

# Rules of Origin in International Trade

STEFANO INAMA



**CAMBRIDGE**  
UNIVERSITY PRESS

# Contents

<i>List of Figures</i>	<i>page</i> xv
<i>List of Tables</i>	xvii
<i>List of Acronyms</i>	xxi
<i>Preface</i>	xxv
1. Efforts to Establish Multilateral Rules	1
1.1. The Concept of “Substantial Transformation” and First Attempts to Define It at the Multilateral Level: The Kyoto Convention of 1973 and 2000	4
1.2. The UNCTAD Working Group on Rules of Origin	9
2. The Uruguay Round Agreement on Rules of Origin: The Harmonization Work Program of Nonpreferential Rules of Origin	17
2.1. The Agreement on Rules of Origin	20
2.2. The HWP and the Method of Work Adopted by the TCRO to Develop HRO	26
2.3. Adapting the HS to Origin: Some Decisive Technical Issues and Their Implications	34
2.3.1. Definition of “Assembly” in Machinery	38
2.3.2. Definition of “Assembly” in Textiles and Clothing	44
2.4. Secondary or Residual Rules of Origin	46
2.5. The Current Status of the Harmonized Nonpreferential Rules of Origin	47
2.5.1. The Architecture	47
2.5.2. The General Rules	50

2.6. Outstanding Product-Specific Issues	71
2.6.1. Fishery Products	72
2.6.2. Slaughtering	74
2.6.3. Dairy Products	75
2.6.4. Coffee Products	76
2.6.5. Refining Fats and Oils	77
2.6.6. Refining Sugar and Sugar Products and Molasses	77
2.6.7. Cocoa Products and Chocolate	78
2.6.8. Juices and Wines	78
2.6.9. Mixtures/Blends	80
2.6.10. Grinding of Spices	81
2.6.11. Cement	81
2.6.12. Chemicals	82
2.6.13. Leather	83
2.6.14. Textiles and Clothing	84
2.6.15. Footwear	86
2.6.16. Coating of Steel Products	87
2.6.17. Machinery and Electronics	88
2.7. The Chairperson's Proposal on Machinery and Electronic Sectors	94
2.8. Trade Policy Implications of the HWP on Rules of Origin and Other WTO Agreements: The Issue of "Equally all Purposes"	102
2.8.1. Negotiating Issues and Proposals on the Implications of HWP on Other WTO Agreements	108
2.8.2. Possible Implications on the Agreement on Implementation of Article VI of the GATT 1994: "Antidumping Agreement"	113
2.8.3. Possible Implications of Article IX of the GATT 1994: Marks of Origin	117
2.8.4. Possible Implications of the Agreement on the Application of Sanitary and Phytosanitary Measures	120
2.8.5. Possible Implications of the ARO on Textiles and Clothing	123
2.8.6. Section 3 of the ARO on Trade-Related Aspects of Intellectual Property Rights: Geographical Indications	125

2.8.7.	Nonpreferential Rules of Origin and Circumvention	126
2.9.	Implementation Issues	136
2.10.	Conclusions	140
3.	Preferential Rules of Origin	174
3.1.	<i>The Current Rules of Origin under the Generalized System of Preferences</i>	177
3.1.1.	“Wholly Obtained” Products	179
3.1.2.	Products with an Import Content	180
3.1.2.1.	Process Criterion	181
3.1.2.2.	Percentage Criterion	183
3.1.2.2.1.	Canada	183
3.1.2.2.2.	United States	184
3.1.2.2.3.	Russian Federation	188
3.1.3.	Preference-Giving Country or Donor Country Content Rule	189
3.1.4.	Cumulative Origin in the GSP Schemes	190
3.1.4.1.	The Difference between Full and Partial Diagonal Cumulation	194
3.1.4.2.	Cumulation under the EC GSP Scheme and EBA	196
3.1.4.3.	<i>Derogation Procedures from Rules of Origin under the EC GSP Scheme</i>	198
3.1.4.4.	Cumulation under the Japanese GSP Scheme	200
3.1.4.5.	Cumulation under the U.S. GSP Scheme	200
3.1.4.6.	Cumulation under the Canadian GSP Scheme	201
3.1.5.	<i>Rules of Origin under Other Unilateral Trade Preferences: AGOA and the Former Cotonou Partnership Agreement and the EPAs</i>	204
3.1.5.1.	African Growth Opportunity Agreement	204
3.1.5.2.	Rules of Origin under the Former Cotonou Partnership Agreement and the Current Interim EPAs	214
3.1.5.3.	The Trade Preferences for ACP from the Former Lomé Conventions Through the CPA and to EPAs	215

