

Origin and Certification Workshop



**The Socialist Republic of
Vietnam**

December 05, 2012

Cathy Zimmerman



Vietnam Imports Today

Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

While the requirement of substantial transformation is universally recognized, some governments apply the criterion of change of tariff classification, others the ad valorem percentage criterion and yet others the criterion of manufacturing or processing operation.



Vietnam Imports Today

- Non-preferential rules of origin schemes employ the “wholly obtained” criterion for goods that are wholly the growth, product or manufacture of a particular country.
- And, the “substantial transformation” criterion for goods that consist in whole or in part of materials from more than one country.
 - Determinations are on a case-by-case bases
 - Can be subjective and less transparent



Vietnam Imports Today

- Generally speaking for textiles:
- Where the apparel is assembled/sewn or knit to shape
- Table cloths and sheets are where the fabric was knit or woven
- Refer to www.cbp.gov:

What Every Member of the Trade Should Know About Textile and Apparel Rules of Origin

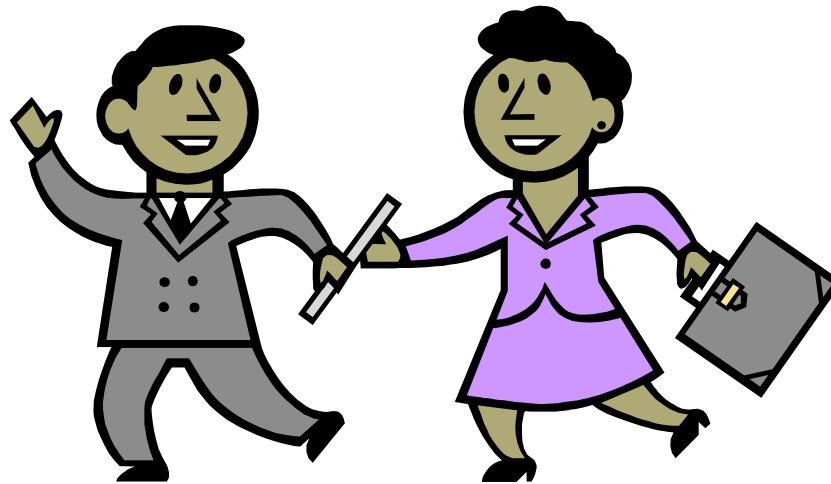


Substantial Transformation

- The substantial transformation rule states that merchandise originates from the country in which it last changed its name, character, or use.
- Was there a change in character or use of the good or components in the last country of manufacture?
- Was the process performed in this country complex or meaningful?



Transition to an FTA with Vietnam



FTA Basic Guidelines

- Determine your product's tariff classification.
- Determine whether there is an advantage to claiming preferential treatment.
- Identify the Rule of Origin under the TPP or other Trade Agreement
- Determine Origin
- Keep Records



Rules of Origin Fundamentals

- Knowing the correct Harmonized Tariff Code classification of a product is **CRITICAL** to determining the requirements for obtaining preferential duty treatment under the Trans-Pacific Partnership.
- The market access section of the agreement will articulate the preferential rules and corresponding requirements and these are driven by the classification of the product.

Harmonized Tariff Schedule of the United States (2011)
Annotated for Statistical Reporting Purposes

