. Chapter Rules in Annex 4A to the Agreement provide that, in determining the ROO to apply to an article of apparel, an importer need apply the ROO governing the component, which gives the article its essential characteristic. In other words, when considering a woollen coat that contains a removable hood, it is the coat, which gives the product its essential character and so the rule governing woollen overcoats (6101.10 or 6102.10) will apply. The only exception to this is visible linings attached to a garment, which must be formed from yarn and finished in the territory of either Australia or the US.

2. Statutory provisions

2.1. Section 153YH of the Customs Act contains provisions relating to clothing or textile goods produced entirely in the US or in the US and Australia from non-originating materials only or from a combination of non-originating materials and originating materials:

153YH Goods that are clothing or textiles produced entirely in the US or in the US and Australia from non-originating materials

(1) Subject to subsection (5), goods are **US originating goods** *if:*

(a) a tariff classification (the final classification) that is specified in column 2 of the Schedule 2 tariff table applies to the goods; and

(b) they are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only or from non-originating materials and originating materials; and

(ba) if the component of the goods that determines the final classification for the goods contains elastomeric yarns-the elastomeric yarns are produced entirely in the US or Australia; and

(c) if any of the following 2 requirements apply in relation to the goods—that requirement is satisfied.

Note 1: Subsection (5) sets out the requirements for goods put up in a set for retail sale.

Note 2: Paragraph (1)(ba) relates to paragraph 7 of Article 4.2 (Rules of origin and related matters) of the Agreement.

First requirement

(2) The first requirement applies only if a change in tariff classification is specified in column 3 of the Schedule 2 tariff table opposite the final classification for the goods. The first requirement is that:

(a) subject to subsection (3), each of the non-originating materials satisfies the transformation test (see subsection (7)); or

(b) the following are satisfied:

(i) the total weight of all the non-originating materials (see subsection (8)) does not exceed 7% of the total weight of the component of the goods that determines the final classification for the goods;

(ii) if one or more of the non-originating materials are prescribed for the purposes of this paragraph—each of those non-originating materials satisfies the transformation test (see subsection (7))

Note: Paragraph 2(b) relates to paragraph 6 (De Minimis) of Article 4.2 the Agreement.

(3) In relation to goods classified to Chapter 61, 62 or 63 of the Harmonized System, paragraph (2)(a) is to be applied by applying:

(a) for goods covered by Chapter 61 of the Harmonized System—Chapter Rule 2 for Chapter 61 that is set out in the Schedule 2 tariff table; and

(b) for goods covered by Chapter 62 of the Harmonized System—Chapter Rule 3 for Chapter 62 that is set out in the Schedule 2 tariff table; and

(c) for goods covered by Chapter 63 of the Harmonized System—Chapter Rule 1 for Chapter 63 that is set out in the Schedule 2 tariff table.

Second requirement

(4) The second requirement is that the goods satisfy any other requirement that is specified in, or referred to in, column 3 of the Schedule 2 tariff table opposite the final classification for the goods.

Goods put up in a set for retail sale

(5) However, if:

(a) the goods are put up in a set for retail sale; and

(b) the goods are classified in accordance with Rule 3 of the Interpretation Rules;

the goods are **US originating goods** *only if:*

(c) all of the goods in the set are US originating goods under this Division; or

(d) the total value of the goods in the set that are not US originating goods under this Division does not exceed 10% of the customs value of the set of goods.

Note: The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153YA(2).

(6) In applying paragraph (5)(c), assume the goods were not part of a set.

Example: A skirt and a belt are put up in a set for retail sale. The skirt and the belt have been classified under Rule 3 of the Interpretation Rules according to the tariff classification applicable to the skirts.

The effect of subsection (6) is that the origin of the belt must now be determined according to the tariff classification applicable to belts.

The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153YA(2).

Transformation Test

(7) A non-originating material satisfies the transformation test if:
(a) it satisfies the change in tariff classification that is specified in column 3 of the Schedule 2 tariff table opposite the final classification for the goods; or
(b) it does not satisfy the change in tariff classification mentioned in paragraph (a), but it was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials, and each of those materials satisfies the transformation test (including by one or more applications of this subsection).

Note 1: Paragraph (7)(b) relates to paragraph 2 of Article 5.3 (Accumulation) of the Agreement.

Note 2: Subsection (7) operates in a recursive manner; a non-originating material may satisfy the transformation test in its own right, or it may satisfy it because each non-originating material used to produce it satisfies the transformation test (whether because each of those materials does so in its own right, or because each non-originating material used to produce the material does so), and so on.

(8) In this section:

relevant non-originating materials, in relation to goods, means non-originating materials that:

(a) are used to produce the component of the goods that determine the final classification for the goods; and
(b) do not satisfy the transformation test (see subsection (7)).

2.2. In determining whether clothing and textile goods are produced entirely in the US or in the US and Australia from non-originating materials only or from a combination of non-originating and originating materials, the following definitions in section 153YA will also need to be considered:

Agreement *means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.*

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.*

non-originating materials *means goods that are not originating materials, where:*

originating materials *means:*

(a) goods that are used in the production of other goods and that are US originating goods; or
(b) goods that are used in the production of other goods and that are Australian originating goods; or
(c) indirect materials.

Schedule 2 tariff table *means the table in Schedule 2 to the Customs (Australia-United States Free Trade Agreement) Regulations 2004.*

3. Policy and practice - general

3.1. Section 153YH of the Customs Act sets out the general rules for determining whether a clothing or textiles good is a US originating good if it is produced entirely in the US, or entirely in the US and Australia, from non-originating materials only, or from non-originating materials and originating materials.

3.2. Textiles or clothing goods are US originating goods if all the requirements of subsection 153YH(1) have been met. The first two requirements of this subsection, simply put, are:

- that the tariff classification of the goods as entered on a customs entry corresponds with a heading or subheading in Column 2 of the Schedule 2 tariff table; and
- all production of the final good occurred in the US or in the US and Australia.

3.3. The Schedule 2 tariff table is that table in Part 2 of Schedule 2 to the AUSFTA regulations. This incorporates the product specific rules relating to imported goods. The product specific rules specify any CTC requirement and any other requirements for the purpose of determining whether a good that is clothing and textiles is a US originating good.

3.4. The Schedule 2 tariff table is split into two parts, part A and B. Part A contains rules that are at the chapter, heading or subheading level. Part B contains rules that are at the chapter, heading, subheading level or tariff item level. Those ROO that are at the 8-figure tariff item level are classified using the Harmonized US Tariff Schedule.

3.5. Column 1 of the Schedule 2 tariff table rules sets out the Chapter reference of goods in the HS. Column 2 lists tariff classifications at the heading or subheading level, and Column 3 sets out the product specific rule relevant to the tariff classification in Column 2.