3.1.5.4.	Rules of Origin, Cumulation and Derogations Procedures under the Former Cotonou Partnership Agreement	218
3.1.5.5.	Rules of Origin under Interim EPAs and the Cariforum EPAs	224
3.1.5.6.	Recent Proposal by the EC Commission on New GSP Rules of Origin from 2009	231
3.2.	Contractual Rules of Origin in Free-Trade Areas	234
3.2.1.	The EC Pan-European Rules of Origin	235
3.2.2.	The EC Policy on Preferential Rules of Origin: The Progressive Adoption of the Pan-European Rules of Origin	238
3.2.2.1.	The Common Structure of the Pan-European Rules of Origin	240
3.2.2.1.1.	Products Wholly Obtained	240
3.2.2.1.2.	Sufficient Working on Processing – The Product-Specific Rules of Origin under the Pan-European Rules of Origin	243
3.2.2.1.3.	Product-Specific Rules of Origin Requirements Contained in Annex II of the Protocols Pursuant to Article 6 of the Protocol	246
3.2.2.1.4.	Additional Features of the Pan-European Rules of Origin	250
3.2.2.1.5.	Insufficient Working or Processing	254
3.2.2.1.6.	Explanatory Notes on the List of Product-Specific Pan-European Rules of Origin	256
3.2.2.1.7.	Progressive Adoption of the Diagonal Cumulation under the Pan-European Rules of Origin and the Enlargement to the Pan-Euro-Mediterranean Cumulation of Origin	257
3.2.2.1.8.	From Diagonal Cumulation under the Europe Agreements to the System of Euro-Mediterranean Cumulation	259

	3.2.2.1.9. Recent Developments in the EC Rules of Origin	269
3.2.3.	Rules of Origin of North American Free-Trade Agreement	275
3.2.3.1.	The Main Criteria for Determining Origin in NAFTA	279
3.2.3.2.	<i>De Minimis</i>	282
3.2.3.3.	Regional Value Content in NAFTA	287
3.2.3.4.	Some Methodologies and Examples of Calculations under the Net Cost Method	291
3.2.3.5.	Cumulation in NAFTA	304
3.2.3.6.	Other NAFTA Provisions	309
3.2.3.7.	NAFTA Rules of Origin for Textiles and Clothing	316
3.2.3.8.	Automotive Products in NAFTA	320
3.2.3.9.	The Evolution of the NAFTA Model of Rules of Origin: From NAFTA to CAFTA through U.S.-Chile and U.S.-Singapore and Other FTA Agreements	323
3.2.3.10.	A Brief Comparison between the NAFTA Model and the Pan-European Rules of Origin Approaches: Techniques and Substantive Requirements	328
4.	The Economics of Rules of Origin	337
4.1.	The Basic Tenets of Rules of Origin and Economics	337
4.1.1.	Recent Developments on the Analysis of the Economic Effects of Rules of Origin	340
4.1.2.	Most Recent Studies on Economics and Rules of Origin: The Elaboration of an Index of Restrictiveness	345
4.1.3.	Some Preliminary Conclusions on the Status of the Economic Analysis on Rules of Origin	358
4.2.	Assessing the Impact of Rules of Origin: Evidence from the Utilization of Trade Preferences under the Generalized System of Preferences	360
4.2.1.	Linking Low Utilization of Preferences and Rules of Origin: A Methodology	365

5. Drafting Preferential Rules of Origin	389
5.1. Learning Drafting Rules of Origin from the Past: Experience Gained with the Rules of Origin under the GSP	389
5.2. Specific Experiences and Lessons Learned from Drafting and Implementing GSP Rules of Origin	391
5.2.1. The Definition of Two Categories of Products: Wholly Produced and Products that Have Undergone Substantial Transformation	391
5.2.2. Negotiations and Experiences on the Definition of the Wholly Produced Criterion	392
5.2.3. Negotiations and Experiences in Drafting Origin Criteria for the Definition of Substantial Transformation	400
5.2.3.1. An Analysis of the Experiences and Lessons Learned under the Process Criterion	403
5.2.3.1.1. An Analysis of the Specific Requirements Related to Selected Products under the Process Criterion	408
5.2.3.1.2. Early Experience and Difficulties with the Issue of Multistage Operations, Double Jumps, and Double Transformations	411
5.2.3.1.3. Some Examples of Product- Specific Experiences under the Process Criterion	413
5.2.3.1.4. Difficulties Experienced by the Introduction of the Harmonized System and the Single List	422
5.2.3.2. An Analysis of the Experiences and Lessons Learned under the Percentage Criterion	426
5.2.3.2.1. Experiences and Lessons Learned on Different Draftings of the “Percentage Criterion”	429
5.2.3.2.2. Preliminary Conclusions and Lessons Learned from the	

