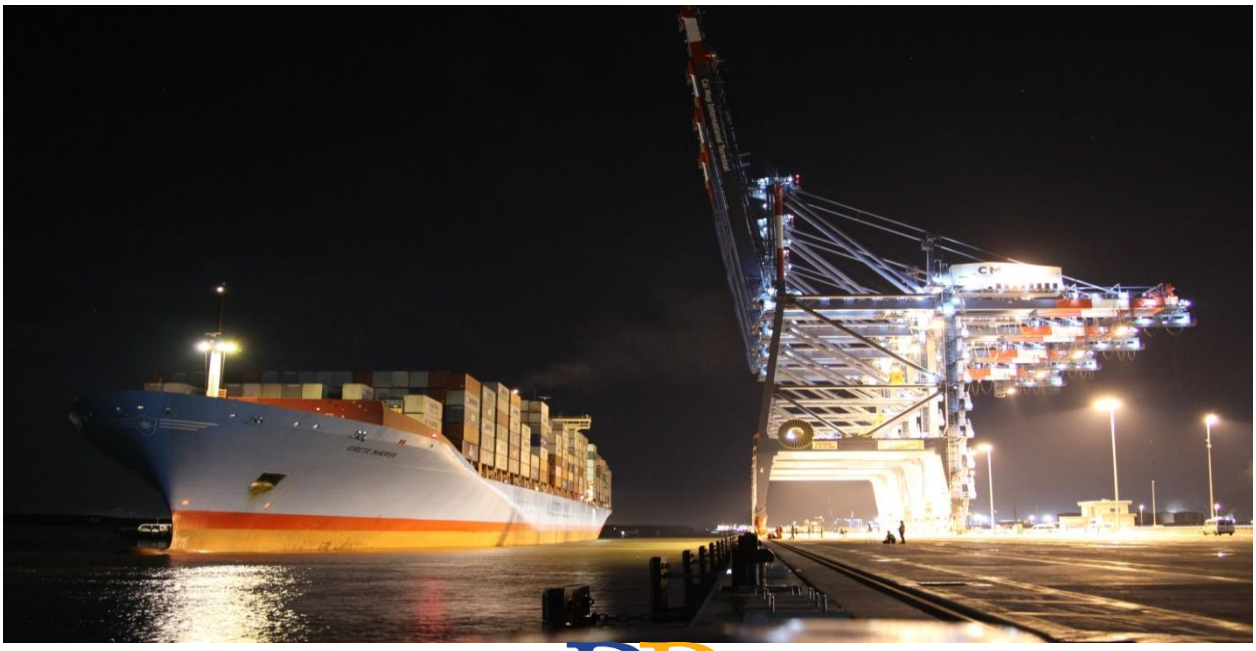
WORLD CUSTOMS ORGANIZATION

GUIDE TO COUNTER ORIGIN IRREGULARITIES (EXCLUDING FRAUD)



Revenue Package

June 2015
(updated in June 2018 and June 2025)

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1 Background and objectives

Within the framework of the Revenue Package Action Plan Phase II, the WCO conducted an analysis of origin irregularities based on the inputs provided by WCO Members (Origin Irregularity Typology Study[1], published in July 2013). This addresses all origin irregularity cases except fraud[2], which is covered by other WCO tools[3].

The Origin Irregularity Typology Study was the first step taken in relation to origin irregularities under the Revenue Package Action Plan Phase II. The second step is to provide advice to Customs authorities on ways to confront origin irregularities in practice. To this end the Secretariat, in cooperation with several Member Customs administrations, has developed the Guide to Counter Origin Irregularities.

This Guide provides a short overview of the Origin Irregularity Typology Study, and an introduction to the case studies presented, which are the central focus of the document.

The case studies were collected from Australia, Japan, Kenya, Korea and Mexico (June 2015) and a case study from Nigeria was added in June 2016. The Secretariat drafted a list of questions to help the Customs administrations collect information on origin irregularity cases and a document on the structural framework of the case studies, to streamline the cases as much as possible and facilitate the use of the tool. However, as practice varies in every country, the structure of the case studies also follows the examples specific to the specific country.

The 2016 version was updated in 2018. Considering that the WCO Guide to Counter Origin Irregularities (Excluding Fraud) was last updated in 2018, potential new cases might have arisen because of the constant changes in the trading system and prompted the need to update the cases with new irregularities.

The purpose of this Guide is to give examples of origin irregularities occurring in practice and based on those examples, to provide ways solving them. It constitutes a useful practical tool, assisting Customs administrations in their endeavors and in their daily work.

2 Overview of the Origin Irregularity Typology Study

The Origin Irregularity Typology Study gives a comprehensive overview of the experiences shared by WCO Member Customs administrations on irregularity cases related to the

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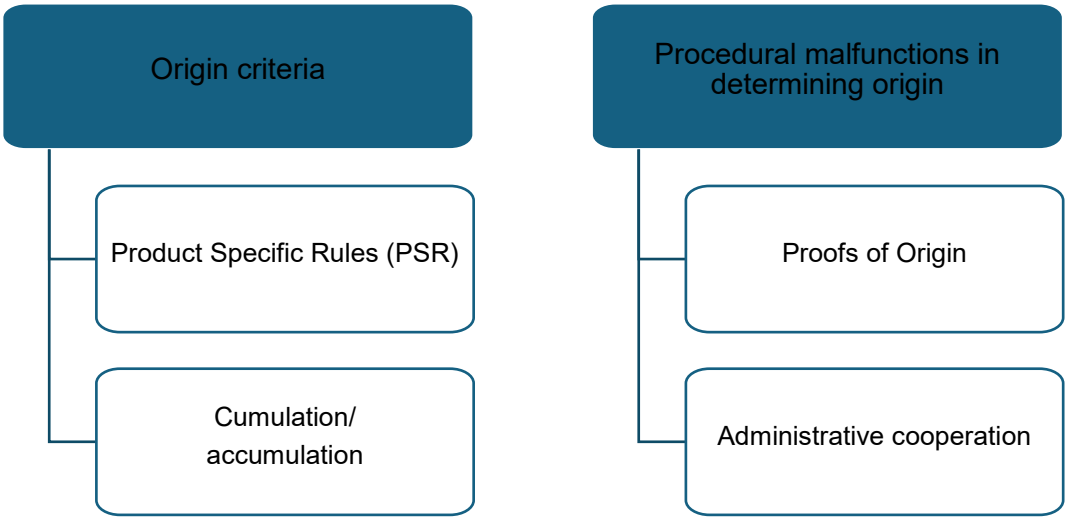
[1] Origin Irregularity Typology Study, July 2013. Available at the WCO homepage: http://www.wcoomd.org/en/topics/origin/instrument-and-tools/~/media/WCO/Public/Global/PDF/Topics/Origin/Instruments%20and%20Tools/Comparative%20Study/Related%20Documents/ORIGIN%20IRREGULARITY%20TYPOLOGY%20STUDY%20_final_%20EN.ashx.

[2] In this document, the term “irregularities” means irregularities excluding fraud, as origin fraud is covered by the Customs Enforcement Guide against Origin Fraud (see footnote 3).

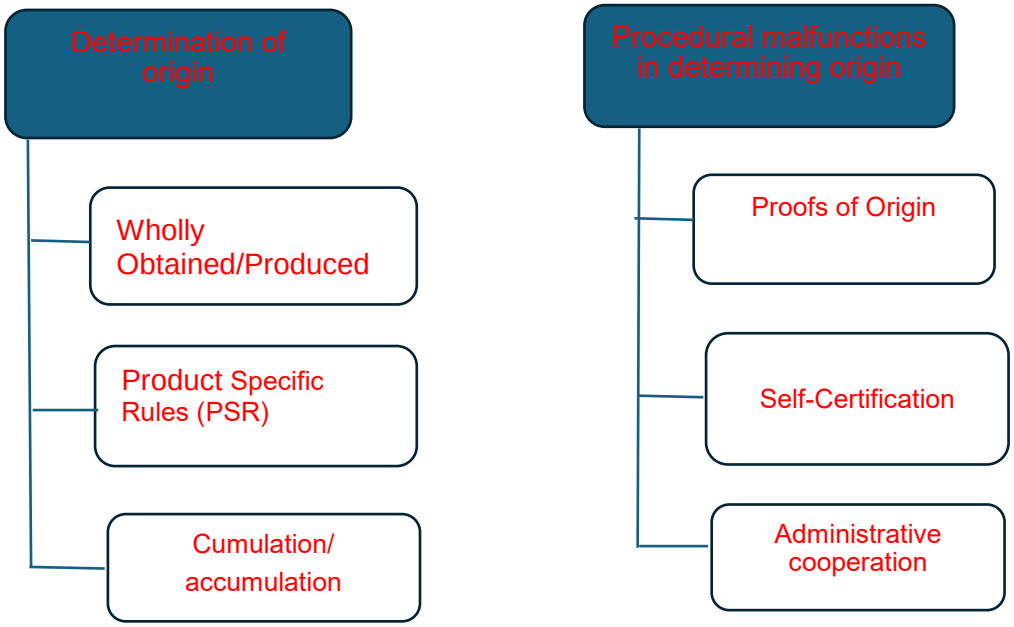
[3] Commercial Fraud Typologies Summary, October 2010. Available at: http://www.wcoomd.org/en/topics/enforcement-and-compliance/resources/publications/~/media/03F2C9CAAE6F4E4DA9761B844799BCB8.ashx; Customs Enforcement Guide against Origin Fraud, December 2012. Available at: http://www.wcoomd.org/~/media/WCO/Member/Global/PDF/Topics/Enforcement%20and%20Compliance/Activities%20and%20Programmes/Commercial%20Fraud/WCO%20technical%20material/Origin%20Fraud%20EN.ashx?db=web.

determination of origin. This Section provides a short summary of the analysis conducted and facilitates understanding of the suggestions and practices outlined in this Guide. The complete study is available on the WCO Web site (see footnote 1 above).

In the 2018 update to the Guide, the Customs administrations reported origin irregularities in four areas:



In the 2024 update to the Guide, Customs administrations identified origin irregularities in four previously existing areas and two additional areas as follows:



Based on the responses from WCO Member Customs administrations it was possible to draw conclusions on the main reasons why the origin irregularities occur in the areas indicated above. The Origin Irregularity Typology Study identified five key findings[4]:

[4] Origin Irregularity Typology Study, July 2013, pp. 3 and 6, *supra* note 1.

1) The stakeholders involved in the implementation of preferential rules of origin are not sufficiently acquainted with Product Specific Rules.

2) In a recent update, it was noted that some traders did not seem to understand that the same rules of origin apply even in self-certification.

3) Irregularities seem to occur from the low level of familiarization with the origin criteria not only by traders but also by the issuing authorities of certificates of origin.

4) There seems to be a general lack of knowledge regarding cumulation/accumulation provisions of free trade agreements (FTAs).

5) WCO Member Customs administrations often encounter simple and obvious, but unacceptable failures in the certificates of origin.

6) Customs in the importing country find that the administrative cooperation for verification is not functioning appropriately, with the verification requests not answered in a timely manner in many instances.

These findings, and the key areas referred to above, are addressed in the next Section and in the case studies.

3 Guidance on origin irregularities (excluding fraud)

Origin irregularities can arise at different stages in the determination of the origin of the product. Whilst the types of origin irregularities are different, the reasons why they arise can often be the same. Notably, origin irregularities frequently occur due to lack of experience and competence. The problems might occur at the level of the exporter, Customs in the exporting country, the importer or Customs in the importing country. A Customs administration has to take many factors into consideration. And because every step is not under their control, Customs needs to work collaboratively with all the parties involved. Awareness raising, information sharing, capacity building, and training in the Customs administrations and in the private sector are therefore the main means of countering origin irregularities.

Are Customs officials trained to interpret rules of origin? How are they trained? Do Customs officials have an overview of non-preferential and preferential rules of origin? Are they given an overview of FTAs? How do the Customs officials who are working on origin matters receive all the necessary information on existing FTAs? Are Customs officials trained when a new FTA comes into force? What types of certificates are used? Is there a system in place for communicating internally in the Customs administration and with other Customs authorities and the private sector?

These questions are just a few examples of aspects that must be considered if a Customs administration wishes to avoid irregularities when determining the origin of products. The *Diagnostic Tool on Tariff Classification, Valuation and Origin Work and Related Infrastructure*, and the *Guidelines on Customs Infrastructure for Tariff Classification, Valuation and Origin*[5], provide further guidance to Customs administrations to improve capacity building in rules of origin. Other relevant WCO publications on rules of origin are also referred to below.

[5] *The Diagnostic Tool on Tariff Classification, Valuation and Origin Work and Related Infrastructure* and the *Guidelines on Customs Infrastructure for Tariff Classification, Valuation and Origin* will be made available at the WCO Web site at the same time as the Guide to Counter Origin Irregularities (excluding fraud).

4 Origin criteria

According to the 2013 Origin Irregularity Typology Study, the major cause of origin irregularities is a lack of understanding of the applicable origin criteria, especially in the examination of Product Specific Rules (PSR) and cumulation/accumulation provisions.

Various tools that can be of help regarding understanding the origin criteria are available to Customs administrations on the WCO Web site:

1) Database of Preferential Agreements and Related Rules of Origin[6];
2) Comparative Study on Preferential Rules of Origin[7];
3) Categorization and analysis on Preferential Rules of Origin[8];
4) Study on the use of 'Change of Tariff Classification-based rules' in Preferential Rules of Origin[9];
5) Rules of Origin – Handbook[10].

Product Specific Rules

To confer the correct origin of the product, Customs officials have to know where to find the applicable rule(s) of origin and how to apply the rule(s). Information should be made available, preferably in electronic format, on the non-preferential rules of origin applicable in that specific country, and on the preferential rules of origin in place in that country. If this document is an electronic document, it could be a list of the FTAs in place with links to access them. If not available electronically, this document could consist of printouts of the FTAs. In both cases, the non-preferential rules of origin and existing agreements containing preferential rules of origin should be available to Customs experts and to the private sector. Reference can be made in this context to "A Comparative Study of the Rules of Origin in the Textiles and Vehicles Sectors" (https://www.wcoomd.org/en/search.aspx?keyword=Comparative+Study+of+the+rules+of+origin+in+the+textiles+and+vehicles+sectors).

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[6] Database of Preferential Agreements and Related Rules of Origin. Accessible at: http://www.wcoomd.org/en/topics/origin/instrument-and-tools/database.aspx.
[7] Comparative Study on Preferential Rules of Origin. Accessible at: http://www.wcoomd.org/en/topics/origin/instrument-and-tools/comparative-study-on-preferential-rules-of-origin.aspx.
[8] Categorization and analysis on Preferential Rules of Origin. Available at: http://www.wcoomd.org/en/topics/origin/instrument-and-tools/~/media/WCO/Public/Global/PDF/Topics/Origin/Instruments%20and%20Tools/Comparative%20Study/Related%20Documents/Start-cat%20e.ashx.
[9] Study on the use of "Change of Tariff Classification-based rules" in Preferential Rules of Origin, February 2015. Available at: http://www.wcoomd.org/en/media/newsroom/2015/february/~/media/WCO/Public/Global/PDF/Topics/Origin/Instruments%20and%20Tools/Comparative%20Study/Related%20Documents/Study%20on%20the%20use%20of%20Change%20of%20Tariff%20Classification-based%20rules%20EN.ashx.
[10] Rules of Origin - Handbook. Available at: http://www.wcoomd.org/en/topics/origin/overview/~/media/D6C8E98EE67B472FA02B06BD2209DC99.ashx.

Cumulation/accumulation

An FTA can contain cumulation/accumulation[11] provisions that apply to the preferential rules of origin of the applicable agreement. Therefore, it is necessary to make sure that Customs officials understand cumulation/accumulation provision to comply with the preferential rules of origin in place. As stated above, the existing agreements should be available both to Customs experts and to the private sector. Reference can be made in this context to the "Study on Accumulation/Cumulation" (https://www.wcoomd.org/en/search.aspx?keyword=Study+on+cumulation).

5 Procedural malfunctions in determining origin

Besides PSR and cumulation/accumulation provisions, origin irregularities may occur due to procedural malfunctions in determining origin, and in administrative cooperation. In many cases Customs administrations encounter certificates of origin which are incomplete or contain incorrect information and have difficulty securing the necessary cooperation between the exporting country and the importing country.

The WCO has published guidelines and studies to assist Members regarding verification and certification:

1) Guidelines on Preferential Origin Verification[12];

2) Guidelines on Certification of Origin[13];

3) Comparative Study on Certification of Origin[14];

4) World Trends in Preferential Origin Certification and Verification[15].

Proofs of Origin

Customs administration must evaluate the proof of origin according to the certification system in place. The exporter/producer (or importer, if the system is importer-based) has to complete the proof of origin and provide the required information. Many kinds of irregularities can occur, such as incomplete information, inconsistency with commercial documents, incorrect stamps and signatures, format errors, and procedural incompliance. Customs officials must be familiar

[11] Cumulation/accumulation is explained at the WCO homepage. Available at: http://www.wcoomd.org/en/topics/origin/instrument-and-tools/comparative-study-on-preferential-rules-of-origin/specific-topics/study-topics/cum.aspx.
[12] Guidelines on Preferential Origin Verification, June 2012. Available at: http://www.wcoomd.org/en/topics/origin/~/media/WCO/Member/Global/PDF/Topics/Key%20Issues/Revenue%20Package/Origin/Guidelines_Preferential_Origin_Verification.ashx.
[13] Guidelines on Certification of Origin, July 2014. Available at: http://www.wcoomd.org/en/topics/origin/~/media/WCO/Member/Global/PDF/Topics/Origin/Instruments%20and%20Tools/Guidelines%20on%20certification%20endorsed%20July%202014%20EN.ashx.
[14] Comparative Study on Certification of Origin, February 2014. Available at: http://www.wcoomd.org/en/topics/origin/instrumentandtools/~/media/WCO/Public/Global/PDF/Topics/Origin/Instruments%20and%20Tools/Comparative%20Study/Related%20Documents/COMPARATIVE%20STUDY%20ON%20CERTIFICATION%20OF%20ORIGIN%20final%20EN.ashx.
[15] World Trends in Preferential Origin Certification and Verification, November 2011. Available at: http://www.wcoomd.org/en/topics/origin/instrumentandtools/~/media/WCO/Public/Global/PDF/Topics/Research/Research%20Paper%20Series/20_PrefOrigin_WorldTrends_Tanaka_EN.ashx.

with the system(s) in place and know how to evaluate the information provided on proof of origin.