Heading Subheading	Stat. Suf. fx	Article Description	Unit of Quantity	Rates of Duty		
				General	Special	
6001		Pile fabrics, including "long pile" fabrics and terry fabrics, knitted or crocheted:				
6001.10		"Long pile" fabrics:				
6001.10.20	00	Of man-made fibers (224)	m ² kg	17.2%	Free (BH, CA, CL, IL, JO, MA, MX, P, PE, SG) 3% (AU) 6.8% (OM)	79.5%
6001.10.00	00	Other (224)	m ² kg	0%	Free (BH, CA, CL, E, IL, JO, MA, MX, P, PE, SG) 3% (AU) 3.6% (OM)	40%
6001.21		Looped pile fabrics:				
6001.21.00	00	Of cotton (224)	m ² kg	9.8%	Free (BH, CA, CL, IL, JO, MA, MX, P, PE, SG) 8% (AU) 3.9% (OM)	40%
6001.22		Of man-made fibers (224)	m ² kg	17.2%	Free (BH, CA, CL, IL, JO, MA, MX, P, PE, SG) 3% (AU) 6.8% (OM)	79.5%
6001.29		Of other textile materials (414)	kg	7%	Free (BH, CA, CL, E, IL, JO, MA, MX, P, PE, SG) 3% (AU) 2.8% (OM)	61.5%



Preferential Rules of Origin

- Rules of Origin schemes set forth in the General Notes of the U.S. Harmonized Tariff Schedule.
- Employ the “wholly obtained” criterion for goods that are the wholly the growth, product, or manufacture of a particular country.
- When consisting of materials from more than one country, use preferential rules of origin which incorporate the concept of substantial transformation and/or a required minimum regional value content.



Rules of Origin

- A good wholly obtained or produced entirely in the territory of one or both of the Parties;
 - produced entirely in the territory of one or both of the Parties and
 - each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification;
 - the good otherwise satisfies any applicable regional value content or other requirements specified in the agreement and the good satisfies all other applicable requirements of the rules of origin;
 - produced entirely in the territory of one or both of the Parties exclusively from originating materials.

Let's explain!



Rules of Origin

- Goods wholly obtained or produced entirely in the territory of one or both of the Parties;
 - Examples:
 - Plants and plant products that are grown and harvested in the territory of one or more of the Parties.
 - Live animals born and raised in the territory of the parties.
 - Fish, shellfish taken from the sea outside the territory of the Parties by vessels registered with a party and flying its flag.



Rules of Origin

- A good wholly obtained or produced entirely in the territory of one or both of the Parties;
 - each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification;
 - the good otherwise satisfies any applicable regional value content or other requirements specified in the agreement and the good satisfies all other applicable requirements of the rules of origin;
 - produced entirely in the territory of one or both of the Parties exclusively from originating materials.

Let's explain!



Rules of Origin-Tariff Shift Rule Variations

- A change to heading ****from any other chapter**
- A change to heading****from any other heading****
- A change to heading****through****from any heading outside that group
- A change to heading****through****from any heading****outside that group except from ****
- It is not possible to just “guess” the terms of the tariff shift rules



Rules of Origin

- (1) Tariff Shift:
Tariff shift rules may vary in different FTAs.

0904.11 – 0910.99 A change to crushed, ground, or powdered spices put up for retail sale of subheading 0904.11 through 0910.99 from spices that are not crushed, ground, or powdered of subheading 0904.11 through 0910.99, or from any other subheading, except from subheading 0910.10; or A change to mixtures of spices or any good of subheading 0904.11 through 0910.99 other than crushed, ground, or powdered spices put up for retail sale from any other subheading, except from subheading 0910.10.

- (2) Tariff Shift +
Regional Value Content (RVC)

Chapter 40 Rubber and Articles Thereof

4001.10 – 4001.30 A change to subheading 4001.10 through 4001.30 from any other chapter; or

A change to subheading 4001.10 through 4001.30 from any other subheading provided there is a regional value content of not less than 30 percent when the build-down method is used.

- (3) RVC Only

7324.10 – 7324.29 A change to subheading 7324.10 through 7324.29 from any other heading; or

No change in tariff classification is required provided that there is a regional value content of not less than:

(a) 35 percent when the build-up method is used, or

(b) 45 percent when the build-down method is used.



Rules of Origin

- (1) Tariff Shift:
Tariff shift rules may vary in different FTAs.

