

# TRANS-PACIFIC PARTNERSHIP AGREEMENT (TPPA)

## 跨太平洋伙伴关系协定（跨协）

### Rules of Origin and Origin Procedures

原产地规则和原产地程序

In collaboration with:  
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# Rules of Origin

## Introduction

Rules of origin (ROO) are a key component of any free trade agreements (FTAs). Only goods that are considered originating from the FTA parties are eligible to receive preferential treatment. Similarly, TPP's Rules of Origin and Origin Procedures illustrated in Chapter 3 provides the rules for defining what it means for a product to be originating from TPP countries; to be classified as TPP goods, and therefore be afforded preferential tariff treatment under the TPPA.

The increasing number of preferential trading (bilateral and regional arrangements) have lead to more complexities in import and export. It is no longer easy to determine exactly where a product comes from because in practice, the inputs and raw materials used could be sourced from multiple countries. Furthermore, these inputs are transformed in different processing plants to make into a variety of products.

Therefore, clear and common set of rules on origin shall be administered to ensure all businesses and SMEs in TPP countries can operate easily across the region while drawing intermediary inputs from TPP countries, regional sources or any other sources, in making their product 'originating' and qualify for preferential treatment.

## Rules of Origin as Trade Measure

Rules of Origin (RoO) is not a trade instrument, but can be used as a measure to address national and international policies, i.e.

- to give preference to products from developing countries or from beneficiary countries;
- to protect local industry and to administer "buy national" policies;
- to control access to the domestic market by foreign exporters; and
- As safeguard to health, environment, food safety and national security.

## Definition of Originating Goods

Under the TPP agreement, there are three (3) basic criteria to determine a TPP good, or as being "made in the TP".

1. Wholly obtained or produced entirely in one or more Parties.
2. Produced entirely in the territory of one or more Parties, exclusively from originating materials.
3. Produced entirely in the territory of one or more of the Parties, using non-originating materials provided the good satisfies all applicable requirements of Product-Specific Rules of Origin (PSR).

### Wholly Obtained

Wholly obtained goods include natural products comprising of natural resources and minerals; plants grown and harvested in a country; and live animals bred, fished or captured.

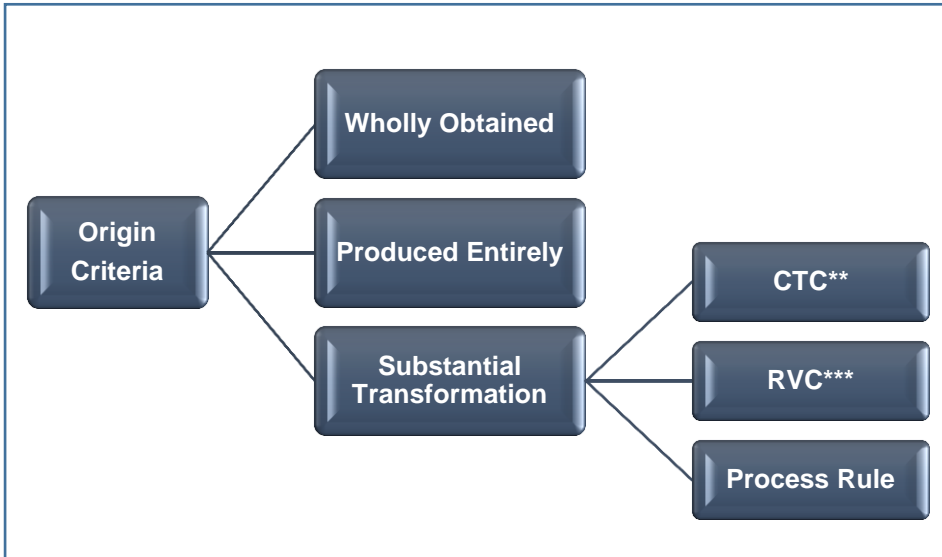
### Wholly Produced

The definition of wholly produced also covers goods produced from originating materials; or from scrap and waste derived from production operations or from used goods of exporting country.

