

## Chapter 4: Substantial Transformation

"1. This Agreement shall apply to any article if:

- (a) that article...is a new or different article of commerce that has been grown, produced, or manufactured in a Party

...

4. For the purposes of this Agreement, "country of origin" requires that an article or material, not wholly the growth, product or manufacture of a Party, be substantially transformed into a new and different article of commerce, having a new name, character or use distinct from the article or material from which it was so transformed."

### Overview

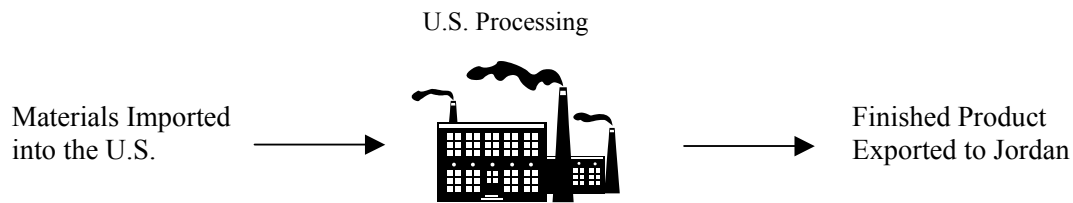
- 4.1 The "substantial transformation" test is intended to identify the country of origin of an imported product when the product is manufactured in more than one country and/or incorporates materials, parts, or components from more than one country. More particularly, the test is intended to identify that country where the most significant manufacturing or processing operation took place; that is, the country in which the imported product was given its essential character.
- 4.2 Under the FTA, the origin of such a product is that country in which it was last substantially transformed into a new and different article of commerce with a name, character or use different from all foreign materials, parts, components used in its manufacture.

### "Name, Character and Use" Test

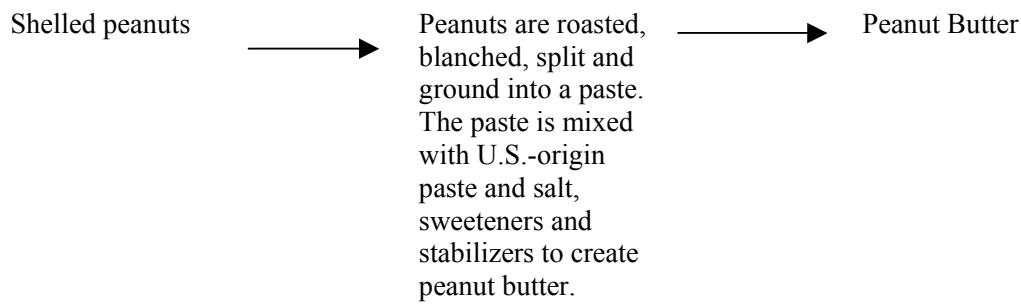
- 4.3 Whether a product undergoes a change in name, character or use that is sufficient to constitute a substantial transformation is highly dependent upon the particular manufacturing operation involved. In all cases, it is a question of degree; the transformation or change to imported materials brought about by manufacturing or other processing must be "substantial." Over a number of years, U.S. Customs and the U.S. trade courts have developed general principles that can be used for guidance in applying this test. These are as follows:

#### **New Name**

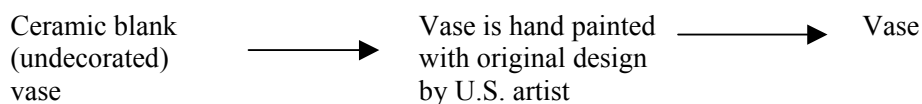
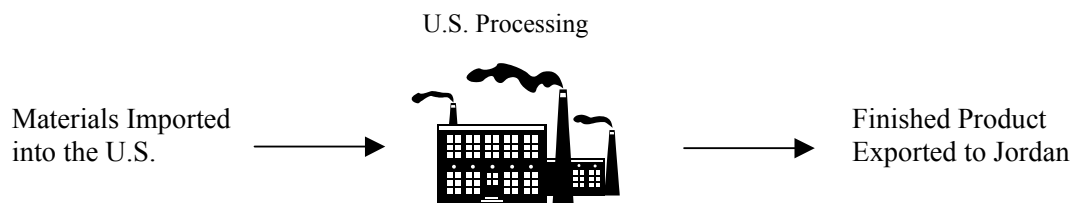
- 4.4 A change in name requires a change in the commercial designation or commercial identity of the product. This might be shown by trade literature, catalogues, or brochures, for example.