0904.11 – 0910.99 A change to crushed, ground, or powdered spices put up for retail sale of subheading 0904.11 through 0910.99 from spices that are not crushed, ground, or powdered of subheading 0904.11 through 0910.99, or from any other subheading, except from subheading 0910.10; or
A change to mixtures of spices or any good of subheading 0904.11 through 0910.99 other than crushed, ground, or powdered spices put up for retail sale from any other subheading, except from subheading 0910.10.



Rules of Origin

Tariff Shift

- Must know the harmonized code for both the finished good and the component foreign materials that go into the production of a good.
- Candy Corn made in Vietnam with sugar from Costa Rica.



Does the Candy Corn Originate in Vietnam and is it entitled to preference upon entry into the U.S.?



- Classification of Candy Corn in heading:1704 (imported good)
- Classification of foreign materials (cane sugar):1701
- Tariff Shift rule for Candy Corn of 1704:
- A Change to heading 1704 from any other heading.

Does the Candy Corn Originate?



Does the Candy Corn Originate in Vietnam and is it entitled to preference upon entry into the U.S.?



Does the Candy Corn Originate?



Rules of Origin

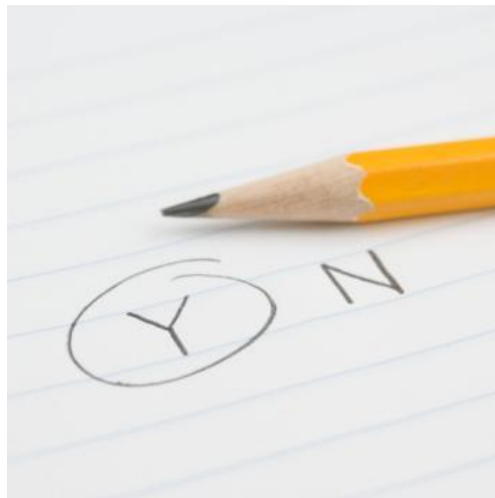
- 9403.50.40—Wooden Furniture used in the bedroom.
- Made with lumber from Indonesia (HS 4403.20)



Rules of Origin

Korea FTA

- 9403--
Wooden furniture of a kind used in the bedroom
- A change to 9403 from any other heading other than heading 9403



Rules of Origin Singapore FTA

- 940350 --
Wooden furniture of a
kind used in the
bedroom
- Change to subheading
940350 from any other
subheading except from
subheadings 940110
through 940180, 940310
through 940380 and except
from subheadings 940190
or 940390 when that
change is pursuant to
General Rule of
Interpretation 2(a).



Rules of Origin

- (2) Tariff Shift + Regional Value Content (RVC)
- (3) RVC Only

**Chapter 40 Rubber and Articles Thereof
4001.10 – 4001.30 A change to subheading
4001.10 through 4001.30 from any other
chapter; or**

**A change to subheading 4001.10 through
4001.30 from any other subheading
provided there is a regional value content of
not less than 30 percent when the build-
down method is used.**

**7324.10 – 7324.29 A change to subheading
7324.10 through 7324.29 from any other
heading; or**

**No change in tariff classification is required
provided that there is a regional value content
of not less than:**

**(a) 35 percent when the build-up
method is used, or**

**(b) 45 percent when the build-down
method is used.**



Principles of Origin for Textiles and Apparel



As used in Free Trade
Agreements



U.S. Rules of Origin Textiles

- Test #1 (Country of Origin)
 - Apparel: Where the assembly (sewing or knit-to-shape) occurs.
 - Fabric: Where the weaving or knitting occurs.
 - Yarn: Where the spinning or extrusion occurs.



Downloaded by BTJ Trade.com



Rules of Origin Textiles

- Test #2 (Preference under the Agreement)
- Yarn forward rule of origin:
 - The yarn and fabric must meet the beneficiary country of origin (Vietnam and the United States) requirements.
 - The apparel must be assembled or knit-to-shape in the beneficiary country--Vietnam.