### Substantial Transformation

Goods produced using non-originating materials will have to undergo substantial transformation in a country before being qualified as originating. Product-Specific Rules of Origin (PSR) is used to determine the change.

# Origin-Determining Criteria



Note:

\* Goods produced using non-originating materials will have to undergo substantial transformation. Non-originating materials include materials or components imported from a non-TPPA signatory, or materials produced in a TPP party containing high level of inputs that do not meet the rule of origin.

\*\* CTC – Change in Tariff Classification

\*\*\* RVC – Regional Value Content

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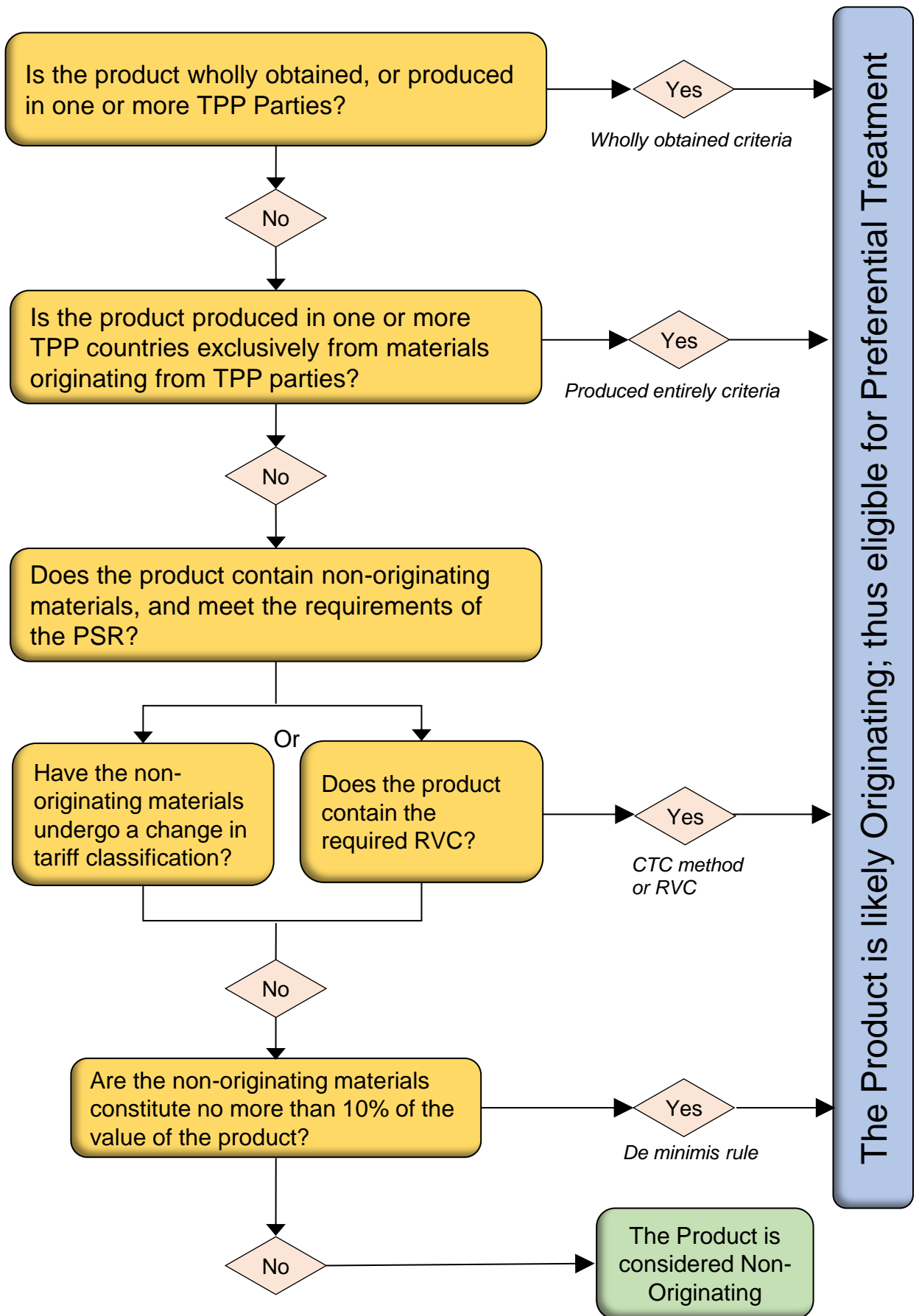
## Substantial Transformation