3.6. Some examples to illustrate the different types of rules that are used in the Schedule 2 tariff table are:

SINGLE RULE

- ***Simple rule = change of tariff classification only***

  The rule may be at the heading level, or at the subheading level, and it may specify a change to a chapter, heading or subheading.

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 50 **Silk**	5001–5003	A change to heading 5001 through 5003 from any other chapter

- ***Simple rule with exceptions = change of tariff classification except from certain classifications***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 52 **Cotton**	5201–5207	A change to heading 5201 through 5207 from any other chapter, except from heading 5401 through 5405 or 5501 through 5507.

- ***Simple rule with exceptions and provisions = change of tariff classification provided certain exceptions and provisions have been met***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 63 **Other Made Up Textile Articles; Sets; Worn Clothing and Worn Textile Articles; Rags**	6304-6308	A change to heading 6304 through 6308 from any other chapter, except from heading 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, Chapter 54, or heading 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the US or Australia.

CHOICE OF RULE

- ***Choice of rule = a change of tariff classification rule with exceptions, or a different change of tariff classification rule with different exceptions***

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 54 **Man-Made Filaments**	5407	Either: (a) a change to tariff items 5407.61.11, 5407.61.21 or 5407.61.91 from tariff items 5402.43.10 or 5402.52.10, or from any other chapter, except from heading 5106 through 5110, 5205 through 5206 or 5509 through 5510; or (b) a change to heading 5407 from any other chapter, except from heading 5106 through 5110, 5205 through 5206 or 5509 through 5510.

MULTIPLE RULE

(c) Multiple rule = a change of tariff classification rule with exceptions and provided that the other requirements are met

Column 1 Chapter	Column 2 Tariff Classification	Column 3 Product specific requirements
Chapter 61 **Articles of Apparel and Clothing Accessories, Knitted or Crocheted**	6102.10–6102.30	A change to subheading 6102.10 through 6102.30 from any other chapter, except from heading 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, Chapter 54, or heading 5508 through 5516 or 6001 through 6006, provided that: (a) the good is both cut (or knit to shape) and sewn or otherwise assembled in the US or Australia; and (b) any visible lining material contained in the apparel article must satisfy the requirements of Chapter Rule 1 for Chapter 61.

4. The requirements

4.1. As stated in paragraph 5 of part 3 above, Column 3 of the Schedule 2 tariff table sets out the product specific rule relevant to each tariff classification in Column 2.

4.2. The product specific requirement will specify one or more requirements and each requirement specified must be satisfied for the good to be a US originating good.

4.3. If any specified product specific rule is not satisfied, the good is a non-originating good.

4.4. These rules are specifically referred to in the Act as "requirements" and are termed the first requirement and the second requirement.

4.5. Provided the criteria specified in paragraphs 153YH(1)(a) and 153YH(1)(b) are satisfied, and the criteria specified in paragraphs 153YH(1)(ba) and (c) are also satisfied, the good will be a US originating good. The criterion, as explained in paragraph 153YH(1)(c), is the satisfying of the two requirements detailed in Section 2 and Section 3 respectively.

Section 2: First requirement – change in tariff classification

1. First requirement

1.1. Subsection 153YH(2) of the Customs Act states that the first requirement applies only if there is a CTC requirement specified in Column 3 of the Schedule 2 tariff table.

1.2. The concept of CTC only applies to non-originating materials and means that non-originating materials that are sourced from outside or within the US or Australia which are used to produce another good, may not have the same classification under the HS as the final good into which they are incorporated. This means that the final good must have a different tariff classification after the production process to the tariff classification the non-originating material had before the production process. This approach ensures that sufficient transformation of the materials has occurred within the US, or the US and Australia, to justify the claim that the goods are the produce of the US.

1.3. Subsection 153YH(3) identifies the circumstances in which the first requirement does not apply. This means that if Column 3 allows a choice of rules and that choice is a requirement that does not include a CTC and that requirement has been satisfied, then the first requirement does not apply.

2. Transformation test – general outline

2.1. Subsection 153YH(7) sets out the transformation test for the purposes of subsection 153YH(2).

2.2. Broadly speaking, the transformation test is the CTC and, if required, the accumulation requirements of the Agreement. Non-originating materials satisfy the transformation test if:

- it satisfies the CTC that is specified in Column 3 of the Schedule 2 tariff table opposite the final classification of the goods; or
- it does not satisfy the CTC required above, but it was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials, each of which satisfies the transformation test (including by one or more applications of subsection 153YH(7)). This is called accumulation.

2.3. The CTC requirement and accumulation that form the transformation test are addressed in detail below.

3. Transformation test (change in tariff classification)

3.1. Paragraph 153YH(7)(a) directly addresses the transformation test.

3.2. Non-originating materials used directly in producing a good, will satisfy the transformation test if they satisfy the CTC requirement that is specified in Column 3 of the Schedule 2 tariff table opposite the final classification for the goods.

Example:

Silk fabric (5007) is produced entirely in the US from non-originating silk yarn (5004) and non-originating man-made yarn (5511).

The product specific rule for 5007 in Part A of the Schedule 2 tariff table is:

A change to heading 5007 from any other heading.

The product specific rule is a CTC requirement of a change to heading 5007 from any other heading.

The silk fabric is an originating good for the following reasons:

- **under 153YH(1)(a), a final classification of 5007 applies to the silk fabric.**
- **further, under 153YH(1)(b), the silk fabric is produced entirely in the US from non-originating materials (i.e. silk yarn and man-made yarn)**
- **finally, under 153YH(2)(a) and 153YH(7), the non-originating material satisfies the transformation test requirement as there has been a transformation from silk yarn (5004) and man-made yarn (5511) to silk fabric (5007). This transformation meets the requirement of 'a change to heading 5007 from any other heading'.**

4. Transformation test - accumulation

4.1. If non-originating materials do not satisfy the specified transformation test for the final good, it is still possible for the first requirement to be satisfied if the material was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials and each of those materials satisfies the same transformation test for the final good.

4.2. Paragraph 153YH(7)(b) gives effect to the accumulation provisions contained in paragraph 2 of Article 5.3 of the Agreement and applies when the non-originating materials that are used directly in the production of the final good do not satisfy the required transformation test.

4.3. In producing the final good that is to be imported into Australia, a US producer may use materials that have been produced in the US by another producer. The components of these materials may have been produced by yet another producer in the US or imported into the US.

4.4. In such circumstances, it is necessary to examine each step in the production process of each non-originating material that occurred in the US 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 US originating good (subject to satisfying all other requirements).

4.5. 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 goods are non-originating goods.

4.6. The example overleaf illustrates the concept where the non-originating material does not satisfy the transformation test but the materials from which it is produced do (subparagraph 153YH(7)(b) refers).

Example:

A US producer imports non-originating carded cotton of heading 5203 for use in the production of cotton yarn of heading 5205.