Administrative cooperation

The Guidelines on Preferential Origin Verification define administrative cooperation as follows:

"The Customs authority of the importing country requests the competent authority of the partner country to provide administrative assistance. Upon request from the importing side, the competent authority of the exporting country would take the appropriate measures to confirm the authenticity of the proofs of origin or the originating status of the goods in question"[16].

To facilitate the flow of trade as efficiently as possible, the exporting country and the importing country need to cooperate. The Origin Irregularity Typology Study showed that importing countries faced difficulties receiving the necessary information for the verification process from the exporting countries. In theory both sides should be willing to cooperate and mechanisms for Mutual Administrative Cooperation should be in place. However, as the exporter is not affected in the same way as the importer, who pays the duties on the products, in many cases the importing country finds that the exporting country does not take the matter as seriously as needed.

Administrative cooperation, compliance with procedural requirements, and origin criteria play a significant role, as the irregularities related to these aspects may lead to denial of preferential treatment (if it is not possible to rectify the irregularity at the right time). The case studies provide various examples relating to the four key areas indicated in Section II together with an overview on the ways to tackle origin irregularities in practice. As there are so many FTAs in force and the rules are not harmonized, it is necessary to evaluate the problems a country faces on a case-by-case basis. However, the case studies show that many of the problems are similar and occur due to the reasons already mentioned above.

[16] Guidelines on Preferential Origin Verification, p. 6, *supra* note 12.

6 Case studies

6.1 Origin Irregularity Case Study for Australia

6.1.1 Introduction

The Trade Policy and Negotiation section of the Australian Customs and Border Protection Service (ACBPS) is responsible for implementing customs related aspects of concluded free trade agreements and is closely involved in the negotiation of the customs related procedures of these agreements. The section provides high quality trade policy advice on customs-related trade policy, including tariff, valuation and origin policy.

6.1.2 Irregularity

ACBPS have encountered cases where the tariff classification provided on an import declaration is different than the tariff classification provided on the documentary evidence used to support the claim for origin.

6.1.3 Category

Proof of origin

6.1.3.1 Problem

A good was imported into Australia under one of Australia's free trade agreements (FTAs). The Australian importer claimed preferential tariff treatment for the good, claiming the good was originating and met the applicable rule of origin for that good.

The importer's claim was supported by a declaration of origin by the producer, which stated the preference criteria of product specific rule (PSR) of origin had been meet. When completing the import declaration, the importer provided a different tariff classification to that listed on the declaration of origin (as the importer did not agree with tariff classification on the declaration of origin). The PSR for the tariff classification of the good on the declaration of origin was a change in tariff subheading (CTSH) or regional value content (RVC) 40%.

ACBPS choose to conduct a verification exercise on the good. As part of the verification process, ACBPS requested information from the producer to support the claim that the good was originating, that is, that it meets the CTSH or RVC 40% rule.

Through information provided by the producer it was found that the 87% of the materials used in the manufacture of the good were non-originating. Therefore, the good failed to meet the RVC 40% rule. Further it was found there had been no significant change in tariff classification (CTC) movement in the production of the good, that is, the good had failed to meet the CTSH rule. As a result, the good was deemed not to be originating because it did not meet the relevant PSR for the good classified on the declaration of origin and could therefore not claim preferential tariff treatment under the FTA using the PSR.

Further, the ACBPS verification confirmed that different tariff classifications had been provided on the declaration of origin and the corresponding import declaration and ruled that the correct HS classification was the classification provided on the import declaration. The PSR for the tariff classification on the import declaration was CTSH provided at least 50% by weight active ingredient is originating or RVC 40% or chemical reaction process rule.

Based on information provided by the producer and the ruling on the correct HS Classification of the good, ACBPS determined the good qualified under the chemical reaction process rule. The ACBPS tariff chemist confirmed that a 'chemical reaction' had occurred in the production that met the requirements of the process rule.

6.1.3.2 Solution

A new declaration of origin was completed by the producer to reflect the correct tariff classification and to identify the correct preference criteria. ACBPS accepted the claim of origin and allowed preferential tariff treatment.

6.1.4 Conclusion

A difference in tariff classification between an import declaration and its supporting documentary evidence should be treated on a case-by-case basis. The focus should be on whether the imported goods meet the rules of origin under the FTA.

6.2 Case Study by Botswana on Countering Origin Irregularities

6.2.1 Overview of origin irregularities

The relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin are as follows:

- Free Trade Agreement (FTA) List
- WTO Agreement on Rules of Origin
- Revised Kyoto Convention (RKC)
- 1956 Trade Agreement: Botswana/Malawi Trade Agreement
- Botswana/Zimbabwe Trade Agreement
- SADC Protocol on Trade
- African Continental Free Trade Area (AfCFTA) Agreement
- EU-SADC Economic Partnership Agreement (EPA)
- SACUM-UK Economic Partnership Agreement (EPA)
- SACU-EFTA Free Trade Agreement
- SACU-MERCOSUR

6.2.2 Irregularities related to origin criteria

6.2.2.1 Failure to submit proof of origin for cumulation purposes

Actual case

Origin criterion: Cumulation Reason for verification: need to confirm status for registration Verification method: Administrative cooperation

A client approached the Administration to apply for registration as an exporter under the SADC Protocol on Trade. The materials used in production were sourced from Country A, necessitating the provision of proof of origin. However, under the SACU arrangement, where exporters are not required to submit proof of origin due to the free movement of goods within the Customs Union, the client faced difficulties in securing the proof of origin for the stated goods. This challenge was identified during the registration process for exporters under the SADC FTA, which includes a one-time pre-export verification. It is important to note that both Botswana and Country A are members of the Southern African Customs Union (SACU) and SADC FTA. Trade within SACU does not require proof of origin due to the free movement of goods with the Customs Union.

After consultations, BURS and the Customs administration in Country A, as the Competent Authorities, resolved the issue by agreeing to use a supplier declaration as provided under the SADC Protocol on Trade.

6.2.2.2 Specified process (Product Specific Rules)

Actual case

Name of commodity: garment
Exporting party:
Origin criterion: specified process
Reason for verification: need to confirm manufacturing process
Verification method: Administrative cooperation (consultative meetings)

A client importing garments claimed preferential treatment, arguing that the process used to manufacture the garments from imported fabric was a sufficient process. However, this interpretation contradicted the specified process, which stated that the garments had to be manufactured from yarn.

The importer based their claim on the definition of “manufacture” under national legislation, which emphasized a Change in Tariff Classification (CTC). They argued that the process was substantial because it altered the character of the product. However, they ignored the specific rule that the garments be manufactured from yarn.

Following consultative meetings with the trader and the Department of Industrial Affairs, the requirements under the rules of origin were clarified, compared to the provisions of the Industrial Act. As a result, the claim for preferential treatment was denied.

6.2.3 Ways to counter origin irregularities

6.2.3.1 Customs Administration

The Inspection Unit (border post/port of entry), Central Processing Unit, and Rules of Origin Unit (BURS) are responsible for detecting origin irregularities. Customs officials responsible for origin are aware of the existing trade agreements. They receive training on the rules of origin through awareness workshops, in-house training, and online courses.

Information is provided in the Customs Procedure Manual and all manuals related to different trade agreements are available through the intranet. Information on rules of origin is also accessible on the BURS website and intranet. Internal communication within the organization is conducted using internal memorandums, and announcements intended for all Customs staff are published on the intranet.

Incomplete information on proof of origin and other documents is typically verified at the time of clearance. Verifications are often initiated by Customs officers at the border, who lodge queries with the Rules of Origin office. The Rules of Origin officer may contact the competent authority in the exporting country via email or telephone. If the issue is not resolved, a deposit is collected to release the goods while the issue is escalated for further verification.

Where verification has been requested, the Administration may send reminders to the exporting country before the deadline. If a request is received, follow-ups will be conducted to ensure exporters supply the required information promptly.

6.2.3.2 Private sector

Through awareness workshops and private sector training conducted in collaboration with other Government agencies, Customs engages with the business community through Customs-to-Business forums. The private sector is represented by Business Botswana, a representative body for the private sector at these forums. Additional information is published on both the Government and BURS websites. Traders' manuals have also been developed to assist with the implementation of the Rules of Origin.

6.2.3.3 Administrative cooperation

In Botswana, the issuing authority is Customs, which is fully aware of all existing agreements. Customs also forms part of the trade agreements negotiation team as technical adviser to the Ministry of Trade.

The Rules of Origin Unit at Head Office disseminates information through training and awareness workshops. Furthermore, refresher courses are conducted on an annual basis. BURS has an External Relations Office, responsible for all external communication. In addition to this, the Origin Unit has established relationships with other Customs Administrations to expedite the dissemination of information.

Communication with the competent authority of the exporting country is usually conducted via email or through a formal letter sent by email. These letters are also copied to the liaison officer. Reminders are sent before the deadline to remind the exporting country of the timelines.

6.3 Case Study by Brazil on Value of Non-Originating Materials

6.3.1 Organizational framework

The Special Secretariat of the Federal Revenue of Brazil (RFB) is an institution that encompasses both Customs and Tax Administration. The Customs Administration has a coordination unit responsible for risk management related to all types of customs offenses, including irregularities related to the origin of goods. Each regional customs unit is responsible for carrying out actions during customs clearance related to origin irregularities. Additionally, a specialized local team focuses on identifying origin-related irregularities through risk analysis and conducting origin verification procedures after clearance.

6.3.2 Overview of origin irregularities

In the implementation of Free Trade Agreements (FTA) that have come into force in recent years, the Customs Administration has been adapting to changes in certification systems and verifications of origin. This shift has redirected efforts towards identifying irregularities related to the originating status of goods and ensuring strict compliance with applicable rules of origin, rather than focusing solely on the documentary examination of certificates and other supporting documents. In response, Brazil has been enhancing its risk management strategies and developing specialized post-clearance verification routines, supported by a dedicated team, to effectively address these challenges.

A list of all FTAs currently in force or under negotiation is available on the following website: https://www.gov.br/siscomex/pt-br/acordos-comerciais/acordos-comerciais. Some of the FTA currently in force include ACE No. 18 (MERCOSUR), ACE No. 35 (Chile), and ACE No. 55 (Mexico).

Moreover, the Normative Instruction RFB No. 1864/2018 further provides a framework for implementing verification of the origin of the goods when a preferential treatment is claimed.

6.3.3 Irregularities related to origin criteria

6.3.3.1 Value of Non-Originating Materials

Actual case

Name of commodity: Adhesive films, classified under the code HS 3919
Origin criterion: Value of Non-Originating Materials
Reason for verification: Misrepresentation of materials used
Verification method: Administrative cooperation and direct questioning

An example of the work carried out by customs officers includes a case in which goods exported to Brazil from a specific country were selected for a post-clearance audit. There were doubts about compliance with the rules of origin in 180 Certificates of Origin.

In this case, the goods exported to Brazil were adhesive films, classified under HS 3919. As described in the Certificates of Origin, the goods should have complied with a rule requiring a 60% regional content index. This meant that to receive preferential tariff treatment, the sum of the Cost Insurance and Freight (CIF) values of the non-originating materials could not exceed 40% of the Free on Board (FOB) value of the exported goods.

The origin verification began with administrative cooperation, whereby the Brazilian Customs Administration requested additional information and documents from the competent authorities of the exporting country. These authorities provided the requested information and documents. However, the information did not have the required level of detail and was not sufficiently clear, making it necessary to proceed with the investigation. In light of this, the method adopted was direct questioning of the producer of the goods.

Throughout the investigation, the producer cooperated fully with the process, providing satisfactory responses to the inquiries. In response, the Brazilian Customs Administration obtained access to the following:

- A detailed description of the production process of the adhesive film models under investigation;
- Photos and diagrams of the manufacturing place where the goods were produced;
- Spreadsheets detailing the materials used in each component of the adhesive films, including their characteristics, countries of origin, quantities acquired, and acquisition cost (CIF value in US dollars); and
- Invoices for the materials used in production, and the respective import records.

The Customs Administration conducted a thorough analysis and developed a technological solution that enabled precise tracking of the materials acquired by the producer to the goods exported to Brazil. The analysis found that, of the 180 Certificates of Origin evaluated, 153 did not meet the 60% regional content requirement for the export value of the adhesive films to Brazil. Therefore, the CIF value of the materials originating from third countries exceeded 40% of the FOB export value of the goods.

It was concluded that the goods did not fulfill the rules of origin. The result of the investigation was then communicated to the authorities of the exporting country and the importers of the goods.

6.3.4 Ways to counter origin irregularities

6.3.4.1 Customs Administration

The local team, which is specialized in rules of origin, has extensive experience in this area. Generally, customs officers cross-reference information from the Certificate of Origin, invoices, shipping documents, accounting documents, and other information provided by the producers, the exporters, or the certifying authorities.

Among other tools, the Customs Administration uses the INDIRA system, a platform that enables the automatic exchange of information on import and export declarations within MERCOSUR. The INDIRA system is a powerful tool used to assess various irregularities that may occur in foreign trade operations, such as under-invoicing, classification errors, and origin-related irregularities.
Upon completion of the verification procedure, if preferential treatment is denied, the importer is granted a 30-day period to rectify their import declarations and pay the applicable customs duties. This regularization procedure aims to avoid additional penalties.

6.3.4.2 Private sector

During the verification of origin, the private sector (including importers, producers and exporters) is always provided with the opportunity to present additional information. The communication between the RFB and the private sector is currently done by email.

To enhance transparency and foster compliance, information on the completion and submission of import declarations is available on the official RFB website. (https://www.gov.br/receitafederal/pt-br/assuntos/aduana-e-comercio-exterior/manuais/despacho-de-importacao/sistemas/duimp/elaboracao-da-duimp/aba-mercadoria-de-duimp-de-mercadoria-procedente-do-exterior).

Furthermore, customs officers participate regularly in virtual meetings and seminars to inform all the stakeholders about existing agreements and their requirements.

6.3.4.3 Administrative cooperation

Customs does not oversee the issuance of Certificates of Origin. This responsibility lies with the Secretariat of Foreign Trade, which coordinates with the entities responsible for the issuance of the Certificates.

Brazil currently exchanges electronic Certificates of Origin with some countries in Latin America, using XML files and digital signatures. This process streamlines origin-based treatment claims and enhances trade facilitation.

6.4 Case Study by Cambodia on Origin Irregularities

6.4.1 Organizational framework

The General Department of Customs and Excise of Cambodia (GDCE) is currently implementing 11 Free Trade Agreements (FTAs), including:

- ASEAN Trade in Goods Agreement (ATIGA);
- ASEAN-China Free Trade Area (ACFTA);
- ASEAN-Korea Free Trade Agreement (AKFTA);
- ASEAN-Japan Comprehensive Economic Partnership (AJCEP);
- ASEAN-India Free Trade Area (AIFTA);
- ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA);
- ASEAN-Hong Kong, China Free Trade Agreement (AHKFTA);
- Regional Comprehensive Economic Partnership (RCEP);
- Cambodia-China Free Trade Agreement (CCFTA);
- Cambodia-Korea Free Trade Agreement (CKFTA); and
- United Arab Emirates-Cambodia Comprehensive Economic Partnership Agreement (UAE-CAMBODIA CEPA).

At GDCE headquarters, two Offices are responsible for verifying Proof of Origin (POO) for preferential tariff treatment: the Rules of Origin Office under the Department of Planning and Technique, and the Free Trade Office under the International Customs Cooperation Department. Additionally, Phnom Penh International Airport Department is responsible for verifying POO for imported goods arriving by air.

6.4.2 Overview of rules of origin irregularities

Cambodia has 11 FTAs in force as of 2024. The types of FTA origin irregularities can in practice be divided into two categories: Minor Error and Rejection.

6.4.2.1 Statistics on types of irregularities from 2021 to 2024, based on number of applications

Year	Minor Error	Rejection
2021	2175	521
2022	6378	377
2023	5546	344
9 months in 2024	5091	393

(Unit: Number of applications)

Minor Error mostly involves mistakes in the application form, an incorrect HS code with regard to the last two digits, typographical errors, or a lack of supporting documents. Cases of Certificate of Origin (CO) rejection typically arise from non-compliance with origin certification requirements, misapplication of direct consignment, application of an incorrect FTA duty rate, or failure to meet the required origin criteria.

6.4.3 Irregularities related to administrative cooperation

6.4.3.1 Irregularities related to misapplication of Back-to-Back CO

Actual Case 1

Name of Commodity: Sodium Cyanide Solid (Originating in Country A)

Exporting Party: Country B

Reason for verification of Proof of Origin: Cambodia Customs officers verified the Back-to-Back CO Form AANZ, issued by Country B to Cambodia. During this process, they requested the importer to submit the original CO issued by Country A, where the commodity originated. Upon review, the Cambodia Customs officials questioned the importer about the original CO AANZ, issued by Country A to Country B. They noticed that Box 13 (Back-to-Back CO) on the original CO AANZ, issued by Country A to Country B, had been ticked, raising questions about its validity.

Verification method: Due to this concern, Cambodia Customs officials sent an email to the CO issuing authority of Country A for further clarification. In response to the email, along with a notification letter, the CO issuing authority of Country A provided the information that Box 13 (Back-to-Back CO) had been ticked in error.

Result: Following this clarification, the Back-to-Back CO Form AANZ, issued by Country B to Cambodia, was accepted, and the preferential tariff treatment was granted in Cambodia.