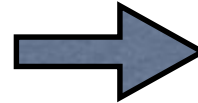
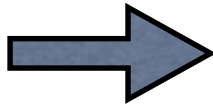
Rules of Origin Textiles

Tariff-shift rule



- 5205 Cotton Yarn

»6003 Cotton Fabric



6105 Mens/boys Knit Cotton Shirts

There is no value based rule for textiles
Regional value content may apply to other products, e.g. automobiles
De minimus for textiles is chief weight of fiber, e.g. cotton, wool, man-made fiber.



Textile or Apparel Product



- Any good classifiable in Chapters 50 through 63 of the Harmonized System



Other FTA Issues

- Packaging
- De minimis
- Accumulation
- 3rd Country Transportation



Import Process and Certification



USAID
FROM THE AMERICAN PEOPLE

Importing Basics

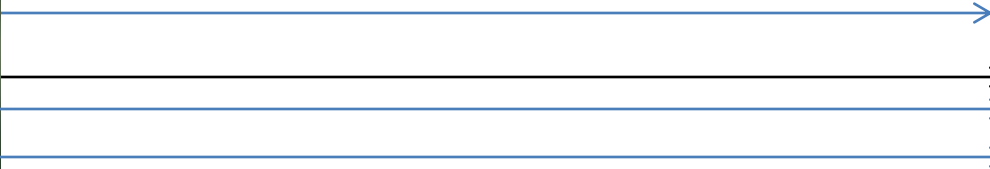
- ❖ Prior to Lading/Lading
- ❖ Cargo Entry
- ❖ Cargo Release (conditional release)
- ❖ Entry Summary
- ❖ Post Summary activities



Importing Basics



Data Data Data Data



Importing Basics

- ✓ **Multiple parties in a transaction**

Carriers, consolidators, warehouse proprietors, port operators, importers, brokers, freight forwarders

- ✓ **Bonds Bonds Bonds Bonds**

Carrier, importer, warehouse, broker

- ✓ **Expedite shipments**

CSI Port, C-TPAT member

ISA member, Other Agency Requirements



Other Agencies and their Impact

Agencies whose laws disallow the release of cargo:

- Food And Drug Administration-Bio-Terrorism Act –Provides for advance information to FDA
- Food Safety Inspection Service—Meat, Poultry and Eggs
- United States Department of Agriculture—Wood Packaging Material



Other Agencies and their Impact

Agencies whose laws allow release of goods conditionally from Customs Custody:

- Food And Drug Administration-Food, Drugs and Cosmetics
- Consumer Products Safety Commission— consumer products including toys, candles, children’s sleepwear
- United States Department of Agriculture— Lacey Act



Certificate of Origin

- In the United States, absent unusual circumstances, in order to facilitate legitimate trade, no certificate/form attesting to trade preference is required at the time the goods are released from Customs custody. And in fact they are maintained in the importer's possession until requested by Customs.



Certificate of Origin

- Good for 3 years
- May contain multiple products
- May span a period of up to 1 year
- Customs may waive the Certificate of Origin in specific circumstances
- Customs does not require the Certificate of Origin for merchandise valued under \$1,000 but requires a statement on the invoice declaring that the goods qualify for preferential treatment



Verification of FTA Claims

- 2. After review of the Certificate of Origin, Customs may conduct a verification of origin primarily through:
 - Requests for information and
 - Verification Visits to the importer/exporter