4.5 Both Jordan and the United States use the Harmonized System as the basis for their respective tariff codes. The Harmonized System is a system of product classification based largely on commercial designation. Accordingly, a change in the tariff classification of a product (particularly at the 4-digit level) can be persuasive evidence of a change in name.



! This is a substantial transformation. As a result of U.S. processing, the imported peanuts undergo a change in name, to peanut butter.



! This is NOT a substantial transformation. There is no change in name; the name of the imported material (vase) remains the same despite the U.S. processing.

4.6 Although the origin test is stated in the alternative (a change in name OR character OR use), in practice a change in name alone is generally not considered sufficient to constitute a substantial transformation. In practice,

it has been necessary to show that the change in name is accompanied by a change in character or use of the article.

#### **New Character**

- 4.7 A change in the character or use of the article as a result of a manufacturing or processing operation are generally considered the strongest indications of a substantial transformation.
- 4.8 A change of character requires that the manufacturing or processing operation results in a change to the physical aspects of a product, such as a change in its physical dimensions (*e.g.*, size, weight, shape), chemical composition, or physical qualities (*e.g.*, strength, hardness).
- 4.9 Cosmetic or surface changes, such as painting, cleaning, lacquering, zinc-plating, or waterproofing, which do not significantly affect the physical dimensions or qualities or chemical composition of the product, are usually not considered sufficient to constitute a substantial transformation.

#### **Examples**

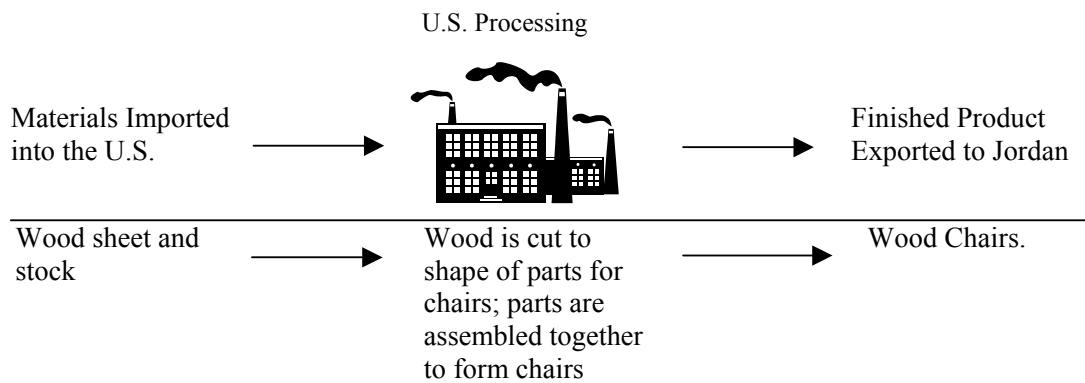
1. A hand-carved totem pole imported from Indonesia is partially painted in the United States, and attached to a base. The totem pole is NOT substantially transformed as a result of the U.S. processing. The partial painting is a minor operation that does not change the physical identity of the imported article.
2. Gold-plating imported jewelry does not constitute a substantial transformation.