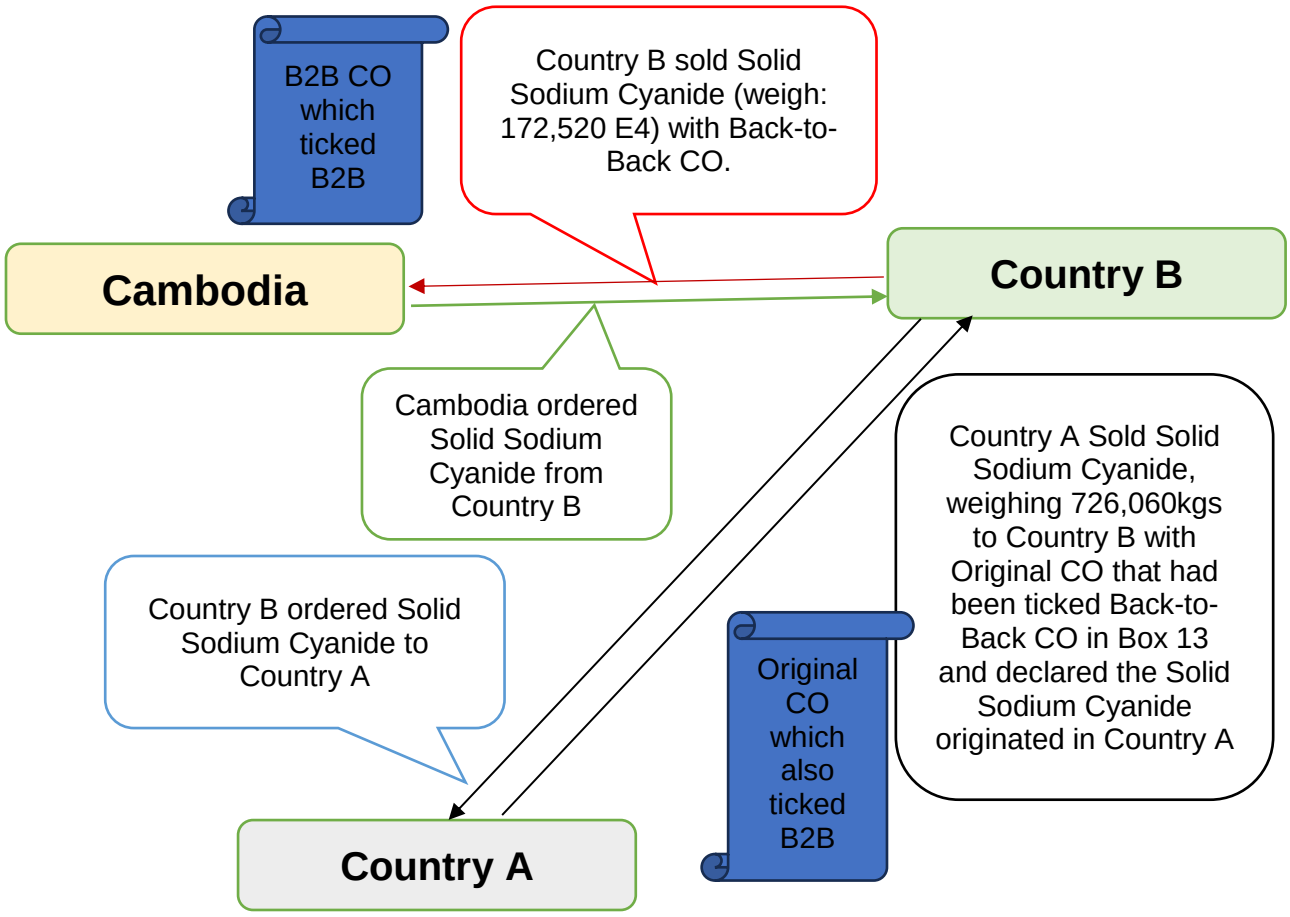
The importer ordered Sodium Cyanide Solid from Country B. To fulfil this order, Country B sourced the Sodium Cyanide Solid from Country A. Country A sold Sodium Cyanide weighing 726,060 kg to Country B, and declared the product as originating in Country A. An original CO that was issued by Country A mistakenly ticked “Back-to-Back CO” while still declaring the product as originating in Country A. Subsequently, to obtain preferential tariff treatment in Cambodia, Country B sold Sodium Cyanide Solid weighing 172,520 E4 (where E4 is the code to indicate the unit measure gross kilograms) to Cambodia. For this transaction, Country B issued a Back-to-Back CO based on the original CO provided by Country A.

After conducting the verification, the Cambodia Customs Authority determined that, based on the Operational Certification Procedure (OCP) outlined in the AANZFTA Rules of Origin (ROO) Chapter, only an intermediate Party is authorized to issue a Back-to-Back Certificate of Origin (CO). Furthermore, the Back-to-Back CO must be indicated by ticking Box 13.

However, in this case, the original CO issued by Country A also had Box 13 (Back-to-Back CO) ticked, which was inconsistent with the provisions of the OCP. This discrepancy meant

that the original CO did not comply with the Back-to-Back CO requirements as stipulated in the OCP.

Figure 1. Transaction flow chart



Back-to-Back CO application was not satisfied

6.4.3.2 Misapplication of direct consignment

Actual case 2

Name of Commodity: ***Cosmetic Counter*** (Originating in Country A)

Exporting Party: Country B to Cambodia

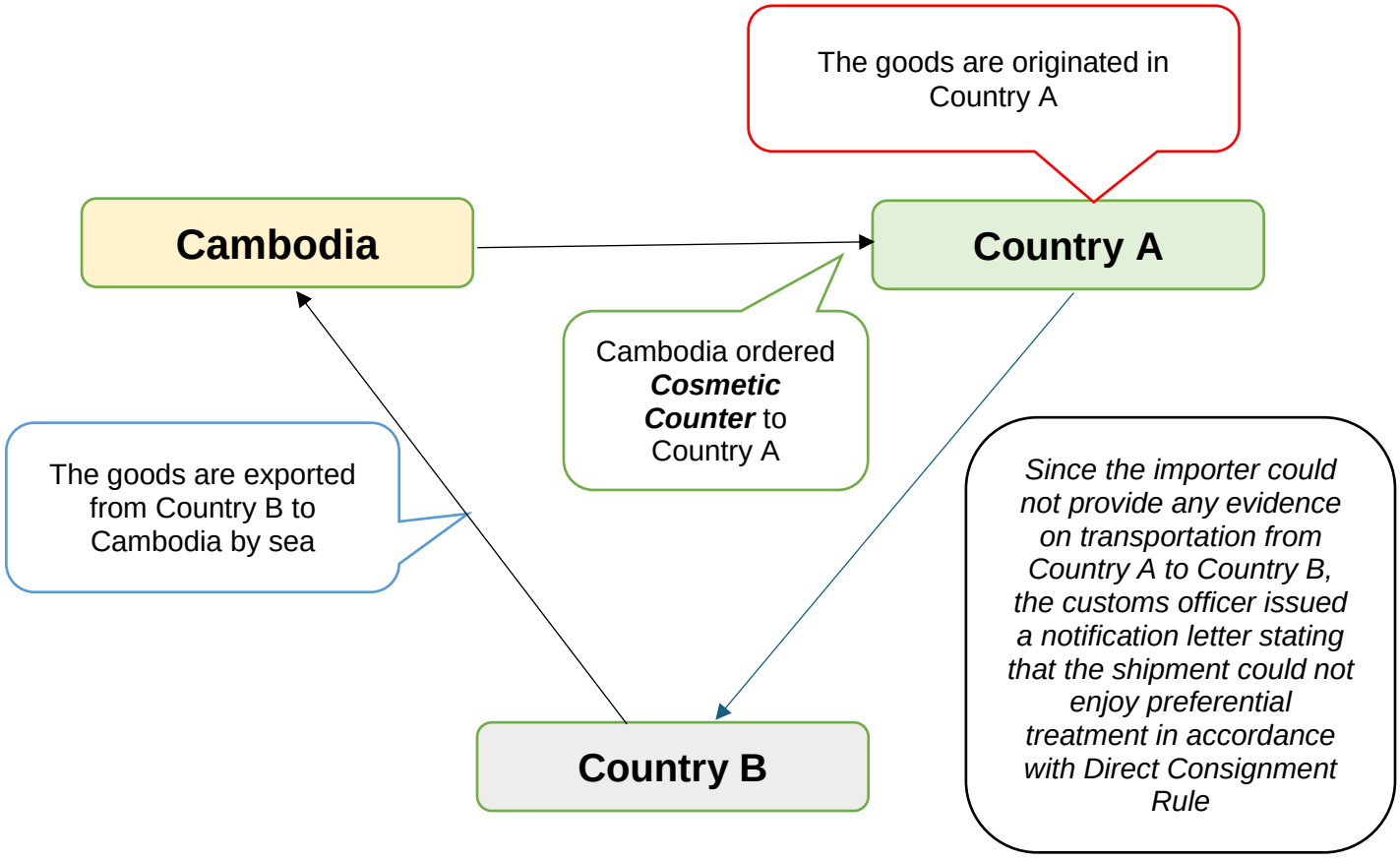
Reason for verification: The exporting country differed from the country of origin

Verification method: The Customs Authority examined the Certificate of Origin (CO) and related verification documents. Additional information was requested from the trader.

Result: The Customs officer issued a notification letter stating that the shipment could not qualify for preferential treatment due to non-compliance with the Direct Consignment Rule.

During the process of CO verification, the Customs officer noticed that the exporting country differed from the country of origin. The Customs officer asked the importer for an explanation. In response, the importer claimed that the goods were produced in Country A and sent to Country B by truck before being loaded onto a vessel bound for Cambodia. The Customs officer requested additional transport documents to prove that the shipment complied with the Direct Consignment Rule under ATIGA. However, the importer was unable to provide any supporting evidence. Consequently, the Customs officer issued a notification letter stating that the shipment could not qualify for preferential treatment due to non-compliance with the Direct Consignment Rule.

Figure 2. Movement of goods to Cambodia



6.4.4 Ways to improve the accuracy of proof of origin

6.4.4.1 Customs Administration

Capacity Building for Customs officers

Customs officers involved in verifying Proof of Origin (POO) receive training on Free Trade Agreements, Rules of Origin, Customs Procedures, Trade Facilitation, and other related

subjects. The training is conducted locally, overseas, or online. Various training sessions and workshops are organized to keep Customs officers updated on the latest regulations and best practices in CO verification.

In addition to workshops and training, Customs officers have access to all necessary information regarding existing agreements through:

- participation in FTA negotiation processes;
- discussions with FTA Parties on implementation issues; and
- the accessing of information via official communication channels or the Customs website.

Moreover, to ensure that Customs officials responsible for ROO understand the varying rules across different agreements, Cambodia Customs:

- assigns Customs officers to examine and verify Certificates of Origin (CO) or Declarations of Origin (DO) under different FTAs;
- delegates responsible Customs officers to participate in FTA negotiations, follow up on developments, and keep records of any updates regarding the status of each FTA; and
- conducts regular on-the-job training sessions to enhance understanding and ensure compliance.

Issuance of Instruction on treatment of discrepancies on Proof of Origin under FTAs

For discrepancies in POO, Cambodia Customs has an Instruction letter on the treatment of discrepancies under FTAs. This document serves as a basis for determining whether to reject or approve preferential treatment in accordance with existing FTAs. The checklist within the Instruction identifies common errors, ranging from minor issues, such as spelling errors, to major ones, such as incorrect HS codes or missing signatures.

Implementing ASEAN Single Window

The implementation of the ASEAN Single Window (ASW) facilitates seamless data exchange and verification processes. The General Department of Customs and Excise (GDCE) has adopted the ASW for exchanging electronic documents with ASEAN Member States. This includes the electronic Certificate of Origin (e-Form D), implemented since July 2019, and the ASEAN Customs Declaration Document (ACDD) since December 2020.

Engaging with the private sector

The GDCE actively engages with the private sector to enhance transparency and efficiency in Certificate of Origin (CO) verification. Cambodia Customs typically requests further clarification when necessary and makes decisions based on actual errors, striving to balance trade facilitation with regulatory compliance.

6.4.4.2 Administrative cooperation

The GDCE uses various channels to communicate with the competent authority of the exporting country. Typically, in accordance with the provisions of FTAs, GDCE uses e-mails to communicate with the competent authority's exporting country when no verification system

exists to authenticate the CO Form. For example, this approach is used to verify the CO Form AANZ, which was issued by the issuing authority in this case.

6.4.4.3 Measures concerning the private sector

The GDCE provides various means to ensure that the private sector is aware of the rules applicable to Proof of Origin and has access to all necessary information on existing agreements through:

- arranging training sessions, workshops and meetings for the private sector;
- publishing all information and documents related to FTAs on Customs websites, social networks and other websites; and
- providing a help desk to address any enquiries.

6.5 Case Study by Chile on Origin Irregularities

This document is intended to disclose the main origin irregularities detected by Chilean Customs and how they are treated.

6.5.1 Institutional framework

The Classification and Origin Department, part of the Customs Technical Directorate, manages the rules of origin, implementing technical regulations for the application of any trade agreement signed by Chile, issuing technical reports and advance rulings related to matters of classification and origin, among other tasks.

Meanwhile, the Post Clearance Enforcement Department, part of the Customs Enforcement Directorate, performs risk analyses regarding valuation, classification, origin and others that affect tax and tariff collection, with the purpose of identifying potential sources of customs risk and managing them, in coordination with local Customs.

Verifying the origin of goods is a task directed by the Customs Enforcement Directorate, intervening either on their own initiative or on behalf of other Directorates or any other local Customs administration. In particular, the Post Clearance Enforcement Department has developed an Annual Origin Enforcement Plan, focused in the application of verification of origin procedures.

6.5.2 Main origin irregularities

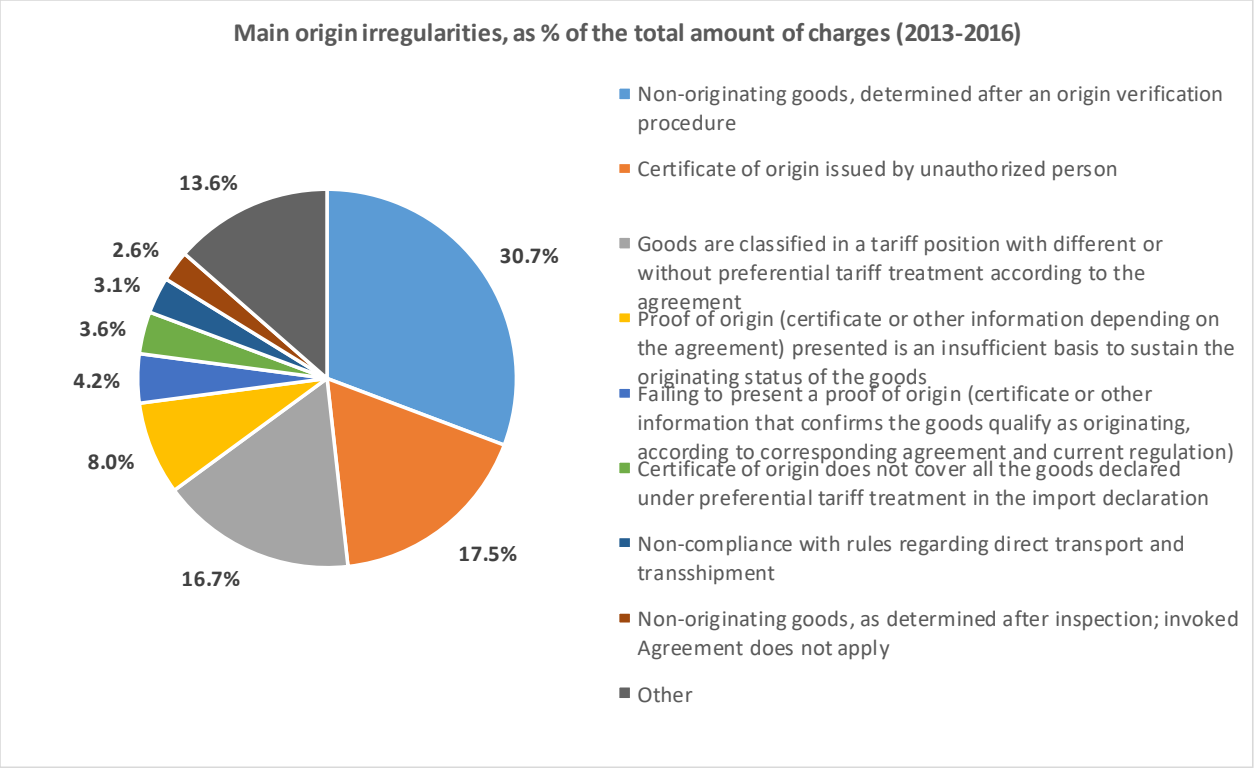
The main origin irregularities detected by the Chilean Customs are analyzed below, according to their respective agreement and regulatory framework. These irregularities seek preferential tariff treatment from one the 26 trade agreements signed by Chile, in force by 2017, or by the preferential treatment granted to Least-Developed Countries.

The database used for the present analysis were the charges filed due to control and enforcement actions performed by Chilean Customs to detect irregularities in origin. In particular, to produce these statistics charges filed due to detected origin irregularities in import declarations with the following status were selected from the Complaints and Charges System of the National Customs Service (*Sistema de Denuncias y Cargos*, DECARE): generated; entered; notified; cancelled after modifying import customs document; determined through review resource; paid; review resource in course; and sent to tribunals for customs and tax matters[17].

Between 2013 and 2016, 2,245 of these charges were filed, for a total amount of USD 7.181.139.
The following chart shows the distribution of the main origin irregularities (by the amount of the charge), detected by the Chilean Customs:

[17] The charges under the following status were excluded, because they were either successfully challenged or dismissed internally: absolved; annulled; not filed; and observed in an internal review process.

Figure 3



Source: Complaints and Charges System of the National Customs Service (DECARE), National Customs Service.

Set out below are the amount (in USD) and the number of charges filed due to the detection of origin irregularities, from 2013 to 2016.