	Different Drafting of the Numerator under the Percentage Criterion	436
5.2.3.2.3.	Preliminary Conclusions and Lessons Learned from the Different Drafting of the Denominator under the Percentage Criterion	443
5.2.3.2.4.	Early Experience and Lessons Learned from Utilizing the Percentage Criterion under the GSP Schemes	444
5.2.3.2.5.	Difficulties in Interpreting the Terminology Used in the Percentage Criterion	447
5.2.4.	Comparisons of Formulations between Percentage and Process Criteria	449
5.2.4.1.	Comparison of Substances between Percentage and Process Criterion	451
5.3.	Learning Drafting Rules of Origin from the Present	456
5.3.1.	Rules of Origin in AFTA and the ASEAN-China Free-Trade Area	456
5.3.2.	The SADC and COMESA Experience	471
5.3.3.	Mercosur Rules of Origin	478
5.4.	Drafting Rules of Origin: Some Lessons Learned and Advice	481
5.4.1.	The Main Actors in Drafting and Administering Rules of Origin	481
5.4.2.	The Main Parameters for Drafting Rules of Origin	486
5.4.2.1.	A Drafting Dilemma: What Are the Good and Bad Rules of Origin and How Should a Good Rules of Origin Be Drafted?	486
5.4.2.2.	Defining the Index of Technical Soundness	488
5.4.2.3.	Suggestions on Defining the Index of Technical Soundness	494
5.4.3.	Defining the Index of Restrictiveness When Drafting Product-Specific Rules of Origin: A Methodology Used in Different Scenarios	500



5.4.3.1.	The Experience with the EC GSP Rules of Origin	503
5.4.3.2.	The SADC Experience	505
5.4.3.3.	The ASEAN-China Free-Trade Experience	507
5.4.3.4.	Negotiating Product-Specific Rules of Origin in the Context of the Economic Partnership Agreements	508
6.	The Administration of Rules of Origin	530
6.1.	The Administration of GSP Rules of Origin	531
6.1.1.	Issuance of Certificate of Origin Form A or Declaration by Exporter or Importer	531
6.1.2.	Direct Consignment	534
6.1.3.	Arrangements for Administrative Cooperation	537
6.2.	The Experience of the United States on Administering Origin	538
6.2.1.	Customs Procedures and Enforcement under AGOA for Textiles and Clothing Products	539
6.2.2.	The Administration of NAFTA Rules of Origin	542
6.2.3.	From NAFTA to the U.S.-Chile Agreement	545
6.3.	The EC Experience in Administering Rules of Origin	549
6.3.1.	Procedure for the Issuance of Certificates of Origin EUR.I and EUR-MED	553
6.3.2.	Optional Use of Form EUR and EUR-MED and Mandatory Use of Form EUR.I or EUR-MED	555
6.3.3.	Simplified Procedures for the Issuance of Certificates of Origin: Approved Exporters	558
6.3.4.	Supplier Declarations	562
6.3.5.	Documentary Evidence for the Issuance of Certificates of Origin	563
6.3.6.	Verification of Proofs of Origin	565
6.3.7.	Issuance of Certificate of Origin for Cumulation under the Pan-European Rules of Origin, GSP, Regional Cumulation, and Cotonou Partnership Agreement	568
6.3.7.1.	Procedure for the Issuance of Certificates of Origin for Cumulation under EC GSP Rules of Origin	568

6.3.7.2.	Procedure for Issuance of Certificates of Origin for Cumulation under the Former Cotonou Partnership Agreement	570
6.3.8.	The Procedure and Decision Making in the Case of A <i>Posteriori</i> Recovery or Remission of Customs Duties and Origin Verification in the EC	572
6.3.8.1.	The Procedure for Nonrecovery of Customs Duties after Clearance	573
6.3.9.	The Future of the EC Rules of Origin: The Green Paper on the Future of Rules of Origin in Preferential Arrangements and Recent Developments	574
6.3.10.	Recent Developments Following the Green Paper	579
6.3.11.	Origin Administration and Customs Cooperation in the EC	582
6.3.12.	Experience of OLAF on Origin Investigation	587
6.3.13.	An Overview of EC Judicial Remedies in Matters Related to Origin and Verification Requirements	593
	<i>Index</i>	607