The product specific rule for 5201 to 5207 in Part A of the Schedule 2 tariff table is:

> **A change to heading 5201 through 5207 from any other chapter, except from heading 5401 through 5405 or 5501 through 5507.**

Because the CTC from carded cotton to cotton yarn is a change within the same chapter, the carded cotton does not satisfy the applicable CTC rule for cotton yarn, the cotton yarn is also classed as non-originating.

The cotton yarn is then sold to another producer in the US, who uses the cotton yarn in the production of woven fabric of heading 5208.

The product specific rule for 5208 to 5212 in the Schedule 2 tariff table is:

> **A change to heading 5208 through 5212 from any heading outside that group, except from heading 5106 through 5110, 5205 through 5206, 5401 through 5404 or 5509 through 5510.**

The CTC from cotton yarn to woven fabric does not satisfy the applicable CTC rule for woven fabric. Therefore, the woven fabric is also classed as non-originating.

However the producer of the woven fabric can "accumulate" the production of the cotton yarn.

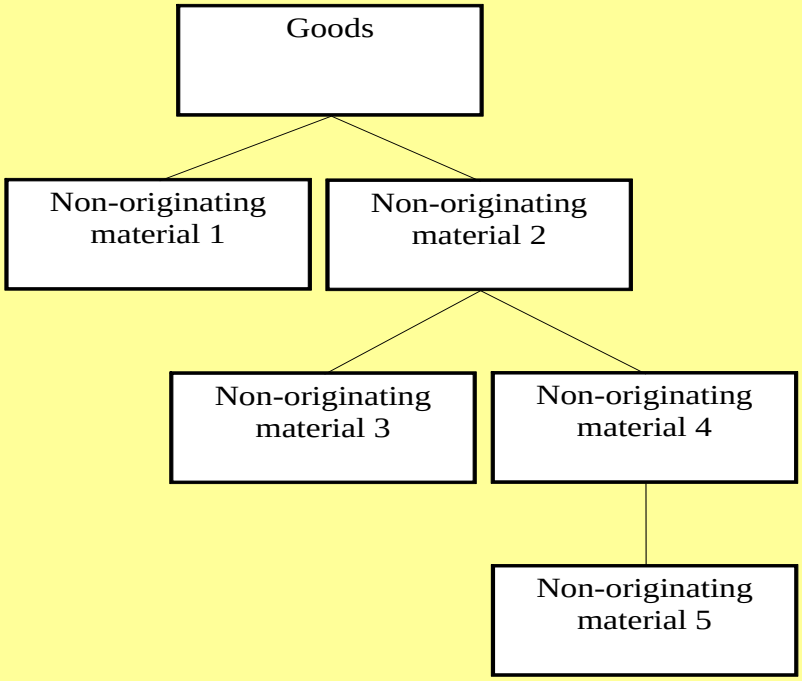
In this example, the direct CTC from carded cotton of heading 5203 to woven fabric of 5208 would satisfy the applicable CTC for heading 5208.

Further, the cotton yarn would now be considered to have been produced by the producer of the woven fabric. This is allowed because both the yarn and the fabric were both produced in the US.

The woven fabric of cotton would therefore be considered as an originating good.

4.7. The example overleaf demonstrates accumulation and the operation of paragraph 153YH(7)(b).

Example: the following diagram relates to the production of particular goods that occurred entirely in the US. The diagram and the accompanying text illustrate the application of subsection 153YH(7).



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

First application of subsection 153YH(7)

Non-originating materials 1 and 2 must satisfy the transformation test. Under paragraph 153YH(7)(a), non-originating material 1 does satisfy the relevant CTC. Under paragraph 153YH(7)(b), non-originating material 2 does not satisfy the relevant CTC, but it has been produced by non-originating materials 3 and 4.

Second application of subsection 153YH(7)

Non-originating materials 3 and 4 must satisfy the transformation test. Under paragraph 153YH(7)(a), non-originating material 3 does satisfy the relevant CTC. Under paragraph 153YH(7)(b), non-originating material 4 does not satisfy the relevant CTC, but it has been produced by non-originating material 5.

Third application of subsection 153YH(7)

Non-originating material 5 must satisfy the transformation test. Under paragraph 153YH(7)(a), non-originating material 5 does satisfy the relevant CTC.

Final result

The result of the 3 applications of subsection 153YH(7) is that non-originating material 2 does satisfy the transformation test.

5. *De minimis* rule for clothing and textiles

Statutory provisions

(1) The provisions of paragraph (b) of subsection 153YH(2) of the Customs Act incorporate the de minimis rules for clothing and textiles that are set out in Article 4.2 of the Agreement.

153YH Goods that are clothing or textiles produced entirely in the US or in the US and Australia from non-originating materials

(1) ……

First requirement

(2) The first requirement applies only if a change in tariff classification is specified in column 3 of the Schedule 2 tariff table opposite the final classification for the goods. The first requirement is that:

(a) subject to subsection (3), each of the non-originating materials satisfies the transformation test (see subsection (7)); or

(b) the following are satisfied:

(i) the total weight of all the non-originating materials (see subsection (8)) does not exceed 7% of the total weight of the component of the goods that determines the final classification for the goods;

(ii) if one or more of the non-originating materials are prescribed for the purposes of this paragraph—each of those non-originating materials satisfies the transformation test (see subsection (7))

Note: Paragraph 2(b) relates paragraph 6 (De Minimis) of Article 4.2 the Agreement.

(2) As stated in the above citation, paragraph (b) of subsection 153YH(2) relates to paragraph 6 of Article 4.2 of the Agreement. The article that relates to de minimis, state:

ARTICLE 4.2: RULES OF ORIGIN AND RELATED MATTERS

De Minimis

6. A textile or apparel good that is not an originating good because certain fibres or yarns used in the production of the component of the good that determines the tariff classification of the good do not

undergo an applicable change in tariff classification set out in Annex 4-A, shall nonetheless be considered to be an originating good if the total weight of all such fibres or yarns in that component is not more than seven percent of the total weight of that component.

7. *Notwithstanding paragraph 6, a good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.*

Policy and practice

(1) The Agreement provides a de minimis provision for clothing and textiles that prevents goods losing their eligibility for preferential treatment when they contain a small amount of non-originating materials. Under this provision, a good that would otherwise fail to meet a product specific ROO could still be considered to be a US originating good.

(2) The effect of these provisions is that if the total weight of all the non-originating fibres or yarns does not exceed 7% of the total weight of the component that determines the tariff classification of the good being produced, they do not have to satisfy the transformation test specified in Column 3 of the Schedule 2 tariff table opposite the final classification of the goods.

(3) The de minimis requirement does not apply to all non-originating materials that are used to produce goods detailed in Schedule 2 tariff table. If non-originating materials are prescribed for the purposes of sub-paragraph 153YH(b)(ii), they still have to satisfy the transformation test notwithstanding that the total weight of the non-originating fibres or yarns does not exceed 7% of the total weight of the component that determines the tariff classification of the good.