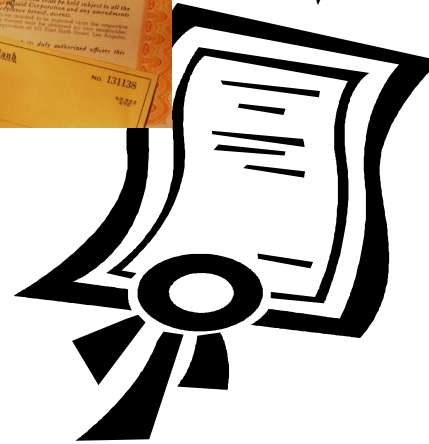
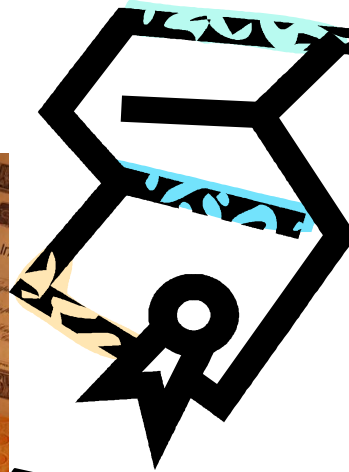
Verification of claims using preference criteria “B” regional value content or complex origin claims are conducted by Customs Regulatory Auditors.

With the limited exception of our commercial trade partners, Customs can verify any shipment including those where no certificate of origin is required. In certain circumstances Customs is required to conduct verifications (random/trade strategy).



Certifications/Certifications

Many Shapes and Sizes



USAID
FROM THE AMERICAN PEOPLE



Exporting Country Competent Authority Certification



- The Generalized System of Preferences is a trade agreement utilizing an exporting country's competent authority certification to certify origin.
- All trade agreements in the U.S. since the North American Free Trade Agreements (NAFTA) to include the NAFTA use either exporter or importer certifications of origin.



U.S. preferred method to certify that a good is entitled to preferential treatment

Importer Certification
with no prescribed form used for certification.



Importer Certification

- The exporter, producer, foreign government entity does not know what the importer will declare to CBP upon making entry at the U.S. port of entry.
- The certificate is basically a declaration by the importer that the good is originating.



Importer Certification

- The importer is the entity that should be knowledgeable about the sourcing of components and final product that is imported and therefore the country of origin and preference.
- There have been innumerable instances where certificates issued by foreign governments and exporters have been counterfeited.
- Many foreign governments issuing certificates of origin do not perform verification and validation of the shipment that is being exported.



Importer Certification

- CBP does not require the certificate as part of the cargo release or entry process. It must be provided by the importer upon Customs request only.
- The collection of forms at the time of release or at the time that duties and taxes are paid is viewed as non-facilitative and an impediment to international trade.



Importer Certification

- Information Required on Certification (no prescribed format)
 - Name of certifying person
 - Importer
 - Exporter
 - Producer
 - Tariff classification and a description of the good
 - Information demonstrating the good is originating
 - Date of certification
 - Period of blanket certification



“Model” Certification (CAFTA-DR)

Certificate of Origin – CAFTA - DR Instructions

For purposes of obtaining preferential tariff treatment, this document must be completed legibly and in full by the exporter and be in the possession of the importer at the time the declaration is made. This document may also be completed voluntarily by the producer for use by the exporter. Please print or type:

- EXPORTER** State the full legal name, address (including country) and legal tax identification number of the exporter.
 - BLANKET PERIOD** Complete field if the Certificate covers multiple shipments of identical goods as described in Field 5 that are imported into a CAFTA-DR country for a specified period of up to one year (blanket period). “FROM” is the date upon which the Certificate becomes applicable to the good covered by the blanket Certificate (it may be prior to the date of signing this Certificate). “TO” is the date upon which the blanket period expires. The importation of a good for which preferential tariff treatment is claimed based on this Certificate must occur between these dates.
 - PRODUCER** State the full legal name, address (including country) and legal tax identification number, as defined in Field 1, of the producer. If more than one producer’s good is included on the Certificate, attach a list of the additional producers, including the legal name, address (including country) and legal tax identification number, cross referenced to the good described in Field 5. If you wish this information to be confidential, it is acceptable to state “Available to Customs upon request.” If the producer and the exporter are the same, complete field with “SAME.” If the producer is unknown, it is acceptable to state “UNKNOWN.”
 - IMPORTER** — State the full legal name, address (including country, and legal tax identification number, if known, of the importer. If the importer is not known, state “UNKNOWN.” If multiple importers, state “VARIOUS.” This field may be left blank and completed by the importer itself at time certificate is presented to its customs service.
 - DESCRIPTION OF GOODS** Provide a full description of each good. The description should be sufficient to relate it to the invoice description and to the Harmonized System (H.S.) description of the good. If the Certificate covers a single shipment of a good, include the invoice number as shown on the commercial invoice. If not known, indicate another unique reference number, such as the shipping order number.
 - TARIFF CLASSIFICATION** For each good described in Field 5, identify the H.S. tariff classification to six digits. If the good is subject to a specific rule of origin in Annex 4.1 that requires eight digits, identify to eight digits, using the H.S. tariff classification of the country into whose territory the good is imported.
 - PREFERENCE CRITERION** For each good described in Field 5, state which criterion (A through C) is applicable. The rules of origin are contained in Chapter Four and Annex 4.1.
- NOTE:** In order to be entitled to preferential tariff treatment, each good must meet one of the criteria below.
- A.** The good is “wholly obtained or produced entirely” in the territory of one or more of the CAFTA-DR countries, as referred to in Article 4.22. **NOTE:** The purchase of a good in the territory does not necessarily render it “wholly obtained or produced.”

- The good is produced entirely in the territory of one or more of the CAFTA-DR countries and satisfies the specific rule of origin, set out in Annex 4.1, that applies to its tariff classification. The rule may include a tariff classification change, regional value content requirement, or a combination thereof. The good must also satisfy all other applicable requirements of Chapter Four.
- The good is produced entirely in the territory of one or more of the CAFTA-DR countries exclusively from originating materials. Under this criterion, one or more of the materials may not fall within the definition of “wholly produced or obtained,” as set out in Article 4.22. All materials used in the production of the good must qualify as “originating” by meeting the rules of Article 4.1.
- PRODUCER** For each good described in Field 5, state “YES” if you are the producer of the good. If you are not the producer of the good, state “NO” followed by (1), (2) or (3), depending on whether the certificate was based upon: (1) your knowledge of whether the good qualifies as an originating good; (2) your reliance on the producer’s written representation (other than a Certificate of Origin) that the good qualifies as an originating good; or (3) a completed and signed Certificate for the good, voluntarily provided to the exporter by the producer.
- REGIONAL VALUE CONTENT (VCR/RVC)** For each good described in Field 5, where the good is subject to a regional value content (RVC) requirement, indicate “YES” if the RVC is calculated to determine that the good is originating; otherwise, indicate “NO.”
- COUNTRY OF ORIGIN** Identify the name of the country using the ISO 3166-1 alpha-3 code: United States=USA, Costa Rica=CRI, Dominican Republic=DOM, El Salvador=SLV, Guatemala=GTM, Honduras=HND, Nicaragua=NIC
- CERTIFICATION** This field must be completed, signed and dated by the exporter. When the Certificate is completed by the producer for use by the exporter, it must be completed, signed and dated by the producer. The date must be the date the Certificate was completed and signed.