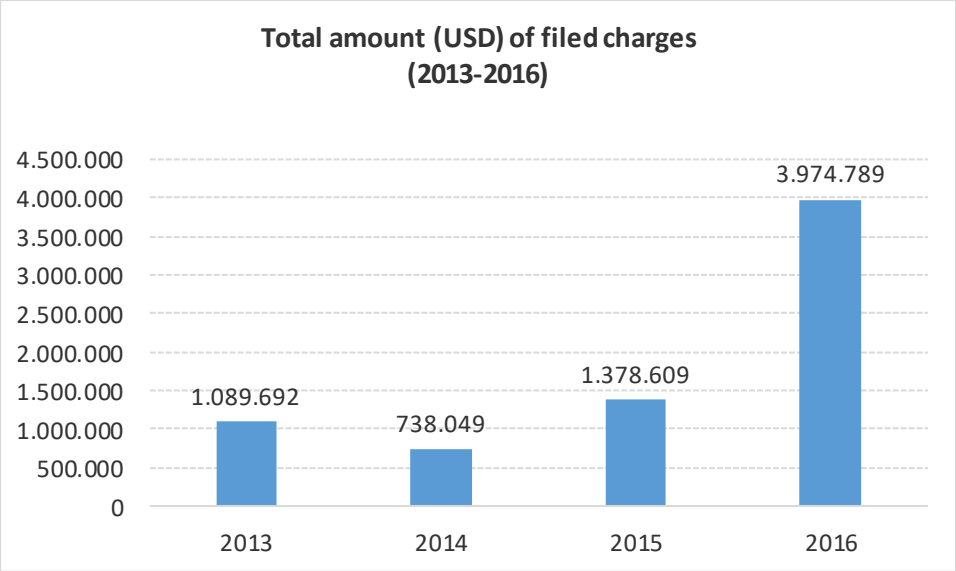
Table 1

GROUNDS FOR CHARGES	AMOUNTS FROM FILED CHARGES (USD)				
	2013	2014	2015	2016	TOTAL
Non-originating goods, determined after an origin verification procedure	51,848	144,743	339,610	1,670,372	2,206,574
Certificate of origin issued by unauthorized person		18,614	36,007	1,202,514	1,257,135
Goods are classified in a tariff position with different or without preferential tariff treatment according to the agreement	169,791	178,175	570,507	280,875	1,199,348
Proof of origin (certificate or other information depending on the agreement) presented is an insufficient basis to sustain the originating status of the goods		5,564	63,391	503,818	572,772

GROUNDS FOR CHARGES	AMOUNTS FROM FILED CHARGES (USD)				
	2013	2014	2015	2016	TOTAL
Failing to present a proof of origin (certificate or other information that confirms the goods qualify as originating, according to corresponding agreement and current regulation)	58,296	86,772	107,789	47,960	300,818
Certificate of origin does not cover all the goods declared under preferential tariff treatment in the import declaration	29,864	40,233	79,835	108,629	258,561
Non-compliance with rules regarding direct transport and transshipment	127,924	60,070	31,985	2,882	222,861
Non-originating goods, as determined after inspection; invoked Agreement does not apply	189,752				189,752
Non-compliance with rules regarding invoicing by third, non-party country		88,178	74,224	20,157	182,559
Certificate of origin presented outside its validity period	46,060	38,006	53,752	13,093	150,911
Failing to present corrected certificate in terms of formality, according to agreement or current regulation		28,543	19,958	88,618	137,119
Failing to present certificate of origin in original, when required by the applicable agreement or regulation	29,137			25,633	54,770
Certificate of origin issued outside of the allowed period with respect to the issuance of the invoice (when required by the agreement)		38,402			38,402
Certificate format does not conform to previously authorized/agreed format	15,971	8,344	1,530	1,512	27,356
Certificate of origin not issued by an authorized body	12,224	2,404	22	5,634	20,284
Stamp affixed to certificate of origin does not match with the official stamp				3,092	3,092
Other	358,824				358,824
TOTAL	**1,089,692**	**738,049**	**1,378,609**	**3,974,789**	**7,181,139**

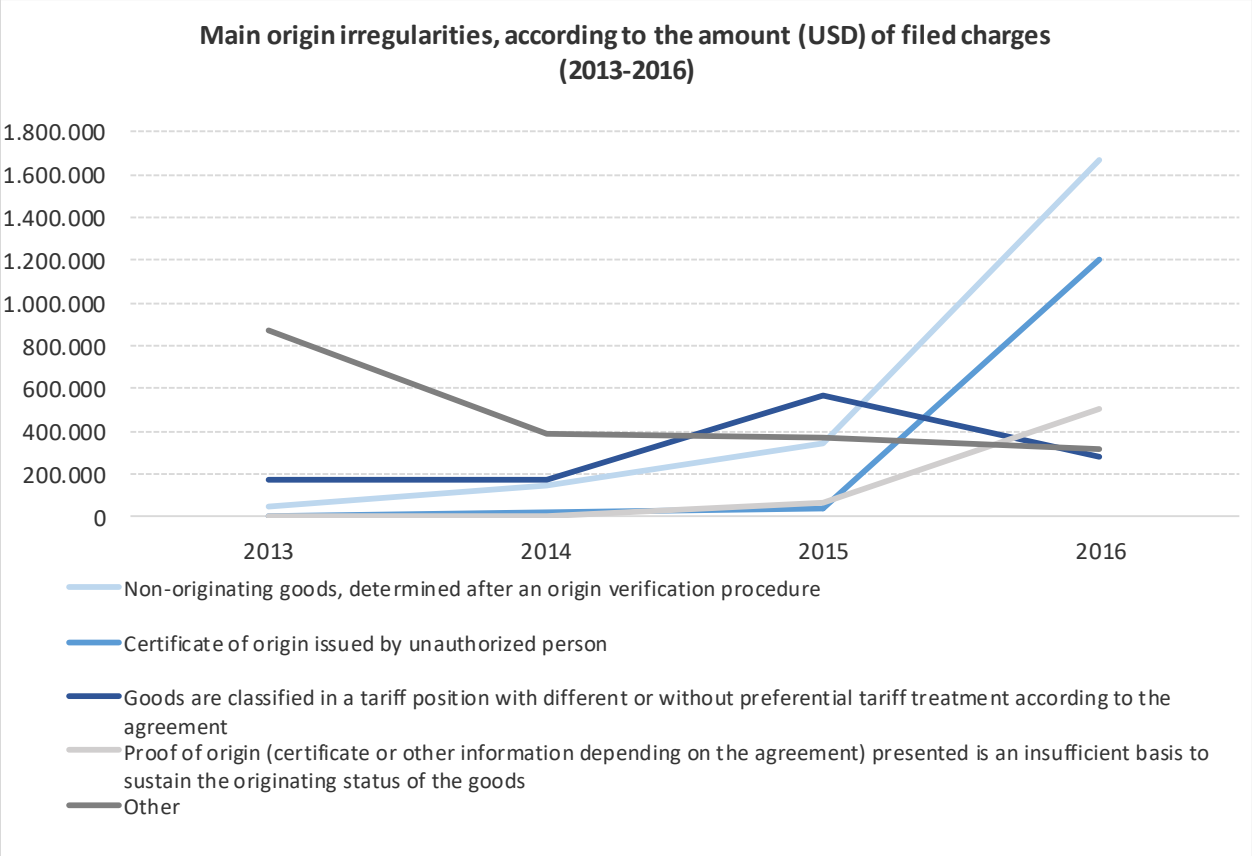
Source: Complaints and Charges System of the National Customs Service (DECARE), National Customs Service.

Figure 4



Source: Complaints and Charges System of the National Customs Service (DECARE), National Customs Service.

Figure 5



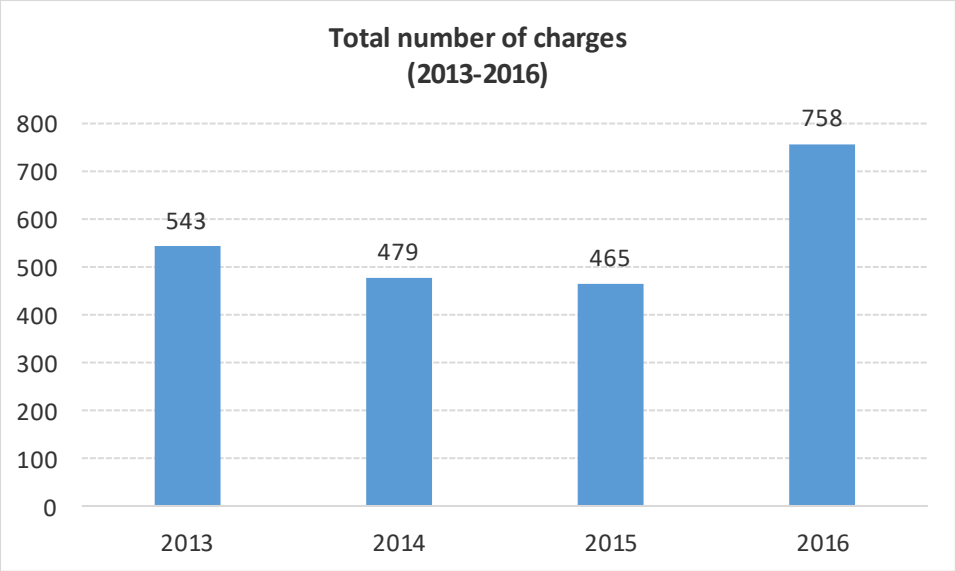
Source: Complaints and Charges System of the National Customs Service (DECARE), National Customs Service.

Table 2

GROUNDS FOR CHARGES	NUMBER OF FILED CHARGES				
	2013	2014	2015	2016	TOTAL
Non-originating goods, determined after an origin verification procedure	29	81	164	412	686
Goods are classified in a tariff position with different or without preferential tariff treatment according to the agreement	101	232	156	121	610
Failing to present a proof of origin (certificate or other information that confirms the goods qualify as originating, according to corresponding agreement and current regulation)	93	48	50	89	280
Proof of origin (certificate or other information depending on the agreement) presented is an insufficient basis to sustain the originating status of the goods		9	30	58	97
Non-originating goods, as determined after inspection; invoked Agreement does not apply	93				93
Certificate of origin does not cover all the goods declared under preferential tariff treatment in the import declaration	17	14	21	23	75
Non-compliance with rules regarding direct transport and transshipment	49	18	3	2	72
Certificate format does not conform to previously authorized/agreed format	20	25	11	1	57
Failing to present corrected certificate in terms of formality, according to agreement or current regulation		20	6	22	48
Certificate of origin issued by unauthorized person		10	9	12	31
Failing to present certificate of origin in original, when required by the applicable agreement or regulation	23			2	25
Certificate of origin presented outside its validity period	4	5	9	6	24
Non-compliance with rules regarding invoicing by third, non-party country		15	5	4	24
Stamp affixed to certificate of origin does not match with the official stamp				5	5
Certificate of origin not issued by an authorized body	1	1	1	1	4
Certificate of origin issued outside of the allowed period with respect to the issuance of the invoice (when required by the agreement)		1			1
Other	113				113
TOTAL	**543**	**479**	**465**	**758**	**2,245**

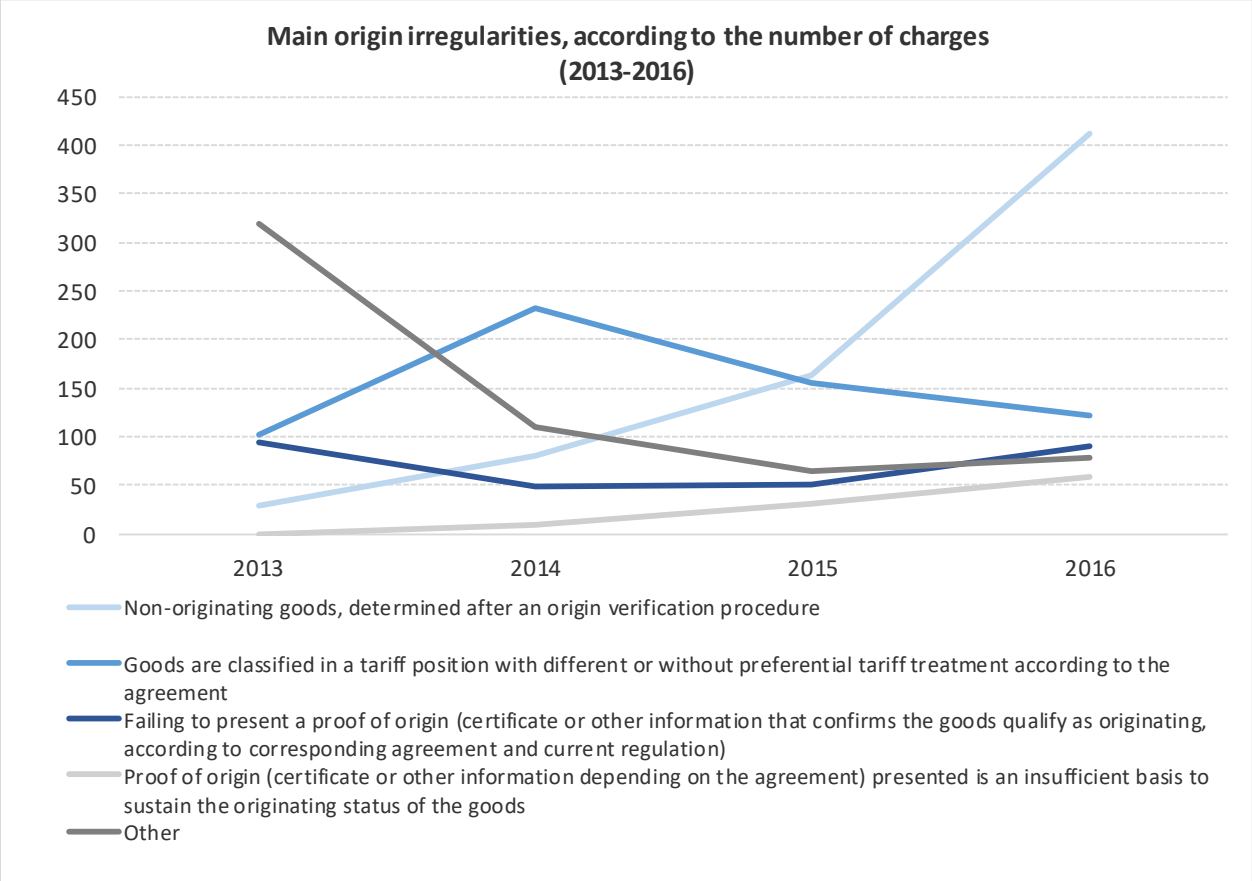
Source: Complaints and Charges System of the National Customs Service (DECARE), National Customs Service.

Figure 6



Source: Complaints and Charges System of the National Customs Service (DECARE), National Customs Service.

Figure 7



Source: Complaints and Charges System of the National Customs Service (DECARE), National Customs Service.
As shown in Table 1 and Figure 1, the main origin irregularities in terms of amount in the 2013-2016 period correspond to: non-originating goods determined by origin verification procedures, amassing 30.7% of the total value of origin irregularities; then we have certificate of origin issued by unauthorized person (17.5% of the total); and in third place that the goods are classified in a tariff position with different or without preferential tariff treatment according to the agreement (16.7% of the total).

Thus, charges from non-originating goods following origin verification procedures, and from certificates of origin issued by an unauthorized person contribute around half (a 48.2%) of the amount from charges filed due to irregularities in the origin of goods between 2013 and 2016.

Meanwhile, Table 2 and Figure 5 show that during this period the main origin irregularities according to number of charges are: non-originating goods determined after an origin verification procedure, amassing 30.6% of the total; then we have cases where the goods are classified in a tariff position with different or without preferential tariff treatment according to the agreement , corresponding to 27.2% of the total; and, in third place, failing to present a proof of origin (certificate or other information that confirms the goods qualify as originating, according to corresponding agreement and current regulation), with 12.5% of the total.

As shown in Figure 4, there was an important rise in the number of charges for the 2015-2016 period, increasing 63% (188% in terms of the amounts involved). This surge in origin-related charges was led by origin verification procedures.

6.5.3 Irregularities related to origin criteria (cases)

6.5.3.1 Specific Origin requirements - Active ingredient

Real Case 1

Name of goods: Herbicide (HS 38.08) Exporting party: A Origin criterion: Manufactured from active ingredients produced in the territory of signatory countries Grounds for verification: Import of herbicide, subject to specific origin requirements in the trade agreement Verification method: Customs authority of importing party B performed an origin verification Outcome: Denial of preferential tariff treatment

Exporting Party A sold to Chile a disinfectant, put up for retail sale, corresponding to a herbicide. The certificate of origin provided for goods described as “herbicide”, whose

active ingredient is imazethapyr ammonium, a product exported by Exporting Party A, declared under the tariff code 3808.9319 of the Harmonized System.

The product referred to as “herbicide” is subject to specific requirements in the trade agreement, which notes that products from heading 3808 must be manufactured from active ingredients produced in the territory of signatory countries, and these requirements prevail over general criteria.

Exporting Party A answered the origin verification questionnaire declaring that the herbicide is composed by the active ingredient Technical Imazethapyr/Pursuit, qualifying as non-originating goods, as this does not qualify as an active ingredient produced in the territory of Parties of the agreement.

As a result of the origin verification procedure for goods, and according to the collected background information, it was concluded that the active ingredient used in the manufacturing of the disinfectant corresponds to a non-originating material, therefore, the specific origin requirements set in the trade agreement are not met.

6.5.3.2 Specific Origin requirements – Change in classification

Real Case 2

Name of goods: Ferrochrome (HS 72.02) Exporting party: A Origin criterion: Goods are wholly obtained or produced in the territory of one or both parties. Grounds for verification: Ferrochrome import from a country that does not produce said mineral Verification method: Customs authority of Importing Party B performed verification Outcome: Denial of preferential tariff treatment

Exporting Party A sold to Chile Ferrochrome with a carbon content over 4% of its weight (heading 72.02 of the Harmonized System)

In the origin verification procedure, it was possible to determine that the exporting country is not a Ferrochrome producer and that, considering the available background, it was determined that the product originates from a Non-Party country.

Exporting company A declares that the product is High Carbon Ferrochrome (HS 72.02), that it receives in stones in a raw state, with a size of about 2 inches x ½ inch or around 10 mm or less. It is then subject to a grinding process, in the country declared as origin, to turn it into dust (HS 72.02).

In this case, it was concluded that both Ferrochrome high carbon in stones and Ferrochrome dust are classified in tariff header 72.02, therefore the rules of origin of the Agreement are not applicable since there is no change in the tariff chapter.

6.5.4 Irregularities related to proof of origin (cases)

6.5.4.1 Goods are classified in a tariff position not provided for preferential tariff treatment in the Agreement

Real Case 3

Name of goods: Tights for girls Exporting Party: A Indicator: Certificate of origin and import declaration Irregularity: Tariff header declared in certificate of origin and import declaration is excluded from the trade agreement Outcome: Denial of preferential tariff treatment

An importer brought synthetic fiber long pants for women, with the import declaration indicating classification in header 6402.6311, fully exempt of taxes by providing Customs with a Certificate of Origin in order to be granted preferential tariff treatment.

An inspection officer reviewed the documents contained in the clearance folder (invoice, CO, among others), analyzing them together with the goods in physical inspection, and had doubts regarding the correct tariff classification of the goods.