- When imported inputs are used to manufacture a finished product, the rules of origin require these non-originating materials to be sufficiently processed to be considered as originating in the beneficiary country.
- TPPA provides specific rule of origin for every good that incorporates non-originating materials. Product Specific Rules of Origin (PSR) is used to determine the substantial transformation in the exporting TPP country before the good produced is eligible for the preferential treatment.
- Generally, the TPP agreement allows a maximum 10% de minimis content (based on Customs value of the good) for non-originating materials.

## Product-Specific Rules (PSR)

- Product Specific Rules of Origin (PSR) defines the limits the amount of non-TPP materials that can be used; or if such materials have been substantially transformed into a TPP good before being eligible to receive preferential import duties.
- Broadly, 3 criteria are used for non-originating materials used in the production of a good under Annex 3-D, Section A, 2(a):
  - (i) Change in Tariff Classification (CTC); or
  - (ii) Regional Value Content (RVC); or
  - (iii) Production Process Rule
- The product-specific rules of origin for textile or apparel goods are dealt separately in Chapter 4 and Annex 4-A. For certain vehicles and parts of vehicle, a separate PSR methodology is applied as contained in Appendix 1 to Annex 3-D

# Flow Chart to Determine the Origin Status



# Concept of Accumulation / Cummulation

## Article 3.10 Accumulation

- The concept of "accumulation" in the Rules of Origin enable member countries of a preferential trade agreement to share production and jointly comply with the relevant rules of origin provisions.
- This means that the products of one member of TPPA can be further processed or value-added in another member country, and be treated as though the product had originated in the latter country, provided that the good satisfied the requirement of the rules of origin in the TPP agreement.



## Advantages and drawbacks

- Through the concept of accumulation, production may be aggregated with other countries' inputs. For example, the raw materials from Vietnam can be further processed or value-add in Malaysia, and the final product can be treated as if originated from Malaysia.
- This provision essentially encourage and provide flexibility to producers of TPP members in sourcing and using inputs originating from partner countries. This represent a key opportunity for a member country to develop and enhance chains of manufacture and assembly across multiple countries, foster diversification and attract foreign direct investments to enhance regional integration amongst the TPP members.
- The drawback of this TPP accumulation rule is it may impact member countries that have establish important integration with other countries which are non-party to TPP.
- For instance the yarn forward rule may seen to be deliberately "exclude" outside parties rather than liberalization trade. Such rule may restrict TPP members to create the best supply chain for the sake of upholding the TPP agenda.

Some of these long-established supply chains with non-TPP countries may be difficult to separate, hence neutralizing the potential benefits of TPP.

# CTC or RVC Requirement for Non-Originating Materials

## Change in Tariff Classification (CTC)

- The CTC requirement known as tariff-shift rule is similar to other free trade agreements (FTAs). The CTC includes change in chapter, heading or sub-heading.
- Products are identified by harmonized coding system known as Harmonized System (HS), which usually consist of six-digit numbers. These number can be further subdivided into eight digits or more. The first 2-digit indicates the Chapter; first 4-digit is the Heading; 6-digit is the sub-heading.
- Producers or exporters need to know the HS classification of the exporting product, and the HS classification of any non-originating materials.

## Regional Value Content Requirement

- Regional value content is used to determine whether a good is originating from one member country or more Parties.
- An imported good is considered originating when the value-addition have taken place, and meet the minimum level predetermined.
- RVC can be calculated in four (4) methods as follows, but whichever formula is applied is specified under the product Subheading defined in Annex 3-D Section B.