Example:

A US company uses combed wool yarns (HS 5107) to produce fine woven wool fabric (HS 5112) that is then used to produce dresses (HS 6204.41).

The specific origin criterion for tariff heading 6204.41-6204.49 states:

> **A change to subheading 6204.41 through 6204.49 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, Chapter 54, or heading 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the US or Australia.**

Both the combed wool yarn and the fine wool fabric produced must qualify as US originating materials if the dresses are to qualify as US originating goods. However, under the *de minimis* allowances, if the US producer uses a small quantity of non-originating combed wool yarn which is not greater than 7% of the total weight of that fabric in the dress that determines its tariff classification (i.e. the fine wool fabric), the dresses will be considered to be US originating goods.

(4) The textile de minimis provision does not apply to elastomeric yarns for which there is zero tolerance for non-originating yarn. In other words elastomeric yarn in the component of the good that determines the tariff classification must satisfy the transformation test.

Example:

A swimsuit with elastomeric yarns in the body of the suit will be a US originating good ONLY if the elastomeric yarn satisfies the transformation test.

(5) It should be noted that the de minimis principle, based on weight, applies only to textile products covered by Annex 4A of the Agreement which are also detailed in the Schedule 2 tariff table in the AUSFTA regulations which is duplicated at Appendix 2.

Section 3: Second Requirement

Subsection 153YH(4) of the Customs Act identifies the circumstances in which the second requirement is satisfied. This means that if Column 3 requires that a certain criterion must be met by the good then, if that criterion has been met, the second requirement has been satisfied.

Example:

100% Cotton briefs (6108.21) have been produced in the US from cotton fabric made from different coloured cotton yarn (6006.23). The briefs have been cut and sewn in the US.

The specific origin criterion for tariff heading 6108.21:

A change to subheading 6108.21 from:

(a) tariff item 6006.21.10, 6006.22.10, 6006.23.10, or 6006.24.10 provided that the good, exclusive of waistband, elastic or lace, is wholly of such fabric and the good is both cut and sewn or otherwise assembled in the US or Australia;

or

(b) any other chapter, except from heading 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, Chapter 54, or heading 5508 through 5516 or 6001 through 6006, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the US or Australia.

The 100% cotton briefs are originating goods as they have met:

- **the transformation test requirement from 6006.23 to 6108.21 (the first requirement); and**
- **the cut and sewn requirements referred to in column 3 of the**

Schedule 2 tariff table (the second requirement).

Section 4: Summary of Section 153YH

1.1. A good is a US originating good if the requirements of 153YH are satisfied.

1.2. The following is a summary of the application of section 153YH.

Must be satisfied in ALL instances	
153YH(1)(a)	A tariff classification (final classification) specified in Column 2 of the Schedule 2 tariff table applies, and
153YH(1)(b)	the goods are produced entirely in the US, or entirely in the US and Australia, from non-originating materials or from non-originating and originating materials; and
153YH(1)(c)	any of the three requirements that need to be satisfied have in fact been satisfied

First Requirement		
A	153YH(2)	There must be a CTC in Column 3 of the Schedule 2 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	153YH(2)(a) and 153YH(7)(a) apply	Each of the non-originating materials must satisfy the transformation test in Column 3 of the Schedule 2 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	153YH(2)(a) and 153YH(7)(a) apply	Accumulation – non-originating material does not satisfy the CTC requirement but it was produced entirely in the US, or entirely in the US and Australia, from other non-originating materials and each of those materials satisfies the transformation test (including by one or more applications of this section). 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	153YH(2)(b)(i)	De minimis – the total weight of all the non-originating fibres or yarns does not exceed 7% of the total weight of the component that determines the tariff classification of the goods being exported 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

Second Requirement	
153YH(4)	The third requirement is that the goods satisfy any other requirement that is specified in, or referred to in, Column 3 of the Schedule 2 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 5: Clothing and textiles classified to Chapter 62

1. Statutory provisions

1.1. The provisions of section 153YI of the Customs Act sets out a special rule that will apply only in respect of clothing and textiles that are classified to Chapter 62 of the HS.

153YI Goods that are clothing and textiles classified to Chapter 62 of the Harmonized System

Goods are **US originating goods** *if:*

(a) they are produced entirely in the US, or entirely in the US and Australia, from non-originating materials only or from non-originating materials and originating materials; and
(b) they are goods that are classified to Chapter 62 of the Harmonized System; and
(c) either:
(i) in any case—the goods satisfy Chapter Rule 2 for Chapter 62 that is set out in the Schedule 2 tariff table; or
(ii) in the case of goods that are classified to subheading 6205.20 or 6205.30 of Chapter 62 of the Harmonized System—the goods satisfy the subheading rule for that subheading that is set out in the Schedule 2 tariff table.

1.2. Rule 2 for Chapter 62, referred to in subparagraph (c)(i) above, is contained in the AUSFTA regulations at Part B of Schedule 2 and states:

Rule 2: Apparel goods of this Chapter are US originating goods if they are both cut and sewn or otherwise assembled in the US or Australia and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

(a) velveteen fabrics of subheading 5801.23, containing 85 per cent or more by weight of cotton;
(b) corduroy fabrics of subheading 5801.22, containing 85 per cent or more by weight of cotton and containing more than 7.5 wales per centimetre;
(c) fabrics of subheading 5111.11 or 5111.19, if hand-woven, with a loom width of less than 76 cm, woven in the United Kingdom in accordance with the rules and regulations of the Harris Tweed Association, Ltd., and so certified by the Association;
(d) fabrics of subheading 5112.30, weighing not more than 340 grams per square meter, containing wool, not less than 20 per

cent by weight of fine animal hair and not less than 15 per cent by weight of man-made staple fibres; or

(e) batiste fabrics of subheading 5513.11 or 5513.21, of square construction, of single yarns exceeding 76 metric count, containing between 60 and 70 warp ends and filling picks per square centimetre, of a weight not exceeding 110 grams per square meter.