As a result of the inspection, the Customs officer determined that the inspected goods corresponded to tights for girls, of synthetic fibers, measuring per single yarn 67 decitex or more, knitted or crocheted, being 6115.2200 the correct header, not included in the trade agreement. Therefore, preferential tariff treatment was denied.

6.5.4.2 Code does not comply with Authorized Exporter code structure to issue origin declaration on invoice

Real Case 4

Name of goods: Used farming tractor, parts and pieces of seeders and used wooden chairs. Exporting Party: A Indicator: Origin declaration on invoice Irregularity: Code does not comply with the structure indicated in the updated Authorized Exporter code list to issue origin declaration on invoice Outcome: Denial of preferential tariff treatment

An importer brought a used farming tractor, parts and pieces of seeders and wooden chairs, with an invoice declaration, in order to benefit from the trade agreement, with a preferential tariff treatment of a 100%.

After being selected for inspection during customs clearance, the appointed officer to perform the inspection had reasonable doubts regarding origin since the Authorized Exporter code on the invoice was not corresponding to the invoice declaration of Exporting Party A.

Since the code did not comply with the structure featured in the updated list of Authorized Exporter codes to issue invoice origin declarations under the trade agreement, the Customs office of the exporting country was consulted regarding the validity of said invoice declaration and the compliance with rules origin established in the trade agreement.

After the Customs office of the exporting country performed verification, the invoice declaration is not valid as it is not an authorized exporter, therefore it cannot be proved that goods are originating from any signatory Party of the Economic partnership association. Due to the above, preferential tariff treatment was denied.

6.5.5 Methods to counter origin irregularities

6.5.5.1 Promoting an Advance Rulings system

An Advance Ruling is an official, binding statement, issued in written form by the National Customs Service before performing import, export or re-entry procedures, or filed as a request for the reimbursement customs duties, regarding the following matters: tariff classification of goods; application of different valuation methods or criteria; recognition of rights for preferential tariff treatment or a review of the originating status of goods, determined according to a trade agreement signed by Chile; application of rules regarding tax exemption; and other customs matters.

Through an advance ruling, the stakeholder can be granted a binding opinion regarding origin for three years. Issued advance rulings are published on the website www.aduana.cl to provide easy access for all users.

6.5.5.2 Comparison charts of the different trade agreements, regarding rules of origin and customs procedures

The Classification and Origin department has developed comparison documents, regarding rules of origin and customs procedures related to origin included in trade agreements signed by Chile. These charts are published in the internal information network of local and regional Customs of the country in order to effectively guide Customs officers performing enforcement tasks and duties who analyze those operations where legal and technical knowledge of origin preferences and associated customs procedures play an essential role.

The comparative document for rules of origin established in each of the agreements signed by Chile contains the following information: Competent Authority, Tariff Heading change criterion, regional value content criterion, *de minimis* criterion, fungible goods and materials criterion, accumulation criterion, indirect materials, accessories, packaging for retail sale, sets,

packaging material and containers for shipment, free zone goods, preferential tariff treatment for used goods, and exhibitions.

On the other hand, the comparative document for customs procedures related to origin included in each trade agreement signed by Chile contains the following information: Competent Authority, direct consignment requirements, issuer of certificate of origin, validity period of certificate of origin, issuing period of certificate of origin, circumstances for exemption of certificate of origin, form of certificate of origin, period of record-keeping, procedure for customs duty refund, non-party invoicing, review and appeal of origin and advance rulings, penalties and sanctions for violating customs laws, uniform regulations, and treatment of re-entered originating goods.

6.5.5.3 Study of correction of formal errors detected in proof of origin

The proof of origin is the document that allows proving the originating status of goods from a specific country. When applying the preferential tariff treatment established by the trade agreements signed by Chile, this proof is subject to different requirements and instructions to fill the document, according to the relevant agreement, and is regulated through instructions for local Customs administrations.

Errors in the proof of origin document are frequent and it must be considered that each trade agreement establishes its own requirements, granting chances for correction accordingly.

In this context, and considering the many trade agreements signed by Chile, the National Customs Service developed a document for circulation among Regional Customs Administrations, that clearly distinguishes: trade agreements that contain rules regarding errors when filling the proof of origin; those that allow for the possibility to correct errors in the proof of origin, without establishing a correction procedure therein; and those that do not feature rules regarding errors when filling the proof of origin.

6.5.5.4 General Guidelines for the enforcement of origin of goods

Considering that both the legal framework that grants preferential access to originating goods from Least-Developed Countries and the 26 trade agreements signed by Chile as of 2017 contain particular features regarding rules and procedures, the Customs Enforcement Directorate and Customs Technical Directorate, through their Department of Post-Clearance Enforcement and Department of Classification and Origin, respectively, carried out a study regarding irregularities in the enforcement of origin of goods, providing for the filing of charges during a calendar year, with the purpose of achieving permanent coordination and updates of the work performed by the National Customs Service in this respect.

After the analysis, the following are the most common situations identified:

- The tariff position declared in the Import Declaration is wrong, therefore the preferential tariff treatment would be lower or none.
- The clearance folder does not contain the corresponding proof of origin.
- In the case of imports under the Chile-USA Free Trade Agreement, the data provided in the origin certificate or other information presented to prove the origin of goods is not satisfactory, since it does not comply with the requirements of the Agreement and its Common Guidelines for the correct interpretation and application of Chapter Four and the relevant provision of Chapter Five of the agreement.

- The operation does not comply with the direct transport requirement since the goods, on their way to Chile, remained in non-Party country and does not present the appropriate documents to prove that the goods did not lose their originating status, as established by the relevant agreement.
- No compliance with the rules and instructions regarding invoicing through a non-Party country, in the case of Agreements that establish rules regarding this matter.
- The format of the certificate of origin does not correspond to the format established in the relevant Agreement.
- In the context of the Annex C-07 of the Chile-Canada Free Trade Agreement, that lists individual parts of machines for data processing subject to a most favored nation preferential treatment, an incorrect classification of the goods is detected when requesting preferential tariff treatment, while the proper classification is not included in the Annex.
- The certificate of origin does not provide for all the goods indicated in the import declaration for preferential tariff treatment, whether due to the quantity or the nature of the goods.
- In the case of agreements that provide for the certification of origin through authorized entities, it is detected that the certificate of origin has been signed by an unauthorized officer or the signature does not match with that previously informed to the National Customs Service.
- The certificate of origin is past its period of validity when performing procedures related to the entry declaration.
- The certificate of origin was issued after the validity period regarding the invoice, in the case of trade agreements that provide for this requirement.

6.5.5.5 Annual Training Plan on origin enforcement matters

The Technical, Judicial and Customs Enforcement Directorates are working together to implement a National Training Plan focused on the application of origin rules and criteria, and customs techniques for customs officers.
This initiative aims to: reach a harmonized legal framework based on international standards, with foreseeable and smooth application in order to facilitate Chilean foreign trade; and encourage compliance from foreign trade operators, applying strategies to facilitate lawful trade, effective enforcement and control through intelligence-based risk management.

6.5.5.6 Annual Origin Enforcement Plan

Each year, the Customs Enforcement Directorate leads an Annual Origin Enforcement Plan, which addresses various risks in this area, linked to eventual breaches related to: direct transport requirements, documentary requirements, non-originating merchandise accessing preferential tariff treatment and manipulation of tariff classification with an impact on origin, among others. This plan focuses on Regional Customs and Trade Agreements where the greatest level of preference is granted. The core activity of the Plan is the application of verification of origin procedures, which are centralized in the Post Clearance Enforcement Department.

6.5.6 Conclusions

The National Customs Service counts with several technical instruments that help to promote the voluntary compliance of customs responsibilities regarding origin, as is the case of the Advance Rulings. Likewise, the Service promotes among its officers the fair application of rules regarding origin in the different trade agreements signed by Chile, through the yearly training plan and the comparative documents for rules of origin and origin procedures as contained in the trade agreements, published in the internal network of the Service.

Additionally, the Service has developed appropriate control both in primary areas and during post clearance enforcement stage and, at the same time, the free circulation of goods and services of lawful traffic, applying risk management methodologies in this regard.

Thanks to the enforcement initiatives of the National Customs Service, in the 2013-2016 period, charges were filed for over USD 7 million, due to irregularities identified in the origin of goods, with 48.2% of these charges relating to origin verification procedures and the issuance of certificates of origin by unauthorized persons.

6.6 Case Study by China on Countering Origin Irregularities

6.6.1 Overview of origin irregularities

The relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin are as follows:

FTAs:

- Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)
- Mainland and Macao Closer Economic Partnership Arrangement (CEPA)
- Economic Cooperation Framework Agreement (ECFA)
- China-ASEAN Free Trade Area
- China-Pakistan Free Trade Agreement
- China-Chile Free Trade Agreement
- China-Singapore Free Trade Agreement
- China-New Zealand Free Trade Agreement
- China-Peru Free Trade Agreement
- China-Costa Rica Free Trade Agreement
- China-Iceland Free Trade Agreement
- China-Switzerland Free Trade Agreement
- China-Korea Free Trade Agreement
- China-Australia Free Trade Agreement
- China-Georgia Free Trade Agreement
- China-Mauritius Free Trade Agreement
- China-Cambodia Free Trade Agreement
- Regional Comprehensive Economic Partnership (RCEP)
- China-Nicaragua Free Trade Agreement
- China-Ecuador Free Trade Agreement
- China-Serbia Free Trade Agreement
- Asia-Pacific Trade Agreement
- Special preferential tariff treatment for LDCs

National Legislation:

- Regulations of the People's Republic of China on the Origin of Import and Export Goods
- Provisions on the Criteria for Determining Substantial Transformation in Non-Preferential Rules of Origin

6.6.2 Irregularities related to origin criteria

6.6.2.1 Product Specific Rules: Change in Tariff Classification and Proof of Origin

Actual case

Name of commodity: Flax tow (HS 530130) Origin criterion: Change in Tariff Classification Reason for verification: Doubt that imported goods satisfy the origin criterion Verification method: Importer interviews

A company imported flax tow (HS 530130), claiming preferential tariff treatment under one of China's FTAs. The company submitted a certificate of origin under the FTA, indicating the origin criterion "CTH". Customs officials doubted whether the import goods satisfied the origin criterion and asked the importer to provide additional evidence, which showed that the flax tow was produced by scutched flax long fibre (HS 530121) imported from a third country. Therefore, the flax tow did not satisfy the requirement "change in tariff classification at the four-digit level" stipulated by the ROO of the FTA. Moreover, the value of scutched flax long fibre accounted for 83.33% of that of the final product, exceeding the threshold of "10%" set in the de minimis rule. China Customs determined that the good was not originating, and preferential tariff treatment was not granted.

6.6.3 Reason for irregularity to occur

Irregularity seems to occur due to inadequate knowledge of origin criteria by traders. To prevent and detect origin irregularities, China Customs conduct post-clearance audits on imports with origin-related risks. Monitoring of the origin declaration on a regular basis helps identify potential irregularities. A dedicated team of origin experts within the Customs Administration is also in place to provide advice on handling irregularities. China Customs enhances the expertise of Customs officials on rules of origin by providing ongoing training. This ensures that they are well equipped to identify and address origin irregularities. Training is conducted for businesses to improve their understanding of origin rules and regulations. Clear communication of the requirements and consequences of non-compliance can discourage irregularities.

6.6.4 Ways to counter origin irregularities

6.6.4.1 Customs Administration

The Administration has a multi-level administrative system. Each level has dedicated departments/sections responsible for handling origin-related affairs. The regulations and guidelines related to rules of origin are disseminated from the General Administration of Customs down to regional Customs houses, ensuring that information reaches all Customs officials responsible for origin.

Capacity building activities

Origin-specific training is provided at various levels to Customs officials, especially to those who are newly engaged in the work of origin, to ensure that they have sufficient knowledge and understanding of the existing agreements and apply them correctly in practice.

There are online training courses in place for Customs officials, which focus on the rules of origin. These training courses are designed to provide comprehensive understanding and are updated regularly to reflect any changes in the agreements, or if new ones have been introduced. To ensure that knowledge is effectively imparted and understood, Customs officials are evaluated regularly to demonstrate their understanding and proficiency in the application of these rules.

Communication and information dissemination

There is an information system in place for internal communication and consultation. Officials can submit enquiries or requests within the system. The enquiries/requests are addressed by the relevant department or personnel, or forwarded to a higher level of management for guidance if they cannot be addressed at the current level. The system ensures that enquiries/requests are addressed promptly, supporting efficient communication within our Administration.

To address instances of incomplete information in proofs of origin and other supporting documents, traders are required to provide supplementary materials related to the production of the goods, stakeholders involved in the transaction, transportation, etc., or to provide clarification on the incompleteness of information. Customs conduct rigorous verification of the documents.
Where document examination is not sufficient to determine the origin of the goods, Customs may conduct further investigation through post-audit functions.
If necessary, Customs may request administrative assistance from the issuing body or competent authority of the exporting party to obtain further information, under the terms of the FTAs.

In cases involving the incorrect format of the CO, if the format does not exceed the scope of a minor error, Customs will grant the preferential treatment. In cases of other procedural non-compliance, Customs deals with situations on a case-by-case basis, and preferential treatment may be denied. If there is suspicion of smuggling or other illegal activities, the case will be referred to the anti-smuggling or investigative units for further action.

To ensure that the verification process stays within the required timeframe, China Customs utilize an integrated administrative system to track and manage the whole verification process. The status of the verification can be checked, so senior-level management may remind the relevant personnel to expedite verification if progress is slow.

6.6.4.2 Private sector

Every year, China Customs organizes hundreds of physical and online training sessions on rules of origin for businesses all over the country. In addition, Customs work closely with other Government agencies and trade associations to reach a wider audience and provide sector-specific guidance. Customized tutorials are offered to companies which wish to address the problems they have encountered during application of the rules. China Customs also use various channels, such as newspapers, magazines and social media, to disseminate information about the FTAs, and any updates or changes.

Information on existing agreements, including rules of origin and schedules of tariff commitments, etc., is available at fta.mofcom.gov.cn. Legislation related to existing agreements can be found on the GACC website.

6.6.4.3 Administrative cooperation

The Customs Districts of China Customs and the China Council for the Promotion of International Trade are the issuing bodies in China.
The General Administration of China Customs is responsible for formulating the relevant regulations for issuing certificates of origin, and for regulating the origin management of various agreements.

Such regulations are published in the form of a Customs Decree or Announcement and notified to all Customs Districts and the China Council for the Promotion of International Trade. Therefore, the issuing bodies in China are always aware of all the information related to FTAs. China Customs has established the EODES system with certain FTA partners. This system allows for real-time communication of electronic data of certificates of origin between the importing and exporting country. For other FTA partners, communication with the competent authority of the exporting country is facilitated through official contact points, as stipulated by the agreements.

With the management system, all the stages of the verification process are recorded. When the feedback deadline approaches, China Customs proactively communicate with the competent authority of the exporting country to request expedited feedback, ensuring timely completion of the process. In cases where feedback is not received within the required timeframe, Customs will proceed according to the stipulations of the FTA, which may involve denial of preferential tariff treatment, or taking other agreed-upon measures, such as extending the time.

6.7 Case Study by Egypt on Countering Origin Irregularities

6.7.1 Organizational framework

The work team at the General Department of International Agreements, the Customs officials working in the logistics centres and implementing preferential agreements, and those working in the General Department for Post Clearance Audit, are responsible for the detection of origin irregularities. The General Organization for Export and Import Control, not the Customs Authority, is responsible for issuing certificates of origin for goods exported within the framework of preferential agreements.

6.7.2 Overview of origin irregularities

Relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin in Egypt are:

FTAs:

- Regional Convention on pan-Euro-Mediterranean preferential rules of origin, the provisions of which apply to the Euro-Mediterranean agreements, namely:
  - the Egyptian-European Association Agreement,
  - the Free Trade Agreement between Egypt and Turkey,
  - the AGADIR Agreement, and
  - the Free Trade Agreement between Egypt and the EFTA Countries.
- Association Agreement between the Arab Republic of Egypt and the United Kingdom of Great Britain and Northern Ireland
- Agreement of the Facilitation and Development of Trade Exchange among Arab Countries
- Mercosur Agreement
- Common Market for Eastern and Southern Africa (COMESA) Agreement
- African Continental Free Trade Agreement (AfCFTA)
- Global System of Trade Preferences (GSTP)
- Bilateral Agreements between each of the following countries: Libya, Syria, Tunisia, Morocco, Iran, Palestine, Jordan, Sudan.

National Legislation:

- Customs Law No. 207/2020 and its Executive Regulations

Irregularities related to proof of origin

6.7.2.1 Documentation

Actual case 1

Name of commodity: Not stated Exporting party: Origin criterion: Proof of Origin Reason for verification: Issuance of EU proof of origin on goods originating in Country E

Some European Union countries issued documents proving the origin of products originating in Country E, in violation of the European Commission's instructions stipulating that European Union countries shall not issue movement certificates for products originating in Country E as it is no longer a Member State.

Preferential treatment was suspended until the importer submits a new movement certificate, to be issued retrospectively by Country E The authorities issuing movement certificates in European Union countries did not follow the instructions of the European Commission.

Actual case 2

Name of commodity: Not stated Origin criterion: Proof of Origin Reason for verification: The colour of the electronic certificate of origin is different to that reported to us.

Electronic certificates of origin with a green background were received, issued by Country M and Country U, in violation of the instructions in Economic and Social Council Resolution No. 2305 - D.A 108 of 2 September 2021, and concerning which ECA Agreement Circular No. 45 of 2021 has been issued, indicating that Arab certificates of origin issued electronically will be accepted with a white background instead of a green background as of 1 January 2022.

Action taken: Egyptian Customs contacted the Ministry of Trade and Industry to find out whether or not there were new instructions regarding the electronic certificate of origin issued within the framework of the Agreement of the Facilitation and Development of Trade Exchange among Arab Countries.

Proposed solutions and procedures to prevent this type of violation in the future: Member states which are Parties to the agreement shall be urged to make sure that certificates of origin are issued in accordance with the approved model and in accordance with the decision of the Economic and Social Council and any new instructions provided to the Administration.

Actual case 3

Name of commodity: Not stated Origin criterion: Proof of Origin Reason for verification: The certificate of origin form listed on the website does not match the certificate of origin submitted to Customs Authorities.