Method	Regional Value Content (RVC), %
1. Focused Value Method (FVNM)	$RVC = \frac{\text{Value of the Good} - FVNM}{\text{Value of the Good}} \times 100$
2. Build-down Method: Value of Non-Originating Materials (VNM)	$RVC = \frac{\text{Value of the Good} - VNM}{\text{Value of the Good}} \times 100$
3. Build-down Method: Value of Originating Materials (VOM)	$RVC = \frac{VOM}{\text{Value of the Good}} \times 100$
4. Net Cost Method (for Automotive Goods Only)	$RVC = \frac{NC - VNM}{NC} \times 100$

### Note:

- For material imported by the producer of the good, the value of the material includes transaction value at the time of importation such as international shipping costs.
- For material that is self-produced, the value of the material is all the costs incurred in the production of the material, including the amount equivalent to the profit added.
- For an originating material, costs of freight, insurance, packing, duties, taxes and customs brokerage fees paid on the material may be added. The cost of waste and spoilage resulting from the use of the material in the production of the good can be included. These expenses, however must be deducted from the value of the material in the case where non-originating material or material of undetermined origin is being used in the production of the good

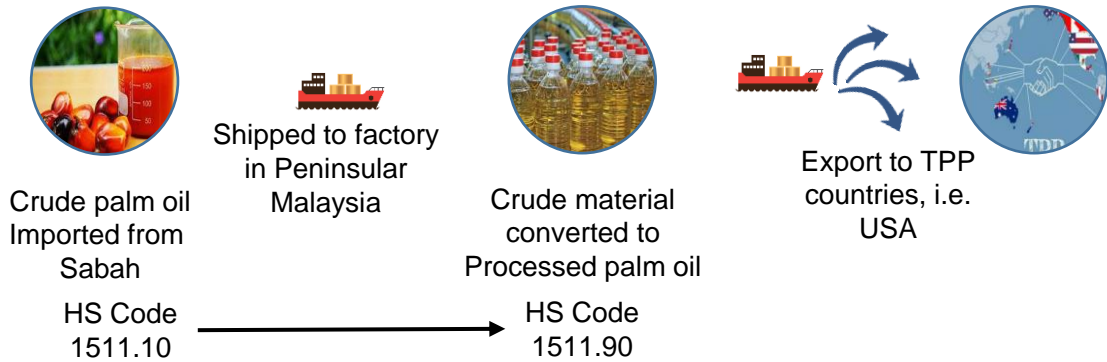
# Comparison of RVCs with other FTAs

<b>ASEAN FTA Rules of Origin</b>	<p>A good shall be treated as an originating good if:</p> <ul style="list-style-type: none"><li>• the goods have a regional value content of not less than forty percent (40%); or</li><li>• if all non-originating materials used in the production of the goods have undergone a change in tariff classification at four-digit level (i.e. a change in tariff heading) of the Harmonized System.</li></ul>
<b>ASEAN- Japan Comprehensive Economic Partnership Agreement Rules of Origin</b>	<p>A good shall be treated as an originating good if:</p> <ul style="list-style-type: none"><li>• The good has a RVC of not less than forty (40) percent and the final process of production has been performed in the Party; or</li><li>• all non-originating materials used in the production of the good have undergone in the Party a change in tariff classification at the 4-digit level (i.e. a change in tariff heading) of Harmonized System.</li></ul>
<b>ASEAN- China FTA Rules of Origin</b>	<p>A good shall be treated as an originating good if:</p> <ul style="list-style-type: none"><li>• Not less than 40% of its content originates from any Party; and</li><li>• If the total value of the materials, part or produce originating from outside of the territory of a does not exceed 60% of the FOB value of the product</li></ul>
<b>ASEAN- Australia FTA Rules of Origin</b>	<p>A good shall be treated as an originating good if:</p> <ul style="list-style-type: none"><li>• the good has a regional value content of not less than 40 per cent of FOB, and the final process of production is performed within a Party; or</li><li>• all non-originating materials used in the production of the good have undergone a change in tariff heading</li></ul>
<b>ASEAN-India FTA (AIFTA) Rules of Origin</b>	<p>A good shall be treated as an originating good if:</p> <ul style="list-style-type: none"><li>• The AIFTA content is not less than 35 per cent of the FOB value; and</li><li>• The non-originating materials have undergone at least a change in tariff sub-heading (CTSH) level of the Harmonized System; and</li><li>• The final process of the manufacture is performed within the territory of the exporting Party.</li></ul>

- Comparing TPPA's Rules of Origin with other ASEAN FTAs which Malaysia is a party, the rules of origin of TPPA are almost similar, except in AIFTA. The AIFTA is more stringent than TPPA.

