

Ministry of Agriculture and Agrarian Reform

NAPC

National Agricultural Policy Center

POLICY BRIEF NO 19

Rules of Origin

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November 2006

With the support of
Project GCP/SYR/006/ITA



Food and Agriculture
Organization of
the United Nations

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Ministry of Agriculture
and Agrarian Reform

Rules of Origin

What are rules of origin?

Article 1 of the Agreement of Rules of Origin (RoO) under WTO makes distinction between preferential and non preferential rules of origin

Normally, when non-preferential RoO are referred to, the intended are, those RoO that will be established under the WTO Agreement on Rules of Origin, and which will be applied equally by all WTO Members.

Rules of Origin (RoO), for short, 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 on the source of imports.

The world Trade Organization defined rules of origin as those laws, regulations and administrative determinations of general application applied by any member to determine the country of origin of goods.

Non-preferential rules of origin

Non-preferential rules of origin can be used as an important trade and commercial policy measure. They do not formulate a trade instrument by themselves; but they may be used by the instruments of non-preferential commercial policy that relate to most-favored nation treatment, anti-dumping and countervailing duties, safeguards measures, origin marking, and quantitative restrictions on tariff quotas. The later exist in several Articles of GAAT 1994; moreover, they may be used for governmental procurement and trade statistics

Preferential RoO

on the other hand, Preferential RoO normally refer to those RoO laid down in bilateral or multilateral agreements, which may be signed between countries or economic unions, and which apply only to goods moving among the contracting parties. These goods are in fact given what is known as preferential treatment” Preferential RoO also play a very important role in the international trade, owing to the proliferation of regional trading agreement , which are now more than 160 in force across world wide.

Agreement on rules of origin

During the Uruguay Round, participant countries recognized the need to provide transparency as to regulations and practices regarding rules of origin in order to eliminate unnecessary measures during transition period¹ that hinder the flow of international trade.

Disciplines to control the application of rules of origin during the transition period

Under the agreement, members are obliged to adhere to the following regulation:

- Not to use rules of origin as instruments to pursue trade policy objectives directly or indirectly and not to constrain trade in one product or from certain sources
- Rules of origin Shall not themselves creates restrictive, distorting or disruptive effects on international trade;

¹ - The three years which are determined until adoption the harmonization of rules of origin.

- (The rules of origin they apply to import and exports are not more stringent than those they apply to determine whether a product is domestic or not. Additionally, they shouldn't discriminate among other members)
- To manage rules of origin in a consistent, uniform, impartial and reasonable manner
- To base rules of origin on a positive standard; Rules of Origin that state what does not confer origin (negative standard) are permissible as part of a clarification of a positive standard or in individual cases where a positive determination of origin is not necessary;
- To publish the countries laws, regulations, judicial decisions and administrative rulings relating to rules of origin
- To provide origin assessments upon request but no later than 150 days after the requests for such assessments that all necessary elements have been submitted.
- Not to apply changes in rules of origin retroactively. ²
- To provide for a prompt appeal for any administrative actions unbalancing the situation in terms of origin's determination.
- To deal with secret information confidentially. by the authorities concerned, which shall disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Aims of the Agreement

The Agreement on Rules of Origin aimed to harmonize non-preferential rules of origin, and to ensure that such rules do not themselves create additional obstacles to trade. The Agreement sets out a work program for the harmonization of rules of origin to be undertaken in the World Trade Organization (WTO), in conjunction with the World Customs Organization (WCO).

Harmonized Rules of Origin

As stipulated in the Agreement on Rules of Origin, the harmonized Rules of Origin should:

- Be applied equally for all the above-mentioned non-preferential purposes , meaning that , member countries should have a number of unified rules, such as: in the application of most- favored nation treatment- anti dumping and countervailing duties;
- Be objective in terms of harmonizing non-preferential rules of origin. In addition, it should be understandable and predictable ;
- Not used as instruments to pursue trade objectives directly or indirectly ;
- Be administrable in a consistent, uniform, impartial and reasonable manner ; and

• ² - When Introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in their laws or regulations.

- Be coherent and based on a positive standard. (Negative standards may be used to clarify a positive standard).

Criteria for the determination of origin

As a general principle, the determination of the country of origin is based on the division of goods into two categories: Goods which wholly obtained or produced in one country and goods whose production involved more than one country.

1. **“Goods wholly obtained”** in one county are considered as originating in that country, but, although the concept is still relevant for some agricultural and mining products, it has quite limited relevance for most other traded products given the increasing globalization of production.
2. **Goods whose production involved more than one country** are considered as originating in the country where they underwent their last substantial transformation, as determined by a series of quite complex rules.

The three main criteria used world wide for defining substantial transformation and which have also influenced WTO work on rules of origin are:

whether the transformation has caused a specified change of tariff heading(CTH), based on harmonized system(HS) nomenclature; what is the percentage of value added (VA) by the transformation; and whether the transformation occurred using a specified manufacturing process(SP).Each criterion has its advantages and drawbacks and none is perfectly appropriate for all products and purposes.

Where are rules of origin used?