A certificate of origin from Country U was received, and upon verifying the accuracy of its data via the QR code, it was found that it was issued retrospectively, but that the general provisions and the certificate submitted to Customs did not have the phrase “Issued retrospectively” written on it.

Action taken: We requested verification of the validity of the certificate of origin.

Proposed solutions and procedures to prevent this type of irregularity in the future: Member states shall ensure, when issuing certificates of origin, that the data of the certificate of origin provided matches the data available on verifying the authenticity of the certificate via the QR code.

6.7.3 Ways to counter origin irregularities

6.7.3.1 Customs Administration

To prevent the recurrence of the same problem, the Administration proposes raising awareness, emphasizing that European Union countries should no longer issue movement certificates for United Kingdom products, as per the instructions of the European Commission, because it is no longer part of the European Union.

There is a work team at Egyptian Customs specialized in the field of preferential rules of origin, some of whom are in the logistics centres (NAFEZA) and are assigned the task of implementing preferential agreements. Others are in the General Department of Agreements. Their task is to study Customs data documents, consider importers’ grievances regarding the logistics centres’ decisions, and to express an opinion on the extent of the possibility of implementing the agreement for matters referred to the Administration by the logistics centres. Their task is also to liaise with the Customs authorities of the countries issuing proof of origin documents to verify the authenticity of these documents and the origin of the consignments in cases of doubt. The members of this team are fully aware of all preferential rules of origin.

This team was established as part of supporting Egyptian Customs and our efforts to build capacity and develop human resources by organizing training programmes in the field of preferential rules of origin for Customs officials who are responsible for implementing preferential agreements. This gives Customs officials the skills on the technical and procedural aspects and helps them make the right decisions, which leads to standardization in the Customs treatment of goods and proper application of procedures.

6.7.3.2 Private sector

The Egyptian Customs Authority ensures that the private sector is aware of the rules applied to proofs of origin by holding seminars for the private sector, brokers, exporters and Importers. The seminars discuss the preferential rules of origin, requirements for applying preferential agreements, and how to complete proof of origin documents within the framework of each agreement; they also state the rules applied in the event of irregularities concerning those requirements, presenting practical cases, and responding to participants' enquiries as part of disseminating Customs culture.

The private sector obtains all the information about existing agreements via the Egyptian Customs Authority's website, where all the rules and instructions related to Customs affairs are announced, including rules of origin, as part of Egyptian Customs' desire to achieve transparency. The Customs Authority has undertaken these procedures to achieve its strategic objectives of facilitating and simplifying the movement of trade, and fulfilling Egypt's international obligations through the implementation of preferential trade agreements to which Egypt is a Party, with the proper application of their provisions.

6.8 Case Study by El Salvador on Countering Origin Irregularities

6.8.1.1 Organizational framework

Our Customs officials are generally aware of the relevant issues. They receive all the necessary information on existing agreements via the official website of our Customs Administration; the Origin Network that meets once a year to keep all members updated on all the news regarding origin; and notification via the ASYCUDA system.

6.8.2 Overview of origin irregularities

The relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin are:

FTAs:

- Dominican Republic-Central America Free Trade Agreement DR-CAFTA
- Chapter Four – Rules of Origin and Origin Procedures
- Annex 4.1 Specific Rules of Origin
- Decision of the Free Trade Goods Commission Regarding the Rules of Origin for Textile and Apparel Goods

6.8.3 Irregularities related to origin criteria

6.8.3.1 Change in tariff classification (CTC)

Actual case

Name of commodity: Worn clothing and other worn articles (used shoes and used clothing) – HS 6309
Origin criterion: CTH (change in HS four-digit code)
Reason for verification: Misapplication of the Origin criteria
Verification method: Request for information from the importer

A company imported worn clothing and other worn articles (used shoes and used clothing – HS 6309), claiming preferential tariff treatment. The company submitted a certificate of origin under the FTA, indicating the Origin Criterion “CTH”. Customs officials doubted if the imported goods satisfied the origin criterion and asked the importer to provide additional evidence. The goods under study are classified under tariff heading 63.09 – Worn clothing and other worn articles (used shoes and used clothing). The specific rules of origin for these goods is as follows: *A change to heading 63.09 from any other heading.*

The rules of origin specify that any goods classified under heading 63.09 will not qualify as originating if non-originating materials classified under the same heading (63.09) for clothing articles are used in their production. In other words, if any materials classified under tariff heading 63.09 are used in the production of worn clothing, those must originate from countries that are parties to the Treaty.

In the analysis of compliance with the origin requirements, used shoes and used clothing have no other requirement than that the materials and inputs used in their production undergo a change in the tariff classification at the starting level.

Compliance with the origin requirements entails on the one hand, the interpretation of the rule of origin and, on the other hand, the interpretation of the provisions that define what is meant by originating merchandise. For the case study, Article 4.1 of DR-CAFTA where originating goods are defined establishes the following:

Except as otherwise provided in this Chapter, each Party shall provide that a good is originating where:

(a) *It is a good wholly obtained or produced entirely in the territory of one or more of the Parties;*

(b) It is produced entirely in the territory of one or more of the Parties and

(i) each of the non-originating materials used in the production of the good undergoes an applicable change in the tariff classification specified in Annex 4.1, or

(ii) the good otherwise satisfies any applicable regional value content or other requirements specified in Annex 4.1, and

the good satisfies all other applicable requirements of this Chapter; or

(c) it is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

It is important to note that the definition of originating goods under the tariff change criterion that concerns this case is preceded by two requirements which are of great importance for a good to qualify as originating from one of the Parties:

…each Party shall provide that a good is originating where: […]

(b) it is produced entirely in the territory of one or more of the Parties […].

To be precise, the two requirements referred to are that:

- there be production, and
- that this production be carried out in the territory of one or more of the Parties.

This means that to qualify as originating, goods classified under tariff heading 63.09 must not only comply with the specific rule of origin but must also have been produced in the territory of the Parties. If these conditions are not met, the goods will not qualify as originating and, consequently, they will not be entitled to preferential tariff treatment.

The problem was identified during immediate verification, when the assigned Customs officer identified that the used goods were marked as originating from countries other than the country of origin declared in the import declaration. The officer consulted the Unit in charge of the administration of the origin regulations within Customs, thus confirming that the goods could

not claim preferential tariff treatment due to evidence indicating that they had not been produced in the territory of any country Party to the Treaty.

The Customs administration where this irregularity was identified began the administrative sanctions process, granting the importer the opportunity to present the argument for it to be considered that the goods presented for preferential tariff treatment qualified as originating. The importer indicated in its argument that the used goods were collected in the territory of a Party country, and that this collection process conferred their origin by complying with the requirement of change in the tariff classification of the inputs.

One of the main problems with worn clothing and other worn articles, especially used shoes and used clothing classified under HS tariff heading 63.09, is that the companies dedicated to the commercialization of this type of good are not normally the producers and are often actually unaware of the companies that produce the clothing since, most commonly, these companies are dedicated to collecting used goods for subsequent sale. It is not unusual for this type of good to be sold in large volumes or packages and, in some cases, these packages could be classified according to commercial criteria such as type of clothing (i.e. whether for men or women), or size (shoes or clothing intended for children or adults), regardless of the country of production or origin of the goods. Consequently, the companies that are dedicated to the collection of these used items are unaware of the origin of the goods they are marketing, and it is very common to find marks of origin that correspond to third countries that often may not be Parties to the Treaty.

For its part, the importing company indicated that the goods (shoes and clothing) were imported into the territory of the Party country as new, but that when they were used in the said country, and subsequently collected for reuse, this gave them a change in classification tariff, since new goods are actually classified in a different Chapter from used goods. However, as part of this argument, the importing company was assuming that the goods were not produced in the territory of a Party country, since they were imported as new from third countries.

Once the arguments were received from the importer, the Legal Unit of the Customs Administration carried out the corresponding validations, determining that the arguments presented were not sufficient to demonstrate that the worn clothing was originating in the Party country and, therefore, there was no right to claim for preferential tariff treatment.

Accordingly, the resolution was issued of the administrative sanctions process, determining that the goods did not qualify for preferential tariff treatment as there was not substantial transformation and the new products were not originating.

6.8.4 Ways to counter origin irregularities

6.8.4.1 Customs Administration

Through prior controls, the aim is to determine elements of risk in imports, and to identify irregularities in imports, including those related to rules of origin within trade agreements. Likewise, there is a continuous specific training programme on regulations of origin for Customs officers, to keep their knowledge in this regard up-to-date.

Therefore, it is the responsibility of Customs officers to know about regulations of origin at different levels. However, it is not the obligation of Customs officers to know about specific

rules of origin but, rather, the general regulations allowing them sufficient knowledge to determine situations that could lead to irregularities in matters of origin.

To ensure that Customs officers have sufficient knowledge about the regulations of origin, there is a continuous training plan; the texts of the different Trade Treaties and Agreements are also published on the General Directorate of Customs' website. Although there is no computerized system on the regulations of origin, the regulatory texts of the different Agreements are available. In addition, in case of doubt as to origin, officials can consult with the Unit assigned to the administration of the rules of origin.

These consultations can be made through email, telephone calls, or messaging. Likewise, written consultations can be made that allow the Customs officer to have a written opinion on the provisions of origin that could be violated in a specific situation due to doubts as to origin.

6.8.4.2 Administrative cooperation

The case in question falls within the framework of a Treaty where the responsibility for issuing the certification of origin lies with the exporter or producer of the goods, and no certification of origin or validation by an authority is required. In this case, communication with the authority of the exporting country is not required since, according to the regulations of origin of the Treaty, the responsibility for the veracity of the information on the certification of origin is solely that of the exporter or producer that issues the certification. Consequently, to ensure compliance with the provisions of the Treaty, the Customs authority may carry out any verification through the importer, or the exporter or producer that has issued the certification of origin.

Similarly, and to ensure compliance with the regulations of the rules of origin, national Customs legislation establishes the necessary legal authority so that the Customs Administration can carry out any verification process resulting from the risk management system at the time of import of the goods.

6.8.4.3 Measures concerning the private sector

For the private sector to have sufficient information about the current Trade Treaties and Agreements, the General Directorate of Customs publishes the texts of these instruments on its website. Likewise, the Customs Administration has issued information bulletins and administrative provisions to facilitate the interpretation and application of the regulations of origin. If changes occur, or where new regulations are implemented as a result of decisions made by the institutions governing the Agreements, it is sought that they be informed promptly. The Ministry of Economy, as the Government Ministry designated for the negotiation and administration of Trade Treaties and Agreements, should also do this.

6.9 Case Study by Ghana on Countering Origin Irregularities

6.9.1 Overview of origin irregularities

The relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin are as follows:

Free Trade Agreement (FTA) List

EU-Ghana Interim Economic Partnership Agreement (iEPA), African Continental Free Trade Agreement (AfCFTA), ECOWAS Trade Liberalization Scheme (ETLS), UK-Ghana Trade Partnership Agreement, and Africa Growth Opportunity Act (AGOA).

National Trade Law:

Rules of origin protocols for each trade agreement

6.9.2 Irregularities related to procedure

6.9.2.1 Registered product

Actual case

Name of commodity: Batteries (8507.20 and 8507.90)
Exporting party:
Procedure: Registered Product
Reason for verification: Importation of unregistered product
Verification method: Confirmation of Classification

Batteries were imported under a Free Trade Agreement to Ghana. The company's approved products are classified under 8507.20 and 8507.90. However, the product entered for clearance was classified under 8507.10. This constitutes an irregularity because the approved HS code must be the same as that of the product entered for clearance, and it is a misapplication of the wholly obtained criterion.

Preferential treatment was not granted on the batteries.

6.9.3 Ways to counter origin irregularities

6.9.3.1 Customs Administration

Officers are continuously and frequently sensitized as to the different trade agreements and the rules of origin governing them. Other stakeholders, including exporters and importers, are also regularly sensitized to information concerning rules of origin, especially in connection with the different trade agreements, as well as other processes to aid in reducing the incidence of

these irregularities. Post Clearance Audit in Origin cases is always undertaken by Customs officers to ensure validity of the processes.

Only the competent authority should be mandated to confer origin. The process of determining the origin of any item should be streamlined to make it less cumbersome, very simple, and universally agreed. An established database accessible to the public should be created to showcase each item and how it qualifies as originating under each trade agreement.

The document should be made electronic to aid in ease of accessibility and to reduce duplication and delay. Electronic versions reduce the possibility of misinterpretation and forgery or misdescription.

6.9.3.2 Private sector

There are no available statistical figures concerning the level of awareness of the private sector about the different rules in place, however, initiatives are in place to provide all the available information on the subject. Most of the information concerning all the trade agreements and the accompanying rules that govern each agreement is available on the Single Window platform at www.external.unipassghana.com.

Each new trade agreement is brought to the awareness of the public, and sensitization seminars and workshops are held to aid in making agreements known to the public, including all the channels to aid in accessibility to the information and all its processes.

6.9.3.3 Administrative cooperation

The Central Service dealing with origin issues regularly publishes on the organization's website updated information concerning all existing agreements and new agreements which enter into force. An updated handbook is also available on both preferential and non-preferential origin. Information sessions and workshops on origin issues are sometimes organized and delivered to the private sector.

The dissemination of information concerning origin is distributed through various channels, including electronic modes and hard-copy documents. Each agreement, together with its rules, is handled separately and in different training sessions. All staff receive information via the Administration's official emails which are specially designed for internal use. The operation system is a Single Window system where all stakeholders, including staff, have access to all the relevant information concerning trade agreements, with their corresponding rules and regulations and other pertinent information.

The verification processes are largely dependent on the cooperation of the exporting party and the beneficiary, and how quickly the information required is made available to the verification officers.

The Ghana National Chamber of Commerce and Industry is the issuing authority for Certificates of Origin under ECOWAS, while Customs is responsible for issuing certificates under the AfCFTA. The Chamber is also regularly represented at most sensitization initiatives

and actively engages in sensitizing its members. The REX system, introduced by the European Commission, serves as a platform where the validity of the origin of exports under the interim Economic Partnership Agreement (iEPA) can be confirmed. Similarly, under the ETLS, each item has been provided with a unique code which can be verified using the online verification tool. The Integrated Customs Management System (ICUMS) facilitates verification for exports to the EU and the AfCFTA.

Verification tools available include:

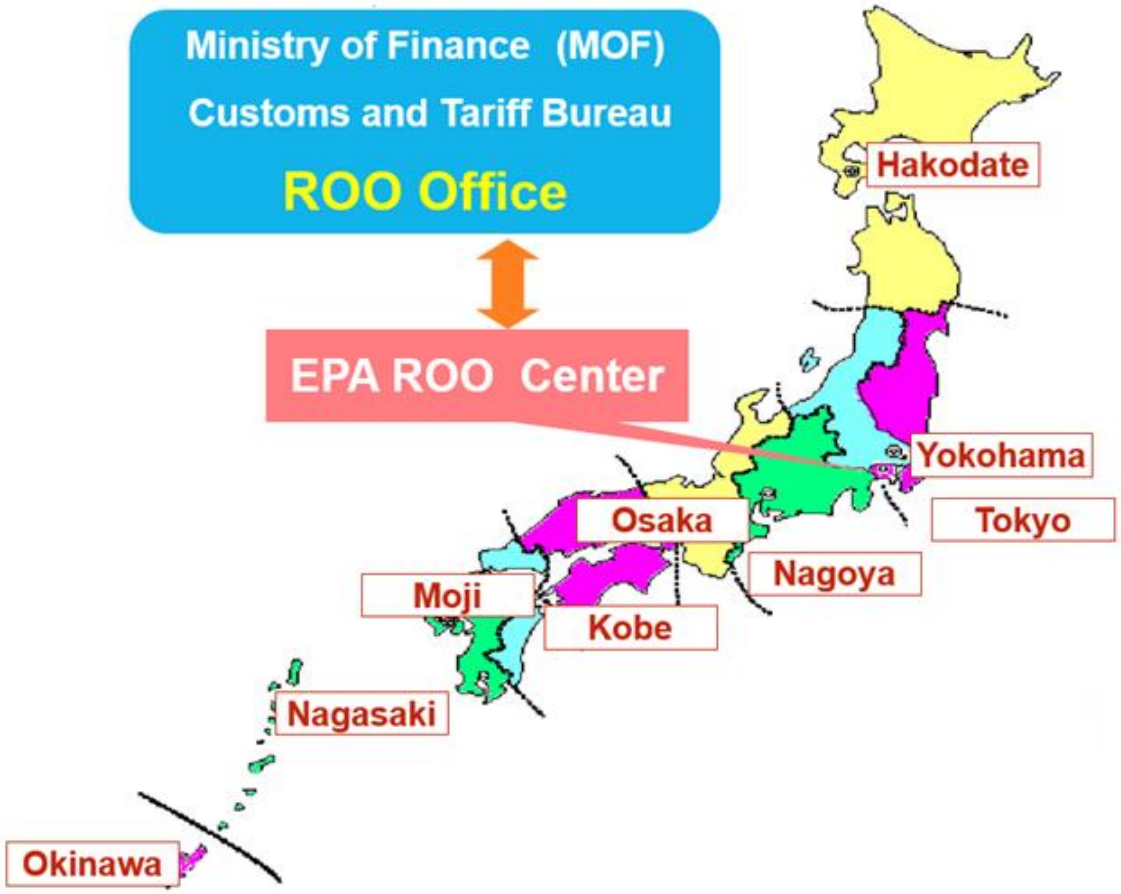
The REX system introduced by the European Union, where information on the validity of the origin of the export can be confirmed under the iEPA.

The ETLS, where each item has been provided with a unique code that may be verified using the online verification tool.

The Integrated Customs Management System (ICUMS), which provides verification for exports to the EU and AfCFTA.

6.10 Case Study by Japan on Origin Irregularities

6.10.1 Introduction



The administrative structure regarding rules of origin (ROO) in Japan Customs consists of the ROO Office within the Customs and Tariff Bureau (CTB) of the Ministry of Finance, the EPA ROO Centre, and nine regional Customs (Hakodate, Yokohama, Tokyo, Nagoya, Osaka, Kobe, Moji, Nagasaki and Okinawa). Each regional Customs has a dedicated ROO section. The ROO Office oversees the policymaking and administration of rules of origin matters, and the EPA ROO Centre coordinates the practical field operations. Specifically, the ROO Office at CTB is responsible for (i) policy matters, including the negotiation of Economic Partnership Agreements, (ii) legislation and regulation matters, (iii) implementation of the laws relating to rules of origin, and (iv) coordination with other countries and government departments. The EPA ROO Centre, located in Tokyo, is responsible for (i) ensuring the correct and uniform application of the rules of origin, (ii) overall coordination of the verification system, and (iii) training for Customs officials and the private sector. The ROO sections at regional Customs provide field-level services to manage origin inquiries and issues.