# Illustration on Determining Rules of Origin

**Illustration 1:** A manufacturer produces processed palm oil (HS 1511.90) in Peninsular Malaysia, with raw material (crude palm oil) shipped from Sabah. The manufacturer plans to export the processed palm oil to USA using the TPP Agreement.



Under the TPPA, the product 1511.90 is wholly obtained

## Outcome

- The product 1511.90 is wholly obtained or produced in Malaysia.
- This product therefore is eligible for preferential treatment when exported to USA or any other TPP parties.

**Illustration 2:** A manufacturer produces processed palm oil (HS 1511.90) in Vietnam, but uses crude palm oil from Sabah. The manufacturer plans to export the processed palm oil to USA using the TPP Agreement

## Outcome

- The product 1511.90 is produced in the TPP region (Vietnam) wholly from materials originating from Malaysia. Malaysia is a party to TPPA.
- The product 1511.90 produced in Vietnam is therefore eligible for preferential treatment when being imported into other TPP countries such as USA.

**Illustration 3:** A manufacturer produces processed palm oil (HS 1511.90) in Vietnam, but uses crude palm oil (1511.10) imported from Malaysia and Indonesia. Indonesian crude palm oil constitute only 5% of the total materials used, or less than 10% of the value of 1511.90.

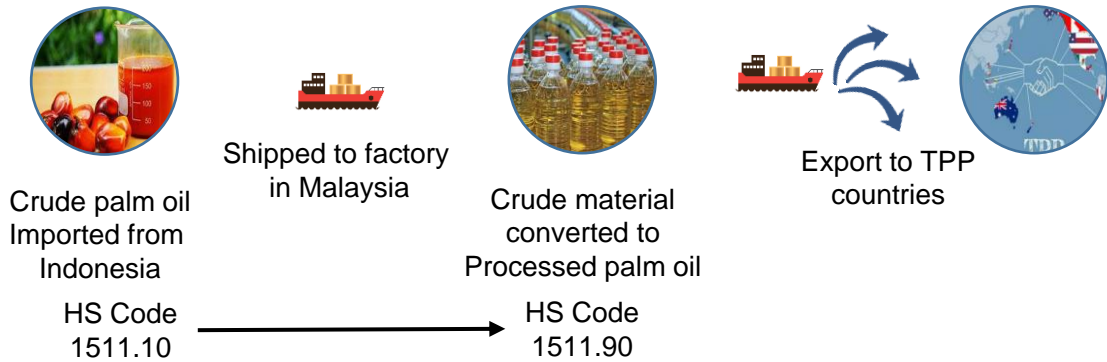
## Outcome

- The product 1511.90 is produced in Vietnam using originating materials and non-originating materials.
- Since the non-originating materials constitute less than 10% of the F.O.B value of the product, the exporter can claim that this product is originating by using the *de minimis* rule.



# Illustration on CTC and RVC Requirement

**Illustration 4:** A manufacturer produces processed palm oil (HS 1511.90) in Malaysia, but imports the raw material (crude palm oil) from Indonesia. The manufacturer plans to export the processed palm oil to USA using the TPP Agreement.



Under the TPPA, the PSR for processed palm oil (1511.90) is a Chapter change or a regional value content of not less than 40%.

## Outcome

- The specific rule of origin for 1511.90 requires a Chapter change. In this case, there is no change in Chapter as both imported raw material and processed product to be exported belong to the same chapter, i.e. Chapter 15 of the HS.
- The product exported to USA is not eligible for any preferential treatment under TPP, unless the producer can provide evidence that the product 1511.90 meets the RVC of at least 40% using the build-down method.

