

## HOW THE 2007 HARMONIZED SYSTEM REVISION AFFECTS FTA RULES OF ORIGIN ISSUES<sup>®</sup>

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By Stuart P. Seidel

Stuart P. Seidel, partner, Baker & McKenzie LLP, Washington, DC, specializes in the following areas: world trade organization, international trade regulation & customs; customs duties & excise taxes; cross-border counseling; IP enforcement; and anti-piracy. Mr. Seidel can be contacted at [stuart.p.seidel@bakernet.com](mailto:stuart.p.seidel@bakernet.com)

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If you are confused over free trade agreement (FTA ) rules of origin issues due to the 2007 Harmonized System (HS2007), you're not alone. To complicate matters, most, but not all, of the FTA rules of origin that allow preferential treatment are based on older versions of the HS and are still in the process of negotiations between the parties to the FTA to convert them to an HS2007 compatible version.

Although many national tariffs are updated annually (or more frequently), the official Harmonized System is updated approximately every five years. Many countries have implemented HS2007 changes into their national tariff schedules.

For example, Canada, the EU, and many other countries implemented the changes on Jan. 1, 2007. The United States implemented the changes on Feb. 3, 2007. Mexico announced that its version of HS 2007 would enter into force on July 1, 2007. However, other countries have not yet implemented the changes.

### Impact on FTAs

The FTA and HS updates will likely cause confusion and may lead to errors in the issuance or use of required certificates of origin or certifications of origin. This is especially true in those cases in which one party to an FTA is using the HS2007 and another is using an older version of the HS (usually HS2002) as the basis for its national tariff, as with the North America Free Trade Agreement (NAFTA ), and the good for which certification is being sought is covered by a chapter, heading or subheading in the 2007 tariff that is different from prior tariff schedules. New provisions now cover printers, multifunction devices (scanner, copier, fax, and printer), telecommunications equipment, semiconductors, and semiconductor manufacturing or handling apparatus, just to name a few.

Action Trade Pros Should Take What should you do until the rules of origin are brought up to date?

1) NAFTA . Under NAFTA , the exporter is required to provide a certificate of origin on an approved form that is supposed to list the tariff number of the good to six or eight digits, using the tariff classification of the country into whose territory the good is to be imported. If that country is Mexico, the listing is easy because Mexico's tariff and the rules of origin are both based on the older Harmonized System, and no special precaution is needed (other than insuring that the rule is met).

However if the country of importation will be Canada or the United States, extra steps must be taken. The product being imported must first be classified under the 2006 tariff in the country of importation to determine which rule applies. Then the rule must be applied to make sure the product qualifies under that rule. The product must also be classified under the 2007 tariff in the country of importation, because the importer is required to use the 2007 classification for importation documentation

If the tariff classification is the same under both tariffs, no special measures are required. However, if there has been a change in tariff classification, to avoid confusion, we recommend that both the old number and new number be shown on the NAFTA Certificate of Origin, followed by "(2006)" or "(2007)" as appropriate. Because some of the new tariff provisions combine goods that were previously under several numbers and others break down goods that were formerly under the same numbers, expert advice may be necessary for proper classification.

2) Other FTAs entered into by the United States. We recommend that certifications of origin under the other FTAs entered into by the United States that provide for a tariff shift also show the old and new tariff classifications for items that have changed until the rules are converted into the 2007 classifications.

You can usually tell whether the HS2007 is being used in the rules of origin by looking at them to see if new headings 8486 and 8508 are covered. If there are rules for those classifications, the rules have been updated.

As of this writing, the status of the tariff shift rules of origin in the various FTAs to which the United States is a party is as follows:

- U.S.-Singapore FTA: The tariff shift rules listed in the Harmonized Tariff Schedule of the United States (HTS) are still based on the old tariff numbers. However the ISI rules and certain specific rules have been converted to 2007 classifications.
- U.S.-Chile FTA: The tariff shift rules listed in the HTS are still based on the old tariff numbers.
- U.S.-Morocco FTA: The tariff shift rules listed in the HTS are still based on the old tariff numbers.
- U.S.-Australia FTA: The rules of origin are based on HS2007, so only 2007 classification is required.
- DR-CAFTA: The tariff shift rules listed in the HTS are still based on the old tariff numbers.
- U.S.-Bahrain FTA: The tariff shift rules listed in the HTS are still based on the old tariff numbers.

Neither the U.S.-Israel FTA nor the U.S.- Jordan FTA rules (except for certain textiles) are based on tariff shift rules. However, the textile rules must be reviewed.

3) Non-U.S. free trade agreements. It is likely that free trade agreements entered into by countries other than the United States are also in the process of having their rules of origin updated to use the HS2007 classifications. Parties to these FTAs may have issued instructions on the completion of any required certificates or certifications or origin.

For example, the Australian Customs Service has issued ACN 2006/66 to explain the procedure to be used when importing goods from, or exporting goods to, Thailand under the Thailand-Australia FTA. Thailand is still using the HS2002, but Australia is using the HS2007. These instructions may be found at <http://www.customs.gov.au/webdata/resources/notices/ACN0666.pdf>

Although Singapore and Australia have both implemented HS2007, the conversion of the rules of origin under their FTA has not yet been completed. Instructions for the Singapore-Australia FTA may be found at <http://www.customs.gov.au/webdata/resources/notices/ACN0662.pdf>

[Baker & McKenzie's](#) global network of customs attorneys can assist with any other specific FTA questions.