6.10.2 Overview of origin irregularities

In implementing the existing 14 Economic Partnership Agreements (EPAs) and the Generalized System of Preferences (GSP), Japan has encountered various irregularities regarding preferential origin. In the early years, typical irregularities detected were mistakes

regarding the certificate of origin (CO) issued by the competent authority of the exporting country. However, in recent years, the trend has been shifting towards irregularities related to the originating status of the good. Considering the recent changes in the system of origin certification, Japan Customs has been focusing on and detecting those irregularities that relate to the originating status of goods, not only by examining the CO and other documents (such as the invoice, etc.), but also by applying risk management.

6.10.3 Irregularities related to origin criteria

6.10.3.1 Goods wholly obtained

Actual case

Name of commodity: frozen surimi (minced fish)
Country of export: Country A
Origin criterion misused: Wholly Obtained
When: Post-Clearance Audit
Indicator: information from outside sources, and list of ingredients
Irregularity: non-originating material was used in the production of the good
Result: preferential tariff treatment was denied

A company imported frozen Surimi (minced fish), claiming preferential tariff treatment as “goods wholly obtained” under one of Japan’s EPAs. Customs received information from outside sources that in the process of producing the Surimi, phosphates which are not available in country A had been used as a preservative.

Customs asked the importer to provide more information about the Surimi. The importer provided Customs with the list of ingredients. Customs examined the document and found that the material concerned (i.e. phosphates) was included in the list. Therefore, Customs had doubts about the originating status of this material and requested the exporting country to conduct a verification regarding its originating status, in accordance with the relevant provision of the EPA.

As a result of the verification, it was discovered that the phosphates used in the production process were non-originating. Customs determined that the Surimi was not an originating good, and therefore preferential tariff treatment was denied. The importer made an amendment to the declaration of duty and paid the necessary amount.

6.10.3.2 Product specific rules (PSR): Change in tariff classification (CTC) rules

Actual case

Name of commodity: cocoa powder
Country of export: country D (a member country of ASEAN)
Origin criterion misused: Change in HS Tariff Heading (CTH)
When: examination by Customs clearance section

Indicator: the certificate of origin and information from the importer Irregularity: non-originating materials do not satisfy PSR Result: preferential tariff treatment was denied Applicable PSR for 1805.00 (cocoa powder): CTH, provided that, where non-originating cocoa beans of heading 18.01 are used, the non-originating cocoa beans are harvested, picked or gathered in a non-Party which is a member country of ASEAN.

A company imported cocoa powder, claiming preferential tariff treatment under one of Japan's EPAs.

The Customs clearance section ascertained, through documentary examination, that the certificate of origin showed the goods as produced from cocoa beans of a non-Party which is an ASEAN member country. Then, the Customs clearance section asked the importer about the origin of the cocoa beans and was informed that the origin was country E (a member country of ASEAN) (30%), country F (a member country of ASEAN) (40%), and "Africa" (30%). The cocoa beans originating in country E and country F would satisfy the PSR. However, the cocoa beans from "Africa" would not satisfy the PSR. Therefore, the Customs clearance section informed the Post-Clearance Audit (PCA) section of the doubt surrounding the originating status of the good and requested the PCA section to investigate. The PCA section conducted an audit of the importer but could not obtain enough information to remove the doubt. Therefore, Customs carried out the verification procedure stipulated in the EPA and requested information from the competent authority of country D.

The reply from the competent authority of country D was that the good was not originating. Customs determined that the good was not an originating good, and preferential tariff treatment was denied. The importer made an amendment to the declaration of duty and paid the necessary amount.

6.10.3.3 *Proof of origin*: *Certification of origin involving the competent authority of the exporting country*

Actual case

Name of commodity: Tin Plate Can Country of export: Country L When: examination by Customs clearance section Indicator: seal of CO Irregularity: non-authentic CO Result: preferential tariff treatment was denied

An importer imported Tin Plate Cans from country L and provided a certificate of origin to Customs when claiming preferential treatment.

A Customs official in the clearance section compared the certificate of origin with the list of seals registered with Japan Customs but could not find the same seal in the list. The official therefore had doubts about the authenticity of the certificate of origin. Hence, Customs

requested the exporting country to conduct a verification with regard to the authenticity of the certificate of origin.

As a result of the verification, it was discovered that the certificate of origin which the importer had provided was forged. Customs determined that the requirements for preferential tariff treatment had not been satisfied. Therefore, preferential tariff treatment was denied.

6.10.3.4 Self-certification by approved exporter

Actual case

Name of commodity: chocolate
Country of export: Country M
When: examination by Customs clearance section
Indicator and irregularity: insufficient information
Result: preferential tariff treatment was denied

An importer imported many kinds of chocolate based on self-certification by an approved exporter, under one of Japan's EPAs.

The PSR for 1704.90 (white chocolate) is CTH, and the maximum value of non-originating materials used under Chapters 4 and 17 is 45% ex-works price.

After application of risk assessment, the Customs clearance section conducted a documentary examination. Although Customs requested further information from the importer, and from the exporter via the importer, they could not provide sufficient information and explanations about the originating status of the good. Customs then requested the exporting country to conduct a verification about the originating status of the good, in accordance with the relevant provision of the EPA.

However, the information provided through verification was not sufficient to substantiate the originating status of the good. Customs determined that the requirements for claiming preferential treatment under the EPA had not been satisfied, and therefore preferential tariff treatment was denied.

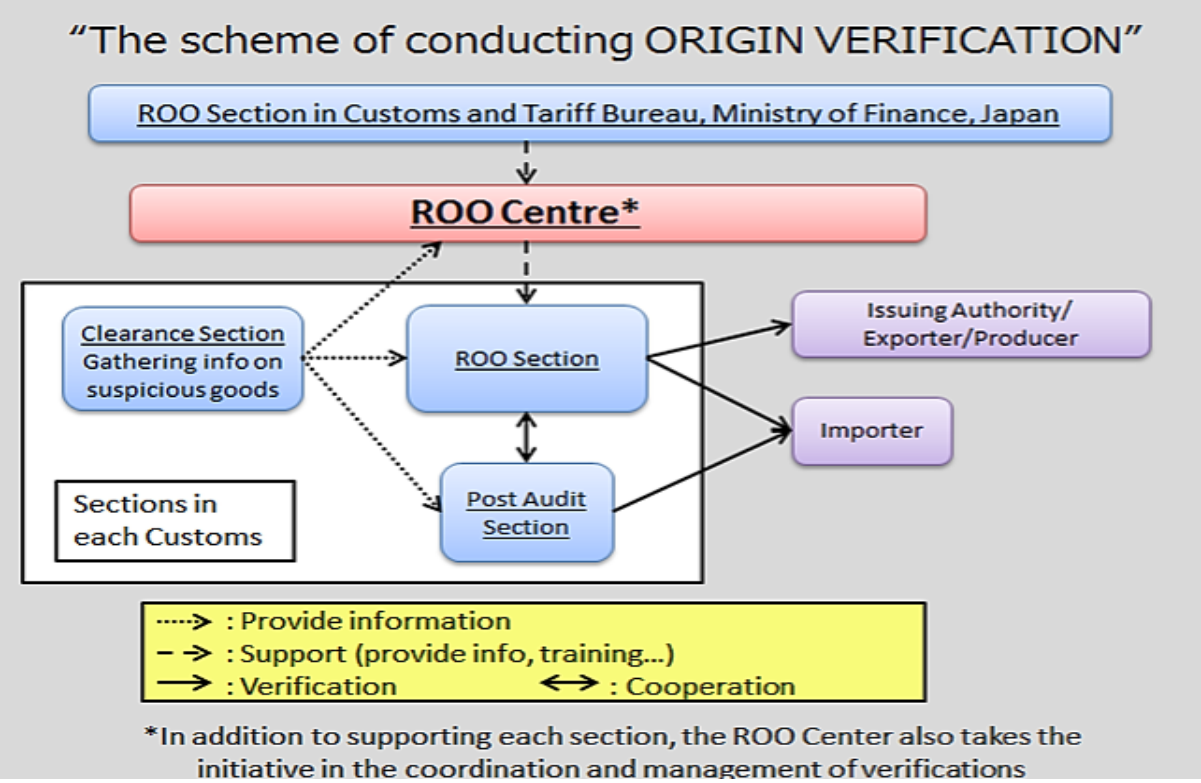
6.10.4 Ways to counter origin irregularities

6.10.4.1 General – organization

To prevent and detect origin irregularities, the Customs clearance section, the PCA section, the ROO section, the ROO Centre, and Headquarters cooperate with each other. When there is a doubt about originating status or the validity of proof of origin, the Customs clearance section shares information regarding this doubt with the PCA section and the ROO section through a computerized system. The ROO section shares the information it receives with the ROO Centre, and the ROO Centre informs Headquarters.

If Customs cannot determine, after the post-clearance audit, whether the goods are eligible for preferential tariff treatment or not, Customs may – through Headquarters – request the exporting country to conduct a verification. This is the basic flow of the operations used by Japan Customs for identifying origin irregularities.

It is very important that the regional Customs, the ROO Centre and Headquarters cooperate with each other to ensure an appropriate clearance procedure.



Furthermore, Japan Customs has the ways below of countering origin irregularities.

6.10.4.2 Seminars on rules of origin for importers

Japan Customs organizes seminars on rules of origin for importers all over the country, both on a regular basis (20 times per year) and upon request. In addition, Japan Customs organizes a series of seminars on every EPA before it comes into effect.

The contents of the seminars are customized to reflect the interests of the audience, depending on the industry. Examples of topics covered include:

- Overview of rules of origin,
- Details of the provisions of specific EPAs,
- Details of the provisions for specific commodity areas.

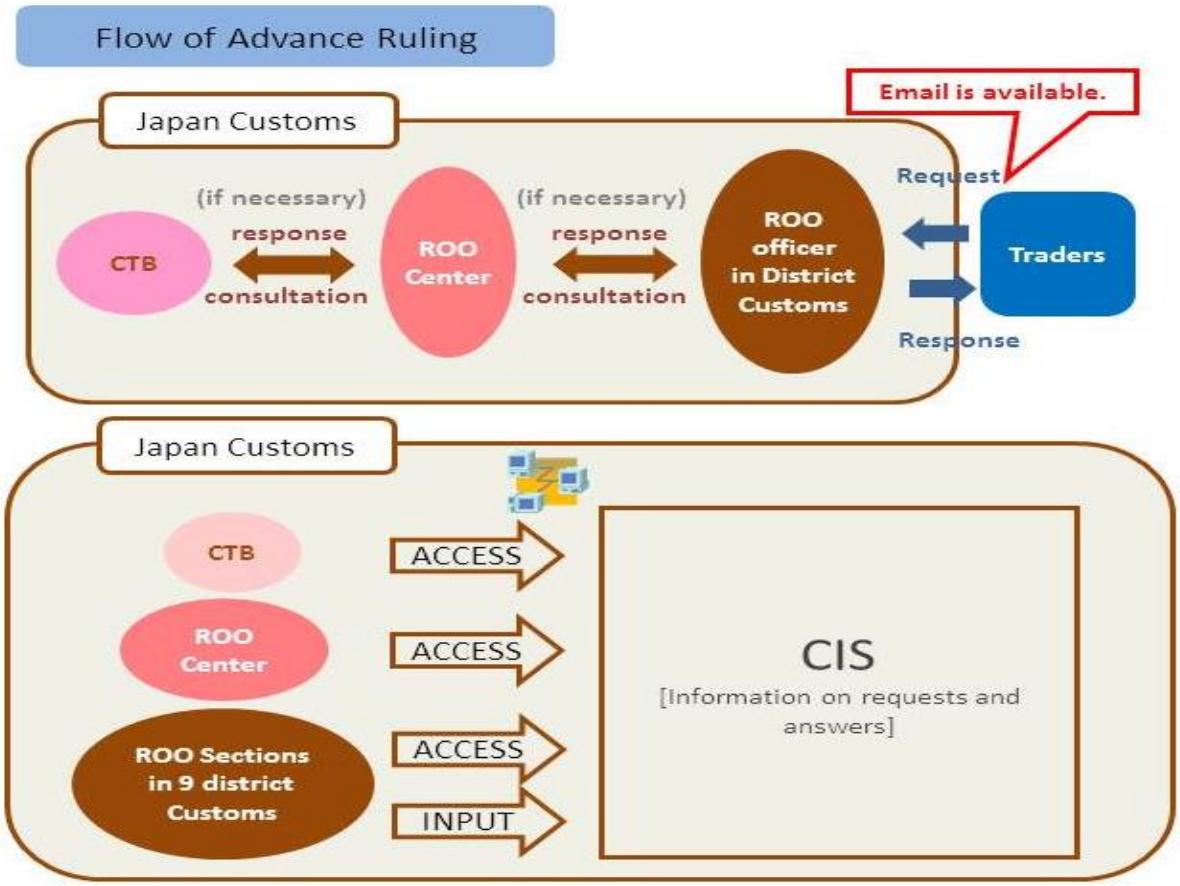
6.10.4.3 Promotion of advance ruling system

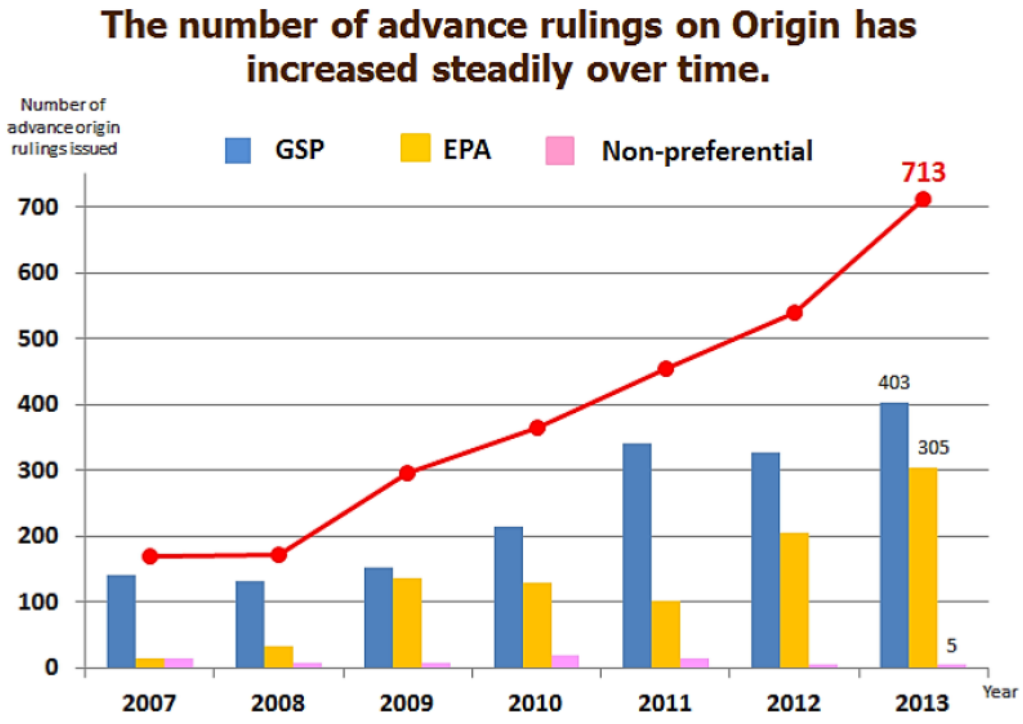
Japan Customs encourages the use of the advance ruling system on preferential origin of goods. A written advance ruling is valid for three years.

To improve the transparency of the determination of the origin of goods, summaries of the advance rulings issued are publicly available on the Customs website (accessible to the public). Traders can refer to the website and obtain information on similar cases which would lead to an appropriate claim of preferential tariff treatment.

Also, all information on the advance rulings issued is stored in an internal system called the "Customs Intelligence database System (CIS)". Customs officials can search and retrieve data on advance rulings issued, using the specific HS code, the description of the goods, key words, and so on.

To make it easier for importers and Customs brokers to use the advance ruling system, Japan Customs provides an application form and the data requirements, which are published on the Customs website. Moreover, a guidebook has been uploaded onto the website, explaining the Advance Ruling procedure and giving detailed examples of the data requirements and what documents importers should provide to Customs. There are three types of examples, based on the origin criterion, i.e. CTC, value added, and manufacturing process. With the above measures to facilitate the use of the advance ruling system, the number of advance rulings has recently been increasing (2012: 539 cases, 2013: 718 cases).





6.10.4.4 Meetings of origin experts

Japan Customs holds meetings of origin experts on a regular basis (2-3 times/year), which are attended by origin experts from Headquarters, the ROO Centre and Regional Customs. In these meetings, difficult origin questions that arise from origin disputes are discussed, and information on recent irregularities is reported.

These meetings raise awareness about trends in irregularities, as well as enhance uniformity in the application of rules of origin throughout Japan.

6.10.4.5 Publication of EPA and GSP Manuals

To help traders understand the rules of origin of the EPAs and the GSP, Japan Customs has published an EPA Manual and a GSP Manual on the Customs website, and updates both publications regularly.

The Manuals contain an overview of rules of origin, an explanation of each EPA/GSP, and examples of clearance procedures under the EPAs/GSP.

6.10.4.6 Dissemination of information on origin irregularities to Customs officials

Japan Customs puts a lot of work into the dissemination of information on origin irregularities to Customs officials, through in-house seminars. ROO section officials in Regional Customs regularly hold training seminars on rules of origin for the Customs officials of other sections, including (but not limited to) the Customs clearance and post-clearance sections.

Various training courses are held for beginners and for advanced-level officials. Through these courses, a wide range of Customs officials acquire the necessary knowledge and skills to

conduct their day-to-day mission in the field, which should lead to origin irregularities being addressed effectively.

6.10.4.7 Origin criteria

Publication of interpretative notes on rules of origin

Customs provides an interpretative note for certain rules of origin on which problems frequently arise during implementation (e.g. interpretative note on the application of product specific rules of origin concerning textiles). These notes are published on the Customs website, with examples of practical cases.