**Illustration 5:** A manufacturer produces processed palm oil (HS 1511.90) in Malaysia, but imports crude material from Indonesia at RM1,500 per tonne. The manufacturer plans to export the processed palm oil to USA using the TPP Agreement. The export value of 1511.90 is RM2300 per tonne.

$$RVC = \frac{\text{Value of the Good} - \text{VNM}}{\text{Value of the Good}} \times 100 = \frac{2300 - 1500}{2300} \times 100 = 35\% < 40\%$$

## Outcome

- Using the build-down method, the producer's non-originating materials from Indonesia is only 35%, thus did not satisfy the RVC criterion of at least 40%.
- The product 1511.90 therefore is not eligible for preferential tariff treatment when being imported into USA.

# Appendix 1: Comparison of Rules of Origin for Selected Products

Product	TPPA	AFTA	AJCEPA
<p>HS4015.19 <i>Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanized rubber other than hard rubber. Gloves, mittens and mitts: Other than Surgical: Natural rubber: Medical glove)</i></p> <p><i>(most exported product from Malaysia to Canada and third to United States in 2015.)</i></p>	<p>A change to a good of heading 40.15 from any other heading</p>	<p>have a RVC of not less than forty percent (40%) or all non-originating materials used in the production of the goods have undergone a change in tariff classification at four-digit level of the Harmonized System.</p>	<p>RVC of not less than forty (40) per cent, and the final process of production has been performed in the Party</p>
<p>HS8541.40 <i>Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made into panels; light emitting diodes; mounted piezo-electric crystals.</i></p> <p><i>(most exported product from Malaysia to United States and fourth to Mexico in 2015)</i></p>	<p>A change to a good of subheading 8541.40 from any other subheading; or No change in tariff classification required for a good of subheading 8541.40, provided there is a regional value content of not less than: 40 per cent under the build-down method taking into account only the non originating materials of subheading 8541.40.</p>	<p>A regional value content of not less than 40 percent; or A change to subheading 8541.40 from any other heading; or A Regional Value Content of not less than 35 percent provided that there is a change to subheading 8541.40 from any other subheading.</p>	<p>RVC of not less than forty (40) per cent, and the final process of production has been performed in the Party</p>
<p>HS8517.62 <i>Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network.</i></p> <p><i>(most exported product from Malaysia to Mexico and forth to United States in 2015.)</i></p>	<p>A change to a good of subheading 8517.62 from any other subheading.</p>	<p>A regional value content of not less than 40 percent; or A change to subheading 8517.62 from any other heading; or A Regional Value Content of not less than 35 percent provided that there is a change to subheading 8517.62 from any other subheading</p>	<p>RVC of not less than forty (40) per cent, and the final process of production has been performed in the Party</p>
<p>HS9403.50 <i>Other furniture and parts thereof. Wooden furniture of a kind used in the bedroom.</i></p> <p><i>(fifth most exported product from Malaysia to Canada in 2015.)</i></p>	<p>A change to a good of subheading 9403.50 from any other heading; or No change in tariff classification required for a good of subheading 9403.50, provided there is a regional value content of not less than: 45 per cent under the build-down method taking into account only the nonoriginating materials of heading 94.03.</p>	<p>A regional value content of not less than 40 percent; or A change to subheading 9403.50 from any other subheading</p>	<p>RVC of not less than forty (40) per cent, and the final process of production has been performed in the Party</p>
<p>HS1804.00 <i>Cocoa butter, fat and oil</i></p> <p><i>(second most exported product from Malaysia to Canada in 2015.)</i></p>	<p>A change to a good of heading 18.03 through 18.05 from any other heading.</p>	<p>have a RVC of not less than forty percent (40%) or all non-originating materials used in the production of the goods have undergone a change in tariff classification at four-digit level (i.e. a change in tariff heading) of the Harmonized System.</p>	<p>A change to the chapter, heading or subheading from any other heading. This means that all non-originating materials used in the production of the good have undergone a change in tariff classification at the 4-digit level of HS.</p>

- By comparing the TPPA's Rules of Origin with other FTAs, the Rules of Origin of TPPA are similar to others except AIFTA. The AIFTA is more stringent than TPPA.
- For the Product Specific Rules on major export products to United States, Canada and Mexico, the rules are less stricter than other FTAs (AFTA & AJCEPA).

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