Estados Unidos / CAFTA-DR Tratado de Libre Comercio Certificado de Origen United States / CAFTA-DR Free Trade Agreement Certificate of Origin										
1. Nombre y Domicilio del Exportador (Exporter Name and Address) 1			2. Periodo que cubre (Blanket Period) DOMMY 2 De (From): D D M M A A A A (to): D D M M A A A A							
Número de Registro Fiscal (Tax I.D. Number)			Número de Registro Fiscal (Tax I.D. Number)							
3. Nombre y Domicilio del Productor (Producer Name and Address) 3			4. Nombre y Domicilio del Importador (Importer Name and Address) 4							
Número de Registro Fiscal (Tax I.D. Number)			Número de Registro Fiscal (Tax I.D. Number)							
5. Descripción del (los) bien(es) (Description of Good(s)) 5			6. Clasificación Arancelaria (Tariff Classification) 6		7. Criterio para trato preferencial (Preference Criterion) 7	8. Productor (Producer) 8	9. VCR (RVC) 9	10. País de Origen (Country of Origin) 10		
SAMPLE										
Declaro bajo protesta de decir verdad que (I Certify that): <ul style="list-style-type: none"> La información contenida en este documento es verdadera y exacta, y me hago responsable de comprobar lo aquí declarado. Estoy consciente que seré responsable por cualquier declaración falsa u omisión hecha en o relacionada con el presente documento (The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document). Me comprometo a completar y presentar, en caso de ser requerido, los documentos necesarios que respalden el contenido del presente certificado, así como a notificar por escrito a todas las personas a quienes entregue el presente certificado, de cualquier cambio que pudiera afectar la exactitud o validez del mismo si agree to maintain, and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that would affect the accuracy or validity of this certificate). Los bienes son originarios del territorio de uno o más de las partes, y cumplen con los requisitos de origen que les son aplicables conforme al Tratado de Libre Comercio, no han sido objeto de procesamiento ulterior o de cualquier otra operación fuera de los territorios de las Partes, salvo en los casos permitidos en el artículo 4.1 o en el Anexo 4.1. (The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the North American Free Trade Agreement, and, unless specifically exempted in Article 4.1 or Annex 4.1, there has been no further production or any other operation outside the territories of the parties; and El certificado se compone de _____ hojas, incluyendo todos sus anexos (This certificate consists of _____ pages, including all attachments) 										
11. Firma Autorizada (Authorized Signature) 11			Empresa (Exporter/Producer)							
Nombre (Name):			Cargo (Title):							
Fecha (Date): D D M M A A A A			Teléfono (Telephone):			Facsímil (Fax):				
Form No. 19-383 Printed and Sold by UNZCO (800) 631-3098 • www.unzco.org Forma No. 19-383 Impreso y Vendido por UNZCO										



Certificate of Origin Non-Compliance Challenges and Issues

- Belief that if a product is purchased in a country it is a product of that country
- Failure to understand how the certificate of origin will be used
- Producers afraid to identify their suppliers for fear of being cut out of the supply chain



Certificate of Origin Non-Compliance Challenges and Issues

- Exporter or producer's lack of understanding of the Rules of Origin
- Inability to use/understand the Harmonized Tariff System to classify goods and materials
- Insufficient information from producer of materials to be able to determine classification and/or regional value content



Issues: Exporter completed Certificate of Origin

- Penalties are issued against a bond posted by the importer so with exporter generated certificates of origin such as with NAFTA, Customs cannot issue a penalty against the exporter. All Customs can do is deny the claim for preferential trade made by the importer and issue penalties against the importer if applicable.



Transshipment

- U.S. Customs and Border Protection has a clear mandate from Congress to strengthen the fight against the illegal transshipment of textile and apparel goods into the United States.
- The federal government has designed a comprehensive anti-transshipment enforcement strategy that incorporates robust domestic and international elements.
- CBP regularly sends Textile Production Verification Teams (Jump Teams) to audit apparel factories in high-risk countries, primarily Asian nations, free trade agreement partners and preferential trade program beneficiaries.
- Strong anti-transshipment language has been included in every FTA and every preferential trade program the U.S. has signed in recent history to prevent countries that are not members or beneficiaries of those arrangements from illegally benefiting from the preferential duty access they afford.



Vietnam Risk

- Once the TPP is enacted Vietnam will be considered a high-risk location for textile shipments:
 - Shipping patterns from China through the Vietnamese border areas allow ease of goods to move through Vietnam and unscrupulous operators will take advantage of this.



Thank you



USAID
FROM THE AMERICAN PEOPLE