1.3. The subheading rule referred to in subparagraph (c)(ii) of subsection 153YC(2) above, applies only to goods classified to subheadings 6205.20 to 6205.30, inclusive. That subheading rule states:

***Subheading Rule**: No change in tariff classification is required for men's or boys' shirts of cotton or man-made fibres, provided that they are cut and assembled in the US or Australia, and the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:*

(a) fabrics of subheading 5208.21, 5208.22, 5208.29, 5208.31, 5208.32, 5208.39, 5208.41, 5208.42, 5208.49, 5208.51, 5208.52 or 5208.59, of average yarn number exceeding 135 metric;

(b) fabrics of subheading 5513.11 or 5513.21, not of square construction, containing more than 70 warp ends and filling picks per square centimetre, of average yarn number exceeding 70 metric;

(c) fabrics of subheading 5210.21 or 5210.31, not of square construction, containing more than 70 warp ends and filling picks per square centimetre, of average yarn number exceeding 70 metric;

(d) fabrics of subheading 5208.22 or 5208.32, not of square construction, containing more than 75 warp ends and filling picks per square centimetre, of average yarn number exceeding 65 metric;

(e) fabrics of subheading 5407.81, 5407.82 or 5407.83, weighing less than 170 grams per square meter, having a dobby weave created by a dobby attachment;

(f) fabrics of subheading 5208.42 or 5208.49, not of square construction, containing more than 85 warp ends and filling picks per square centimetre, of average yarn number exceeding 85 metric;

(g) fabrics of subheading 5208.51, of square construction, containing more than 75 warp ends and filling picks per square centimetre, made with single yarns, of average yarn number 95 or greater metric;

(h) fabrics of subheading 5208.41, of square construction, with a gingham pattern, containing more than 85 warp ends and filling picks per square centimetre, made with single yarns, of average yarn number 95 or greater metric, and characterized by a check effect produced by the variation in colour of the yarns in the warp and filling; or

(i) fabrics of subheading 5208.41, with the warp coloured with vegetable dyes, and the filling yarns white or coloured with vegetable dyes, of average yarn number greater than 65 metric.

2. Policy and practice

2.1. Section 153YI applies only to goods classified to Chapter 62 of the HS i.e., articles of apparel and clothing accessories, not knitted or crocheted.

2.2. Chapter Rule 2 and the subheading rule in Chapter 62 provide that apparel goods of Chapter 62 shall be considered to be US originating goods if they are both cut and sewn or otherwise assembled in Australia or the US.

2.3. Chapter Rule 2 for Chapter 62 allows any of the fabrics outlined in paragraphs (a) to (e) of the rule to be used in the production of apparel of Chapter 62 of the HS provided the good is both cut and sewn or otherwise assembled in Australia or US. Examples of these special fabrics are Harris Tweed, velveteen and corduroy fabrics.

2.4. The subheading rule applies only to goods classified to subheadings 6205.20-6205.30 i.e., men's or boys' shirts of cotton or of man-made fibres. Any of the shirting fabrics outlined in paragraphs (a) to (i), inclusive, of the subheading rule may be used in the production of shirts of these subheadings provided the shirts are both cut and sewn in Australia or the US.

2.5. If goods satisfy all the requirements of section153YI they will be US originating goods and do not have to satisfy the requirements of section 153YH.

Example: Chapter Rule 2

An Australian retailer purchases overcoats from a US producer.

The overcoats are produced from certified Harris Tweed (HS 5111.11) which is imported into the US from England and is therefore a non-originating fabric. The Harris Tweed fabric is cut and sewn in the US and comprises the outer shell of overcoats classified to HS 6201.

Chapter Rule 2 for Chapter 62 determines that the overcoats will be *US originating goods* when imported into Australia because:

- **the overcoats are classified within Chapter 62; and**
- **they were cut and sewn in the US; and**
- **the fabric that formed the outer layer of the overcoat was Harris Tweed; and**
- **Harris Tweed as listed at paragraph (c) of Chapter Rule 2**

Example: Subheading Rule

A US producer imports bleached, plain weave, cotton fabric (average yarn number 140 metric) (HS 5208.21) from China for the cutting, sewing and assembly of men's shirts (HS 6205.20) and women's shirts (HS 6206.30) in its Florida factory.

An Australian distributor imports the finished shirts for sale to retail outlets.

Treatment of the men's shirts:

Upon importation into Australia, these goods will be considered to be US originating goods as they are cut and assembled in the US from fabric of subheading 5208.21.

Paragraph (a) of the Subheading Rule in Chapter 62 is applicable.

<u>Treatment of the women's shirts</u>:

The rule for women's shirts of HS 6206-6210 (Part B of the Schedule 2 tariff table) is:

> **A change to heading 6206 through 6210 from any other chapter, except from heading 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, Chapter 54, or heading 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the US or Australia.**

As the women's shirts are produced from non-originating fabric of tariff heading 5208, the required change in classification <u>has not been satisfied</u>. As such, on importation into Australia, the women's shirts are <u>not</u> US originating goods. Section 153YI does not apply to women's shirts of HS 6206.

Section 6: Treatment of sets

1. Statutory provisions

1.1. Subsection 153YH(5) of the Customs Act sets out the requirements that apply in respect of goods that are clothing or textiles which are, when imported into Australia, put up in a set for retail sale. This provision states:

153YH Goods that are clothing or textiles produced entirely in the US or in the US and Australia from non-originating materials

(1) ……

……

Goods put up in a set for retail sale

(5) *However, if:*

(a) *the goods are put up in a set for retail sale; and*

(b) *the goods are classified in accordance with Rule 3 of the Interpretation Rules;*

the goods **are US originating goods** *only if:*

(c) *all of the goods in the set are US originating goods under this Division; or*

(d) *the total value of the goods in the set that are not US originating goods under this Division does not exceed 10% of the customs value of the set of goods.*

Note: The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153YA(2).

(6) *In applying paragraph (5)(c), assume the goods were not part of a set.*

Example: A skirt and a belt are put up in a set for retail sale. The skirt and the belt have been classified under Rule 3 of the Interpretation Rules according to the tariff classification applicable to the skirts.

The effect of subsection (6) is that the origin of the belt must now be determined according to the tariff classification applicable to belts.

The value of the goods in the set is to be worked out in accordance with the regulations: see subsection 153YA(2).

1.2. Value is defined in subsection 153YA(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.*

1.3. Also relevant is AUSFTA regulation 4.5 which states:

Part 4 Determination of value (Act, subsection 153YA(2))

4.5 Value of goods put up in a set for retail sale

For subsection 153YA (2) and paragraph 153YH (5) (d) of the Act, the value of a good in a set is worked out by reasonably allocating the customs value of the set to each of the goods in the set, ensuring that the value of the goods as allocated is equal to the customs value of the set.

1.4. Reference in section153YH is made to Rule 3 of the General Rules for the Interpretation of Schedule 3 (the Interpretation Rules), which states:

3. When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

2. Policy and Procedure

2.1. The classification of textile articles put up in a set for retail sale is achieved by the application of the Interpretation Rules and the relevant legal notes in the Customs Tariff.

2.2. Subsection 153YH(5) sets out particular origin provisions that apply in relation to clothing and textiles that are put up for retail sale as part of a set and are classified as a set because they comply with Rule 3 of the Interpretative Rules. Such goods are US originating goods only if:

- all of the goods in the set are US originating goods under Division 1C; or
- the total value of the goods in the set that are not US originating goods under Division 1C does not exceed 10% of the customs value of the set of goods.

2.3. Subsection 153YH(6) then provides that in applying subsection (5), it must be assumed that the goods were not part of a set. This means, for example, that in determining whether goods in a set are US originating goods each component of the set is assessed individually.