#### **New Use**

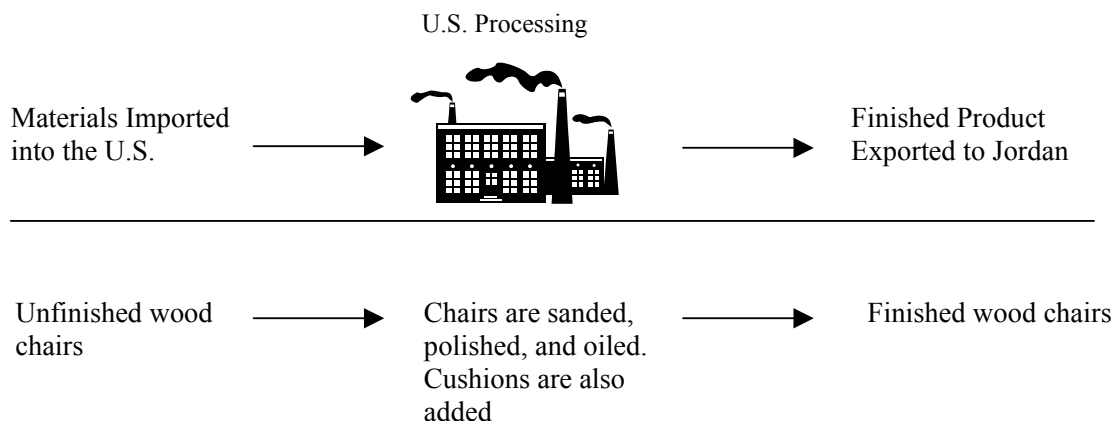
- 4.10 A change in use of an article will generally be considered sufficient to constitute a substantial transformation if the manufacturing or processing operation:
- (1) changes a product that has one use into a product with a different use;
  - (2) changes a product with many potential uses into a product with one specific use; or
  - (3) narrows the range of possible uses of a multiple-use material or product.
- 4.11 Cutting or bending a material (whether glass, steel or wood) to a defined shape or pattern is generally considered a change in use sufficient to constitute a substantial transformation. For example, cutting and shaping plywood sheet into furniture parts (drawers, cabinets, *etc.*) would be considered a substantial transformation. Similarly, cutting and shaping a glass sheet into the form of a windshield for a car would be considered a substantial transformation.

4.11.1 These are illustrations of the general principle that converting a multiple use article (a wood or glass sheet) into one suitable for a specific use (a furniture part or a windshield) will generally constitute a substantial transformation.

4.11.2 On the other hand, simply cutting a material to length or width is generally not considered a sufficient change in use. A material that is simply cut to length or width remains suitable for multiple uses. For example, cutting a steel pipe to a particular length would not be considered a substantial transformation; however, bending a steel pipe to a particular shape would be considered a substantial transformation.



! This is a substantial transformation. As a result of the U.S. processing, the imported wood has undergone a change in name (wood sheet and stock to “chair”), character (wood sheet has been cut and shaped to specific physical dimensions), and use (from a multi-use raw material to a product with a specific use).



- ! This is NOT a substantial transformation. The finished product has the same name as the imported material ('chair'); the operations performed do not significantly alter the physical dimensions or physical attributes of the imported chair; and the imported product does not undergo a change in use.

### **Assembly Operations**

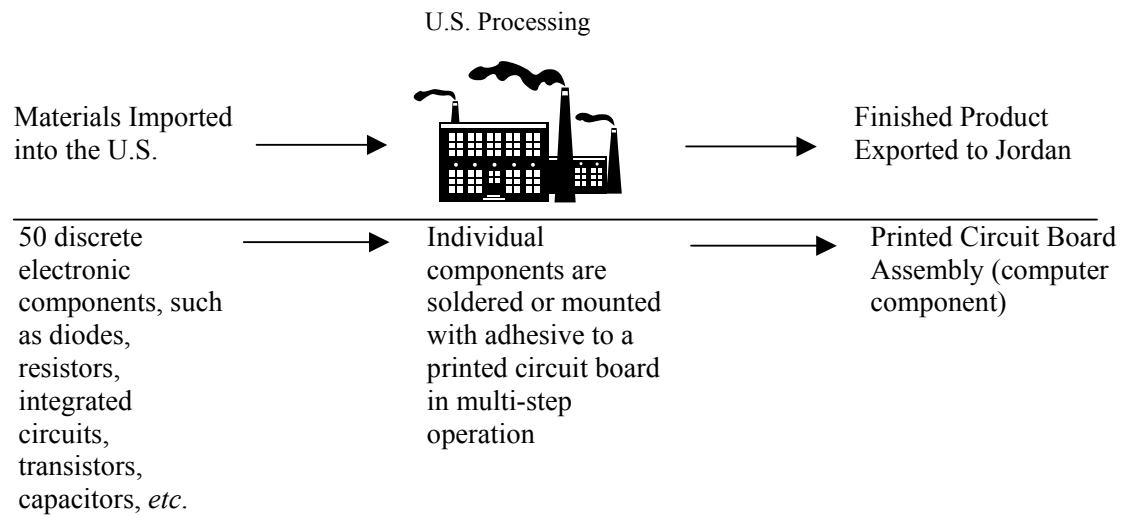
4.12 Some of the more difficult origin questions arise in connection with assembly operations. These are operations in which two or more components or subassemblies are joined to each other to form a new product. Examples of typical assembly operations might include assembly of wood parts to form chairs, tables or other furniture items; assembly of electronic components to form circuit boards for computers or other electronic appliances; or assembly of machines or vehicles from parts.