Rules of origin are used:

- To implement measures and instruments of commercial policy such as anti-dumping duties and safeguard measures;
- To determine whether imported products shall receive most-favored-nation (MFN) treatment or preferential treatment;
- For the purpose of trade statistics;
- For the application of labeling and marking requirements; and
- For government procurement.

The World Trade Organization and the Most Favored Nation Treatment

Box 1. The Most Favored Nation Treatment and the National Treatment Principal: The World Trade Organization deals with the rules of trade between nations through agreements that oblige signatories to keep their trade policies within the agreed upon rules and limitations. Under the WTO agreements, members should not behave in a discriminatory way towards WTO trading partners. Therefore, every lowering in trade barriers towards a trading partner should apply to all trading partners, as all should be treated as the “most favored nation”.

The national treatment principle: the products that are imported in a specific market cannot be treated less favorably than similar products of domestic origin

The European Rule of Origin

Box 2. EU Non-preferential Rules of Origin

EU non-preferential rules are relatively simple, considering product transformation to be substantial if it is “economically justified” and results in a new product or represents an important stage of manufacture, but the criterion is not further defined. Interpretation of the criterion as applied in each case or policy area belongs to the relevant EU institution and leaves certain room for discretion depending on the policy measure for which origin needs to be determined. The criterion is supplemented by an anti-circumvention provision, which denies origin to products transformed solely in order to circumvent anti-dumping or other trade policy measures against specific countries.

However, this transfer of decision-making authority from the Members to EU authorities deprives individual companies of the possibility of seeking redress against questionable origin determinations: unlike, for example, anti-dumping decisions, determinations of origin are not considered to produce direct legal effects vis-à-vis natural or legal persons, so that such persons do not have a standing to initiate proceedings against them. Natural or legal persons affected by determinations of origin will thus either have to ask their national authorities to seek redress on their behalf, or challenge each anti-dumping, countervailing or other decision based on the determination that prejudices them directly.

The coverage of EU non-preferential rules of origin is quite general. Sectoral exceptions include textiles and clothing, shoes, several electronic products, vehicle and equipment parts and certain foodstuffs (including meat and wine). For these sectors or sub-sectors specific non-preferential rules of origin are applied, based on lists of specific requirements, such as a minimum percentage of value added (for example 60% for automobiles and electronic products), or of specified types of manufacturing processes. For some industrial product groups it is possible for the importer to choose between a combination of change of tariff heading (CTH) and value-added criteria, and a single value-added criterion which is easier to prove but entails a higher level of local content.

The Rule of Origin for Arab Countries

For a certain product to be considered originating in a country, the following requirements should be fulfilled:

- The product is wholly grown, produced, or manufactured and substantially transformed in that country;
- The value of the raw materials (produced in that country) and the direct costs of production is at least 40% of the export value;
- The product has been imported directly from that country.
- An official certificate of origin must accompany the product.

Certificate of Origin for the Arab Countries

Certificates of origin are necessary to benefit from preferential tariff treatment among Arab state. It is the proof that goods are entitled to preferential tariff treatment because they comply with the Arab rule of origin. This certificate of origin can be obtained from the Chambers of Commerce in the concern country. Three copies need to be completed; one for the Chamber of Commerce and two are retained by the exporter. The original copy will accompany the goods during the clearing procedures in the country of destination.

Procedure

The Chamber of Commerce and the Ministry of Economy and Trade (MET) must seal the certificate that originated in Arab countries. The certificate should include, the name of the products, the name of the exporter/producer, the registration number of the company and the place of origin of the raw materials.

Requirements

The Chamber of Commerce requires the following documentations in order to ratify the certificate of origin for the Arab countries:

- The commercial invoice
- The corporate registration
- Foreign Trade Dealing registration

At the Chamber of Commerce, the certificate is stamped on the spot and fees charged at a rate of 0,002% of the value of the invoice. The stamp at the Ministry of Economy and Trade is also immediately obtained and no fees are charged.

Relevance of Syria

With the full implementation of the GAFTA Agreement at the beginning of 2005, products and commodities flowed intensively from the Arab countries into the Syrian market.

As a step forward to facilitate the procedures in the context of GAFTA, Legislative Decree No. 80/2005³ exempted rules of origin certificates and trade invoices from the consulate ratification that was formerly required for all Syrian imports of national products from GAFTA members and Arab countries that signed bilateral agreements with Syria.

In order to regulate and organize the rules of origin indications, the MET asked the GDC (General Directorate for Customs) and its directorates that imports should have an irremovable indication as to their origins except for products imported from Arab countries that follow the GAFTA rules of origin (which have the same condition). Any non-compliant products will be returned according to Syrian customs regulations.

In this regards, the Ministry of Finance released Decision No. 217 of February 2006, which imposed a penalty (of 10% of their value) on products that don't have a rules of origin indication. Imported products that have insufficient or removable origin indications will be subject to a penalty of 5% of their value. However, not all the non-compliant products will be re-exported, if those products are not a subject of high-attention rules of origin indications.

On the other hand, the Rules of Origin Committee that was formed by the Arab League is working for setting a unified Arabian Rules of Origin. Many obstacles were solved and member countries still need to agree on the rules for few products.

³ Substituting Legislation No. 49, this passed in August 1977.

References

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