Example:

A skirt and a belt are put up in a set for retail sale. When imported, the skirt and the belt have been classified under Rule 3 of the Interpretation Rules according to the tariff classification applicable to skirts.

Subsection 153YH(6) directs that each item must be assessed individually to determine if the set is a US originating good.

The origin of the belt must be determined according to the tariff classification of belts, whilst the origin of the skirt must be determined according to the tariff classification of skirts.

If both items are US originating goods, then the set is a US originating good under 153YH(5)(a).

If the belt is a non-originating good, then the set is non-originating unless the customs value of the belt does not exceed 10% of the value of the set (153YH(5)(b)

2.4. For the purpose of 153YH(5)(d), the value of the goods in a set is to be worked out in accordance with AUSFTA regulation 4.5. The value of the goods in the set is to be worked out by reasonably allocating the customs value of the set to each of the goods in the set, ensuring that the value of the goods as allocated is equal to the customs value of the set.

Example:

An Australian importer buys men's shirt and necktie sets from a US supplier in Florida. Both items are woven from cotton fabric and presented as a set packaged for retail sale.

By virtue of Interpretation Rule 3, the goods have been classified to HS 6205 as men's shirts.

In deciding whether the set is a US originating good, 153YH(5) and 153YH(6) are applicable and the shirt and the necktie must be assessed

individually.

If both items are US originating goods, then the set is a US originating good under 153YH(5)(a).

If the tie is a non-originating good, then the set is non-originating unless the value of the tie does not exceed 10% of the customs value of the set (153YH(5)(d).

Treatment of the shirt

The shirts (HS 6205) are cut and sewn by the US supplier from cotton fabric purchased from a second US supplier. The second US supplier has used US carded cotton for the production of yarn which is then woven into fabric. As the shirts are manufactured from cotton wholly grown in the US they are *US originating goods* vide 153YB(2)(k).

Treatment of the tie

The ties (HS 6217) are manufactured by the US supplier from cotton fabric (HS 5208) imported from China.

The product specific rule for ties of HS 6217 is:

> **A change to heading 6213 through 6217 from any other chapter, except from heading 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, Chapter 54, or heading 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is both cut and sewn or otherwise assembled in the US or Australia.**

As the cotton fabric is classified to HS 5208, the ties do not satisfy the required tariff change. As such the ties are not US originating.

Treatment of the set

The set is NOT a US originating good under 153YH(5)(a) as each of the individual components which make up the set is not a US originating good.

The customs value may now be examined to determine if the set is a US originating good under 153YH(5)(d).

For the sake of this example, the customs value for the set, determined in accordance with Division 2 of Part VIII of the Customs Act, is US$47, and the value of the necktie is US$4.

As the total value of the non-originating good (the necktie, with a value US$4) is less than 10% of the customs value of the set (US$47) the shirt and tie set is a US originating good under s153YH(5)(d).

2.5. It should be noted that s153YH(5) applies only to sets that contain textile products covered by Annex 4A of the Agreement as detailed in the Schedule 2 tariff table.

Division 9: Other US originating goods

Section 1: Standard accessories, spare parts and tools

1. Statutory provisions

1.1. Section 153YJ of the Customs Act sets out the requirements that apply in respect of accessories, spare parts and tools imported into Australia with the goods to which they are accessories, spare parts and tools. That provision states:

153YJ 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 US originating goods if:*

(a) the underlying goods are US originating goods;

(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.

(2) In working out if the underlying goods are US originating goods, if the goods must satisfy a regional value content requirement under Subdivision D, 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 153YA(2).

1.2. The interpretation of value is relevant in the above definition. Section 153YA 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.*

1.3. Also relevant are AUSFTA regulations 4.1, 4.2 and 4.3 which state:

Part 4 Determination of value (Act, subsection 153YA(2))

4.1 Definition for Part 4

In this Part:

materials *means originating materials and non-originating materials.*

4.2 Value

(1) For Division 1C of Part VIII of the Act, and these Regulations, the value of materials is to be worked out using the principles set out in the following table.

Item	*Materials*	*Principles*
1	*Materials imported into the US by the producer of goods that are produced using the materials*	*The value is the value (the **US adjusted value**) worked out under Section 402 of the Tariff Act of 1930 of the US, as amended by the Trade Agreements Act of 1979*
2	*Materials:* *(a) acquired by the producer of goods that are produced using the materials; and* *(b) not imported into the US by the producer of the goods*	*The value is the US adjusted value, worked out as if the materials had been imported into the US and as if the producer of goods that are produced using the materials were the importer*
3	*Materials that are self-produced*	*The value is the sum of all costs incurred by the producer of the materials in producing the materials, including:* *(a) the producer's general expenses; and* *(b) an amount for profit that is the equivalent of the amount of profit that the producer would make in respect of the materials in the ordinary course of trade*

(2) If the materials are originating materials, the value of the originating materials may include the costs of the following matters, to the extent that they have not been taken into account under subregulation (1):

(a) freight, insurance, packing, shipping and any other transportation of the materials to the producer:

(i) in the US; or

(ii) between Australia and the US;

(b) duties, taxes and customs brokerage fees on the materials that:

(i) have been paid in either or both of Australia and the US; and

(ii) have not been waived or refunded; and

(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) waste and spoilage resulting from the use of the materials in the production of goods, reduced by the value of renewable scrap or by-products.

(3) If the materials are non-originating materials, the value of the non-originating materials may include the costs of the following matters, to the extent that they have not been taken into account under subregulation (1):

(a) (a) freight, insurance, packing, shipping and any other transportation of the materials to the producer:

(i) in the US; or
(ii) between Australia and the US;

(b) duties, taxes and customs brokerage fees on the materials that:
(i) have been paid in either or both of Australia and the US; and
(ii) have not been waived or refunded; and
(iii) are not refundable or otherwise recoverable;

including any credit against duties or taxes that have been paid or that are payable;

(c) waste and spoilage resulting from the use of the materials in the production of goods, reduced by the value of renewable scrap or by-products;
(d) originating materials that are used in the production of the non-originating materials in the US;
(e) other costs incurred in Australia or the US in the production of the non-originating materials, reduced by the cost of materials used in their production.

4.3 Value of accessories, spare parts or tools

For subsection 153YJ(2) of the Act, if underlying goods mentioned in subsection 153YJ(1) of the Act must satisfy a regional value content requirement under Subdivision D of Division 1C of part VIII of the Act:

(a) in working out the regional value content of the underlying goods:
(i) the value of accessories, spare parts or tools that are imported with the underlying goods and are US originating goods must be included in the value of originating materials used in the production of the underlying goods; and
(ii) the value of accessories, spare parts or tools that are imported with the underlying goods and are not US originating goods must be included in the value of non-originating goods used in the production of the underlying goods; and
(b) the value of accessories, spare parts or tools is to be worked out under regulation 4.2 as if the accessories, spare parts or tools were materials used in the production of underlying goods.