4.13 In some cases, an assembly may be simple but nevertheless result in an article with a new name, character or use. For example, the assembly of imported frames to U.S.-origin lenses may result in an article with a new identity – sunglasses – but this operation cannot be considered "substantial."

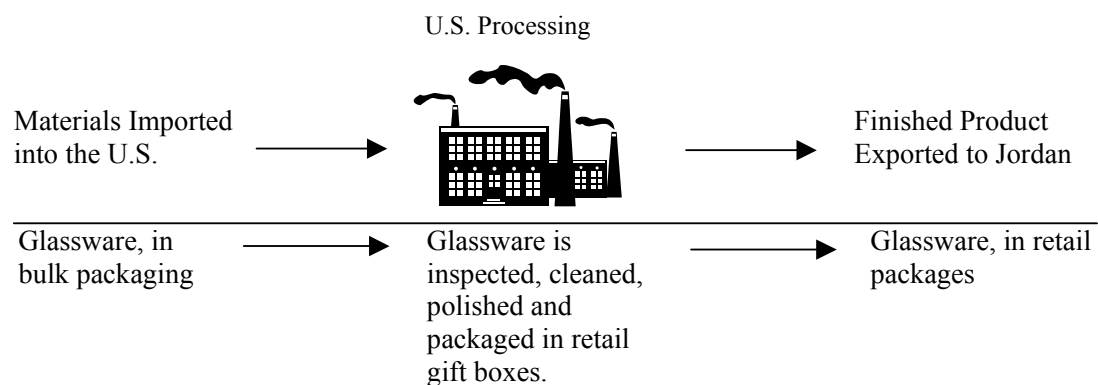
4.14 In U.S. Customs' practice, assembly operations will not result in a substantial transformation unless the operation is "complex and meaningful." Whether an operation is complex and meaningful depends upon the nature of the operation. The factors that might be considered include the time, cost and skill involved, the number of components assembled, the number of different operations, and attention to detail and quality control.

4.15 To ensure that simple assembly operations are not used to qualify goods under the Free Trade Agreement, Annex 2 of the Rules of Origin Annex provides:

"2. No article shall be considered a new or different article of commerce under this agreement and no material shall be eligible for inclusion as domestic content under this Agreement by virtue of having merely undergone (a) simple combining or packaging operations or (b) mere dilution with water or with another substance that does not materially alter the characteristics of the article or material."



! The U.S. processing substantially transforms of the imported components. The process involves considerable time to complete, a large number of components and a number of distinct skilled operations. The finished product (printed circuit board assembly) has a electronic function or use different than any of the individual components, as well as a different character and name.



! This is NOT a substantial transformation. The U.S. processing is a simple packaging operation that does not change the name, character or use of the glassware imported in bulk.

**Requirement of a “New and Different Article of Commerce”**

4.16 The importance of this requirement of a “new and different article of commerce” relates to the concept of “double substantial transformation.” This will be discussed below (Chapter 7).

**Origin of Citrus Juices**

4.17 A footnote to Annex 2.2. provides:

“For the purposes of this Agreement, the processing of goods imported under Harmonized Commodity Description and Coding System (HS) subheading 0805 into goods classified under HS subheadings 2009.11 through 2009.30 does not satisfy the requirements of [the substantial transformation test].”

4.18 Subheading 0805 of the Harmonized System is the tariff code for fresh citrus fruit (*i.e.*, oranges, lemons and limes, grapefruit). Subheadings 2009.11 through 2009.30 are the tariff codes for citrus juices.

4.19 Therefore, the meaning of this special rule is that the production of citrus juice from fruit may not be considered a substantial transformation. Accordingly, orange juice processed in the United States from Mexican-origin oranges, for example, would not qualify for duty-free treatment when exported to Jordan. In effect, the rule defines the country of origin of a citrus juice as the country where the fruit is grown.