2. Policy and practice

2.1. Section 153YJ 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 US 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.

2.2. 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.

2.3. Subsection 153YJ(2) provides, that when working out if a good is a US 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 taken into account will be as originating or non-originating materials, as the case may be.

2.4. Detailed information regarding RVC is to be found at Section 3 of Division 7 of this Instruction and Guideline.

Example:

A pump originating in the US is sold to an Australian company with rubber suction and discharge hoses made in Taiwan.

The hoses from Taiwan are invoiced and packed with the pump and are customarily sold with pumps of this kind.

Since the pump is US originating, the rubber hoses are considered originating for the purposes of satisfying the required CTC. Their value, however, would have to be counted as non-originating materials in any RVC calculation applicable to the pump.

Section 2: Packaging materials and containers

1. Statutory provisions

1.1. Section 153YK of the Customs Act sets out the requirements that apply in respect of packaging materials and containers when US originating goods are imported into Australia. That provision states:

153YK 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 the Division (with 1 exception).

(2) The exception is that in working out if the goods are US originating goods, if the goods must satisfy a regional value content requirement under Subdivision D, 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 153YA(2).

1.2. Also relevant is AUSFTA regulation 4.4 which, states:

Part 4 Determination of value (Act, subsection 153YA(2))

4.4 Value of packaging materials and containers

For subsection 153YK (2) of the Act, if goods (the relevant goods) mentioned in subsection 153YK (1) of the Act must satisfy a regional value content requirement under Subdivision D of Division 1C of Part VIII of the Act:

(a) in working out the regional value content of the relevant goods:
(i) the value of the packaging materials or container in which the relevant goods are packaged and that are originating goods must be included in the value of originating materials used in the production of the relevant goods; and
(ii) the value of the packaging materials or container in which the relevant goods are packaged and that are non-originating goods 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 materials or container in which the relevant goods are packaged is to be worked out under regulation 4.2 as if the packaging materials or container were materials used in the production of the relevant goods.

2. Policy and practice

2.1. 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.

2.2. If a good is subject to a RVC, the value of the packaging materials and containers must be taken into account as being originating or non-originating, as the case may be, in calculating the RVC of the good.

Example:

Leather footwear (6403) is made in the USA. The shoes are wrapped in tissue paper and packed in cardboard boxes, described with a brand logo, for

retail sale. Both the tissue paper and the cardboard box are of Brazilian origin.

The specific origin criterion for tariff heading 6403:

> **A change to heading 6403 from any other heading outside heading 6401 through 6405, provided that there is a regional value content of not less than 35 percent based on the build-up method or 45 percent based on the build-down method.**

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

Section 3: Consignment provisions

1. Statutory provisions

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

153YL Consignment

(1) Goods are not US originating goods under this Division if:
(a) they are transported through a country or place other than the US or Australia; and
(b) they undergo any process of production, or any other operation, in that country or place (other than unloading, reloading, any operation to preserve them in good condition or any operation that is necessary for them to be transported to Australia).
(2) This section applies despite any other provision in this Division.

2. Policy and practice

2.1. 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.

2.2. An exported good will lose its status as a US originating good if it undergoes any process of production or any other operation en route from the US to Australia. In other words, a partially completed product cannot be completed in a third country following export from the US to Australia.

Example:

Surgical instruments, cotton gowns and bandages, made in the US from US 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 (packing and sterilization) in Singapore that were not necessary to preserve the goods in good condition or to transport them to Australia.

2.3. Section 153YL 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 the US 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.

2.4. The provision recognises that geographical or logistical barriers to direct shipment may occur. The provisions do allow for situations where the goods are shipped to another country for storage not further manufacture, before final shipment to Australia.

Example:

Electronic parts manufactured in the US 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 US originating goods if no production process is performed on these goods while in Singapore except storage.

Division 10: Origin Advice Rulings

Section 1: Provision of binding origin advice rulings

1. Provisions

Articles 6.3 and 6.4 of the Agreement, relating to Customs Administration, provide for advance rulings and appeal and review provisions regarding those rulings, and state:

ARTICLE 6.3: ADVANCE RULINGS

1. *Each Party shall provide for the issuance of written advance rulings to a person described in subparagraph 2(a) concerning tariff classification, questions arising from the application of the Customs Valuation Agreement, country of origin, and the qualification of a good as an originating good under this Agreement.*
2. *Each Party shall adopt or maintain procedures for the issuance of advance rulings that:*
   - *(a) provide that an importer in its territory or an exporter or producer in the territory of the other Party may request such a ruling prior to the importation in question;*
   - *(b) include a detailed description of the information required to process a request for an advance ruling; and*
   - *(c) provide that the advance ruling be based on the facts and circumstances presented by the person requesting the ruling.*
3. *Each Party shall provide that its customs authorities:*
   - *(a) may request, at any time during the course of evaluating a request for an advance ruling, additional information necessary to evaluate the request;*
   - *(b) shall issue the advance ruling expeditiously, and within 120 days after obtaining all necessary information; and*
   - *(c) shall provide an explanation of the reasons for the ruling.*
4. *Subject to paragraph 5, each Party shall apply an advance ruling to importations into its territory beginning on the date of issuance of the ruling or such date as may be specified in the ruling. The treatment provided by the advance ruling shall be applied to all importations regardless of the importer, exporter, or producer involved, provided that the facts and circumstances are identical in all material respects.*
5. *A Party may modify or revoke an advance ruling upon a determination that the ruling was based on an error of fact or law, or where there is a change in law consistent with this Agreement, a material fact, or the circumstances on which the ruling is based. The issuing Party shall postpone the effective date of such modification or revocation for a period of not less than 60 days where the person to whom the ruling was issued has relied in good faith on that ruling.*

ARTICLE 6.4: REVIEW AND APPEAL

1. With respect to determinations relating to customs matters, each Party shall provide that importers in its territory have access to:

(a) at least one level of administrative review of determinations by its customs authorities independent of the official or office responsible for the decision under review; and

(b) judicial review of decisions taken at the final level of administrative review.

2. Policy and practice

2.1. Articles 6.3 and 6.4 of the Agreement allow for importers, exporters and producers of goods to obtain advance rulings from the customs administrations of Australia and US regarding the future importations of goods into each country.

2.2. The Australian Border Force (ABF), on request, provides written advice on origin matters through the provision of an Origin Advice Ruling. Requests for a Ruling should be submitted on the approved form, B178. The Ruling 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.

2.3. 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.

2.4. Requests for a Ruling will be accepted before trade in the good concerned begins.

3. Adequate applications

3.1. A Ruling 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.

3.2. Inadequate applications will be rejected.

4. How to lodge an application

4.1. Applications can be made by completing a Ruling application form which is available electronically on the Department of Immigration and Border Protection's website at www.border.gov.au. This form is also available at

section 2 of this Division. The completed form (together with supporting documentation) should be forwarded to:

National Trade Advice Centre

GPO Box 2809

Melbourne VIC 3001

origin@border.gov.au

4.2. At the time an application is made for a Ruling, the ABF will register the application with a unique Origin Advice Number 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

6.1. It is unrealistic to expect a correct and binding origin advice if inadequate or incomplete information is provided to the 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.

6.2. Section 3 of this Division sets out a guide to the minimum supporting documentation required to accompany an application for US 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

7.1. 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.

7.2. In the course of processing a Ruling, ABF may request, at any time, additional information necessary to evaluate the application.

8. Administrative penalty – indemnity

8.1. From the time of registering an application until the decision of the ABF the applicant will be indemnified from administrative penalty in respect of duty short paid in relation to the claimed issue.

8.2. However, the indemnity ceases when an application is withdrawn or where it is voided because of an inadequacy with the application or supporting documentation.

8.3. The quotation of an Origin Advice Number on entries is optional. Failure to quote this number will not affect the indemnity.

8.4. 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 application or Ruling.

9. Withdrawal of application

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

10. Payment of duty following advice

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

11. Validity of advice

11.1. Advices are valid for all ports in Australia for five (5) years from the date of notification of the advice. After that time the Ruling will be cancelled. If an advice is still required a new application must be made.

11.2. The ABF may cancel or amend a Ruling within its five-year life, where particular circumstances warrant. Such circumstances include, but are not limited to where:

- an amendment is made to the legislation which has relevance to the advice;
- incorrect information was provided to the ABF or relevant information was withheld;
- the ABF decision is changed as a result of legal precedent;
- the facts and conditions of the origin application have changed;
- the ABF has issued conflicting advices.

12. Cancelled or amended advice

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

13. In-transit provisions

Where in-transit provisions apply, the cancelled or amended Ruling 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. Australian Border Force to honour advice

A Ruling is not legally binding on the ABF. However, the ABF will honour a Ruling 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 Ruling from the ABF for an origin issue, they are to be treated as being void and the ABF is to be notified immediately.

16. Appeals against Australian Border Force advice

16.1. Where an ABF decision in a Ruling 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 Section, Trade Branch, Canberra may be requested.

16.2. 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 a Ruling in itself is not a decision, which is reviewable, by the AAT or the Federal Court.

Section 2: Application for origin rulings form

APPLICATION FOR ORIGIN RULING

AUSTRALIA-UNITED STATES 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.

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

APPLICANT	CUSTOMS
1. APPLICANT NAME: **2.** ADDRESS: **3.** ABN: **4.** TELEPHONE NO: **5.** CONTACT NAME:	ADVICE NUMBER DATE LODGED __ __ / __ __ / __ __ (DD / MM / YY)

APPLICANT OR BROKER TO COMPLETE		
6. DOCUMENTATION YES ☐ ☐	**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 ☐ NO ☐		**10.** ADVICE NUMBER
11. SUPPLIER'S CUSTOMS CLIENT ID NUMBER:		**12.** BROKER'S REF:
13. NAME AND ADDRESS OF SUPPLIER: **14.**		
14. BROKER'S NAME:		
15. BROKER COMPANY:	**16.** BROKER ABN:	
17. Signature of BROKER / APPLICANT	DATE: / /	

CUSTOMS			
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 10 of Instructions and Guidelines – AUSFTA, 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 Advice Rulings - information requirements

1. The application

1.1. An Origin Advice Ruling will be issued to importers, exporters or any other person who require a Ruling on goods imported into Australia under the AUSFTA ROO provisions. Division 10 sets out the procedures for lodging a Ruling.

1.2. Requests for a Ruling should be submitted on the approved form, B178.

2. Subject matter of advance rulings

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

- whether a good qualifies as an originating good being wholly obtained or produced in the US;
- whether a good qualifies as an originating good produced entirely in the US or in US and Australia;
- whether imported goods qualify as recovered goods;
- whether non-originating materials used in the production of a good imported into Australia undergo the applicable CTC;
- whether a good satisfies a RVC requirement under the build-down, build-up or net cost method;
- the appropriate basis for determining the value of originating and non-originating materials;
- the application of de minimis provisions for general goods and textiles.

3. Content of application - general

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

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

Goods wholly obtained or produced entirely in the US

Where a good has been obtained or produced entirely in the US or in US and Australia 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.

Change in tariff classification of a material

Where the request for a Ruling 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.

Regional Value Content – Build-Down and Build-Up methods

Where the origin advice involves the issue of whether a good satisfies a RVC requirement under the Build-Down or Build-Up methods, as detailed in Part 2 of the AUSFTA regulations, 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 (Build-Down Method); and
- provide a complete description of each material that is claimed to be an originating material and that is used in the production of the good, including the basis for the claim as to originating status (Build-Up Method).

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 and the non-originating material used to produce those goods;
- 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; and
- in the case of textiles and apparel goods, provide the total weight of the component of the good that determines the tariff classification of the good and the total weight of the good.

Tariff Classification

Where no tariff ruling has been made by the 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 11: Fungible goods and materials

1. Provisions

1.1. There is no Australian legislation in regard to fungible goods and materials. Such goods and materials are defined in Article 5.18 of the Agreement as:

> fungible goods or materials *means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.*

1.2. The treatment of fungible goods and materials is covered by Article 5.7 to the Agreement, which states:

ARTICLE 5.7: FUNGIBLE GOODS AND MATERIALS

1. *Each Party shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material or through the use of any inventory management method, such as averaging, last-in first-out, or first-in first-out, recognized 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.*
2. *Each Party shall provide that an inventory management method selected under paragraph 1 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

2.1. 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.

2.2. 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.

2.3. 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.

2.4. These provisions apply equally to fungible materials that are used in the production of a good.

2.5. 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 US producer of machinery parts are ball bearings. Depending on pricing and supply availability, it may source the ball bearings from within the US, from Mexico, 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 US origin, and on January 17 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 US origin indistinguishable from those sourced from China.

An Australian company places an order on the US 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 US originating, regardless of their actual origin.

Example #2:

Continuing the above scenario, a second Australian company places an order on the same US 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 US originating materials. The remaining 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.

2.6. In considering the origin of fungible goods, if, after applying Article 5.7 of the Agreement, the producer determines that they are US originating goods, they do not need to undergo any transformation.

2.7. Alternately, if the fungible goods used in a production process is non-originating, those fungible goods must undergo the transformation test appropriate for the goods being produced.

RELATED POLICIES AND REFERENCES

Practice Statement – Rules of Origin

Instructions and Guidelines – ANZCERTA

Instructions and Guidelines – Preferential Rules of Origin (general)

Instructions and Guidelines – SAFTA

Instructions and Guidelines – TAFTA

Instructions and Guidelines – ACl-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