Providing traders with clear guidance on the interpretation of the rules of origin can prevent potential origin irregularities. This also helps Customs to enhance consistency in the interpretation and application of the rules.

6.10.4.8 Proof of origin

Comparison of certificate of origin data requirements under different EPAs

Each EPA has different formats and data requirements for the CO. Therefore, Customs provides a reference document entitled “How to complete the CO”, which is a schedule of the data requirements in each EPA. It is intended for use by importers, to make them aware of the different data requirements under the respective EPAs so that they can foresee any irregularities.

6.10.5 Clarification of the treatment of errors in the certificate of origin

Customs draws up a list showing the treatment of errors on the CO, and publishes it on the Customs website.

Through this list, Japan Customs announces the criteria regarding the extent to which it would regard possible errors on a CO as “minor errors” under the EPAs. This is intended to be of assistance to importers, so that they can self-check the validity of the CO prior to submitting it to Customs, thus preventing the importer from being accused of irregularities on the CO.

6.10.6 Guidelines on the “self-certification system”

The Japan-Australia EPA entered into force on 15 January 2015, introducing the self-certification system to Japan for the first time. Before starting the system, Japan Customs published guidelines on self-certification for importers and Customs brokers, who would be using the self-certification system for the first time.

The guidelines thoroughly explain the necessary features that traders need to know in order to make full use of the self-certification system, including the origin criteria under the Japan-Australia EPA and related procedures.

6.10.7 Conclusion

As a result of the number of seminars and training courses conducted, knowledge of rules of origin – both within Customs and among traders – is steadily being enhanced. The number of advance rulings has been increasing, which shows a positive trend in terms of traders making use of the available tools to alleviate the risk of origin irregularities.

The range of preventive measures indicated in Chapter 4 above makes it possible for Japan Customs to focus and effectively use its resources on the examination and verification of more suspicious goods.

6.11 Case Study by Kenya on Origin Irregularities

6.11.1 Introduction

Kenya Revenue Authority (KRA) is the agency handling matters related to rules of origin. The Authority is a government agency that runs its operations in the same way as a private enterprise. The mandate of KRA is the collection of Government revenue comprising customs duties; domestic taxes; collection of fees on behalf of other government agencies; facilitation of trade; security and protection of society; and collection of statistical data.

Division of the Customs and Border Control Department. The Rules of Origin section is vital for the facilitation of trade. Kenya Customs issues only preferential certificates of origin and the procedure guidelines for the issuance of certificates of origin in accordance with requirements of the regional, unilateral and multilateral trade protocols to which Kenya is party to. Certificates of origin are issued for the: EAC, COMESA, European Union, and the various GSP schemes including United States under the AGOA Programme.

Origin offices are in Nairobi (Headquarters), Mombasa, Kisumu, Nakuru and Eldoret. These perform the functions of registration of exporters and issuance of proofs of origin. In Addition, the Nairobi office performs the administrative cooperation. Granting of preference under the various agreements for goods imported to Kenya is done at the respective entry point.

Registration of exporters

Persons wishing to export goods under preferential regimes are registered with the Rules of Origin office of the Customs and Border Control Department.

A written application on the Exporter's Registration Form is made to the Commissioner of Customs and Border Control Department in advance of any intended export.

Certified copies of the following documents are attached to the exporter's application:

- Certificate of incorporation.
- PIN certificate.
- Export license from respective agencies where applicable. E.g. HCD[18] for horticultural produce and mining certificates for minerals etc.

Verification of origin of export goods

On receipt of the application, the Rules of Origin office conducts a verification of the exporter's premises to establish whether the goods intended for export meet the origin criteria stipulated under the applicable trade arrangement. Sometimes desk verifications are conducted but only for fresh produce and flowers as these are already licensed by other government agencies.

If the goods are deemed to originate, the exporter is given a reference number which the exporter quotes each time certificates are issued to that them.

[18] Horticultural Crops Directorate (Horticultural Crops Development Authority) is a government directorate under the Agriculture and Food Authority (AFA) that regulates all fresh produce and flowers production and export in Kenya to ensure that the sanitary and phytosanitary conditions as set out in Kenyan and Importer Country Legislation are adhered to.

Registered exporters then make payment for the certificates required and have them issued to them for filling. Once they are filled, they are again submitted to the RoO office for authentication, signature and stamping. A copy of the certificate and its supporting documentation is usually kept at Customs offices for records.

Under the EAC and COMESA FTAs, there exists “Simplified Trade Regimes -STR” to facilitate small scale cross border trade. Under these regimes the registration requirements are waived, and certificates of origin are waived, and customs officials assist the traders to comply with the procedural requirements.

6.11.2 Overview of origin irregularities

By and large origin irregularities in Kenya are related to proof of origin, that is incomplete filling of the proof of origin, missing stamp from exporter, in-correctness of stamps, query of ink colour, etc. Verification cases related to origin criteria do not occur often; however, there are still some improvements necessary in the area of administrative cooperation.

6.11.3 Irregularities related to proof of origin

6.11.3.1 Wrong certificate

Actual case

Name of commodity: sugar
Exporting country: K
Origin criterion: wholly obtained
Reason for verification: wrong certificate
Verification method: the Secretariat of the relevant agreement contacted country K after Kenya sent a request for verification

An exporter from country K exported sugar to Kenya. At the point of entry the Customs officer noticed that the signature was not on the list of approved signatures. The certificate was sent to the headquarters for confirmation the signature. When headquarters received the certificate, it found out that the certificate used was not in its correct form. Under the agreement, certificates have twelve boxes for relevant information, the one in question had eleven boxes, missing a box where “Country, Group of countries in which the products are originating from” should be indicated.

According to the agreement KRA contacted the Secretariat for clarification on the matter. The Secretariat contacted country K. Country K replied that they were not aware that the certificate has to have twelve boxes. The Secretariat asked KRA to accept the certificate as it appeared and promised to work with country K so that the necessary changes would be corrected. This meant that all member countries of that agreement could potentially have problems with similar certificates from country K.

6.11.3.2 Missing information on the certificate

Actual case

The exporter did not indicate the origin of the goods and the country of importation in the certificate. It was therefore not possible to establish the relevant origin criterion, because the relevant agreement could not be established.

6.11.3.3 Printing of the certificate

Actual case

There have been several cases where the guilloche pattern was not printed evenly giving the impression that the form is a colour copy. There was thus reason to doubt the authenticity of the preference document. KRA confirmed the authenticity and accuracy of movement certificate and the correctness of the products contained therein. The certificates had been issued to exporters by KRA, the Designated Competent Authority for issuing preferential certificates of origin in Kenya. The variance in the guilloche pattern resulted from the fact that KRA procures movement certificates from several approved companies and at times the pattern varies from producer to producer. However, KRA keeps record of all certificates it issued to exporters.

6.11.4 Solutions

Supplier Companies are changed due to the price of printing and the need to comply with government procurement rules. In future, it is proposed that one supplier be contracted for a specified period at a fixed price. However, as new agreements are moving toward the approved exporter system supported by an invoice declaration and electronic certification of origin in place of the certificates, this issue will naturally disappear.

6.11.4.1 Stamp on the certificate

Actual case

Country A (EU) asked for verification from KRA alleging that the stamp used on the certificate did not match the specimen stamp impression provided by Kenya. KRA confirmed that the certificate was regularly and properly issued. The stamp impression used on the certificate of origin matched the specimen circulated and used by KRA. KRA also informed to country A that the stamp impression used on the certificate in question was also used on all certificates of origin issued at the Nairobi office.

6.11.4.2 Stamp on the certificate

Actual case

Country A sent a verification request to KRA alleging that the stamp impression appearing on the certificate did not match to the specimen provided by Kenya to country A. An officer in Kenya had mistakenly used a stamp other than that which is circulated and used for certificates of origin. KRA referred to this mistake in the reply and confirmed that the goods are originating.

6.11.4.3 Formal errors and missing information

Actual case

Name of commodity: beaded jewellery, necklaces and bracelets
Importing country: E
Reason for verification: formal errors and missing information
Verification method: Customs authority of exporting party S conducted verification

A Kenyan company exported (consignments of) beaded jewellery, necklaces and bracelets to country E. Country E asked KRA to confirm whether the conditions of the rules of origin had been complied with, whether the certificates were authentic and sort a clarification as the name on a specific certificate of origin ("EUR1") was not printed on the certificate and the box 12 "Declaration by the exporter" was not properly completed. In addition, as there were some corrections made on the box 12 on some certificates, country E also asked KRA to confirm their accuracy.

KRA confirmed that the movement certificates were genuine and duly issued and endorsed by KRA. One of the certificates did not have the name ("EUR1") of the certificate printed on it, because the batch with which was supplied did not have the name printed on them; it confirmed that in spite of this it was duly issued. The non-completion of box 12 was explained as a regrettable oversight that had since been corrected.

KRA confirmed that the corrections made in box 12 of the some certificates were made prior to customs endorsement and that it had the same in the copies of the certificates it had in its records.

Country E acknowledged KRA's reply to its concerns noting that the goods in question had been granted preference as claimed.

6.11.4.4 Certificates issued according to derogation

Actual case

A Kenyan company exported tuna loins to country I accompanied by a certificate of origin. Kenya benefits from a derogation for exportation of tuna loins to country I at a preferential duty rate of zero per cent for a specified quantity. When the derogation expired it was extended. The exporter referred to the regulation granting the extension of the derogation when exporting tuna loins, but the exporter should have referred to the initial derogation regulation. In order to benefit from the derogation the exporter has to refer to the specific regulation on derogation. However, the exporter did not refer to the correct regulation.

Country I stated that the reason for a verification request was because the entry did not match the provided derogation rule.

KRA confirmed that the certificates are issued and endorsed by KRA. However, the exporter referred to another regulation and that it was a mistake.

6.11.4.5 Goods listed in the certificate

Actual case

A Kenyan company exported various chemicals to country F. The exporter listed both originating and non-originating goods in the certificate. A certificate was issued. The importing country contacted KRA when the goods were at the border. KRA noticed that the mistake was based on the commercial invoice the importing country was able to make a difference between the originating and non-originating products. The importing country gave preferential treatment only to the originating goods.

6.11.5 General solutions

6.11.5.1 *Customs*

1. Training of Customs

2. Improvements related to certificates:

    - In new agreements the approved exporter system will eventually replace many of the certificates with an invoice declaration eliminating the problem of printing of certificates;
    - The advent of electronic certificates of origin will also solve the problems related to authenticity of stamps and signatures;
    - The Customs administration has to ensure that only correct stamps are used;
    - The importing countries are encouraged to check the specimen stamps and signatures with their Customs administration and make sure they have the latest list of stamps and signatures before sending requests to the exporting administration;
    - The Customs should only sign certificates when all fields on the proof of origin are duly filled. Customs should send it back to the exporter and explain them what is missing and why they need to fill in the certificate properly.

6.11.5.2 Private sector

1. Training of private sector:

    - On how to properly fill in all the necessary information on the certificates before presenting them to Customs for endorsement;
    - The importance and consequences of not filling in the certificates properly;
    - Contacting to the umbrella institutions of the private sector and educating on the steps followed when filling in certificates. This is so that they can educate their members on the same or help them with completion where necessary.

6.11.6 Origin criteria

6.11.6.1 A product going to the East African Community (EAC certificate)

Actual case

An exporter exported chemicals using a certificate of origin stating that the origin criterion for the chemicals was “P” (goods are wholly obtained). However the origin criterion should have been “V” (value added criterion) as the goods in question were covered by value added rules. Kenya Revenue Authority sent the certificate back to the exporter and advised the exporter to make a new certificate with reference to the correct origin criterion.

Solutions

Informing the private sector why they have to fill in the certificate correctly and what the consequences are if they do not (mainly preferential treatment is denied in those cases).

6.11.7 Administrative cooperation

6.11.7.1 Lack of response to verification requests

Actual case

A Kenyan company has been importing clear float glass invoiced in country B (no agreement in force between country B and Kenya) claiming to originate in country G where there is an agreement. Kenya had noticed that a trend had emerged where a lot of commodities were being imported claiming to originate from country G from which they are traditionally are not known to have been manufactured in. e.g., (steel and allied products). KRA therefore carried out for an enquiry to be carried out to establish the correct position.

The invoice and the packing list were from country B and stamped by its Chamber of Commerce. The certificates of origin were issued country G. The bill of lading claimed that the goods were consigned in country G while the Kenyan customs declaration showed that the goods were consigned and supplied in country B and that the country of last consignment is N.

In the light of foregoing, the Kenya Revenue Authority recommended that an enquiry be carried out.

A verification request was sent to country G and Kenya Revenue Authority allowed for release of goods under guarantee. However, country G is yet to reply to the verification request since December 2014 when it was sent.

6.11.8 Solutions

According to the rules of the relevant agreement, country G should reply to the verification request within three months. In this case, the deadline has expired.

6.11.8.1 Random checks

Actual case

There are too many random checks for agricultural products and handcraft (which normally should not cause a lot of issues). There is no reasonable doubt to challenge many of the cases related to agricultural products and handcraft.

1) For example country R sent in a verification request for fresh vegetables without indicated the reason.

2) Country H asked KRA to verify the origin of pineapple tidbits in light syrup.

3) Country S requested for a subsequent examination on the authenticity and accuracy of the proof of origin for beans.

4) Country J asked for clarification on the origin of handcrafts exported to it.

- While countries have the right to conduct random checks, they should be limited to the smallest amount possible in line with the principle of proportionality.

Chapter 3 of Specific Annex K to the Revised Kyoto Convention (RKC) has Recommended Practice for verifications made on random basis:

“The Customs administration of a Contracting Party which has accepted this Chapter may request the competent authority of a Contracting Party which has accepted this Chapter and in whose territory documentary evidence of origin has been established to carry out control of such evidence: (a) where there are reasonable grounds to doubt the authenticity of the document; (b) where there are reasonable grounds to doubt the accuracy of the particulars given therein; (c) on a random basis.”

According to Chapter 3 of the Specific Annex K the standard for verifications made on random basis is the following:

“Requests for control on a random basis, as provided for in Recommended Practice 3 (c) above, shall be identified as such and be kept to the minimum necessary to ensure adequate control.”

6.11.9 Conclusions

- Part of the overall solution is to ensure general and proper organization and coordination of the implementation of the rules – including verification of the certificates and origin status – both for imports and exports.
- Training and capacity building on rules of origin including an establishment of an efficient office that deals with both exports and imports coo.
- Requests for verification should as much as possible be done using electronic means as there are cases where such the verification requests do not also reach the KRA over the old letter system.

- Introduction of and electronic certification self-certification in order to facilitate origin related procedures and reduce the cost of doing business. This can be achieved by creating a national database in a web of all approved exporters accessible to all contracting parties of a trade agreement.
- Increase cooperation with other authorities from member countries who are signatories to an agreement or to a FTA.
- Producers/stakeholders should be informed through meetings or on the authority's website of all existing FTAs and the RoO applicable in each agreement.

6.12 Case Study by Korea on Countering Origin Irregularities

6.12.1 Organizational framework

The FTA implementation framework within the Korea Customs Service (KCS) dates back to 2011, when the FTA Implementation Bureau was established to respond to the increasing number of free trade agreements (FTAs) coming into force and to ensure their effective and efficient implementation. In 2021, with the restructuring of the KCS, the FTA implementation function was integrated with international cooperation and became part of the International Affairs Bureau. The Bureau has four divisions: the External Relations Division, the FTA Implementation Division, the Origin Verification Division and the Bilateral Cooperation Division.

The main tasks of the FTA Implementation Division include supporting FTA negotiations, resolving FTA implementation issues, and managing the domestic FTA policy and system, as well as providing technical assistance to industry to promote the utilization of FTAs. The Origin Verification Division provides origin verification guidelines, performs origin risk management and controls origin verifications carried out by the seven main Customs offices. They are also the point of contact for origin verification and liaise with overseas counterparts.

The Bilateral Cooperation Division is in charge of cooperating with foreign Customs authorities and resolving difficulties encountered at the overseas Customs, including issues related to the FTAs. The External Relations Division, as the lead division of the International Affairs Bureau, is responsible for planning and performance management of the whole Bureau, in addition to its own task of cooperation with international organizations and ODA project management.

6.12.2 Origin irregularities

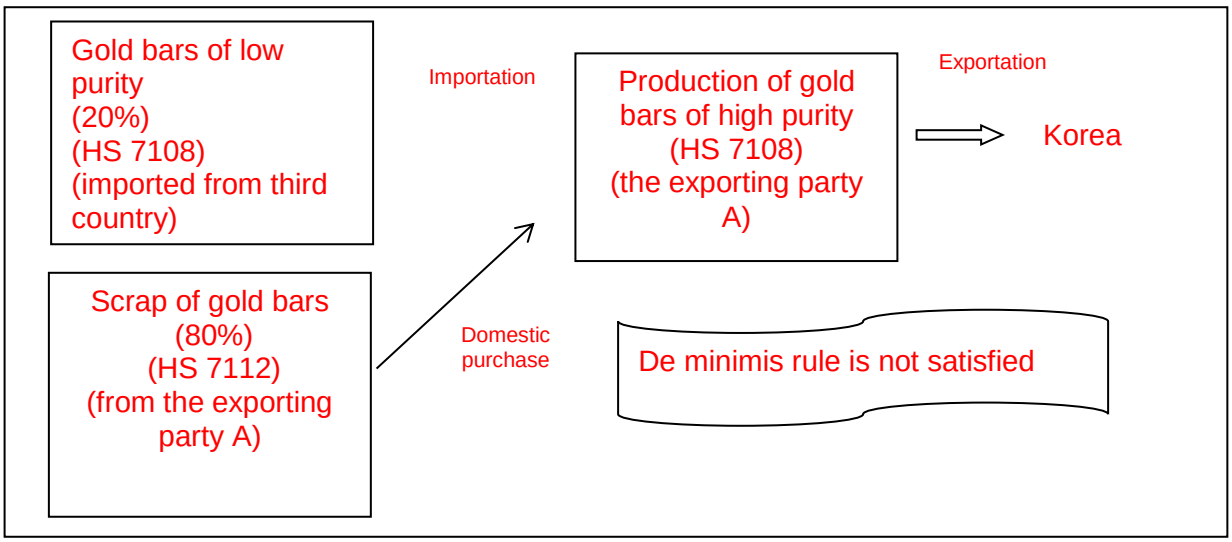
6.12.2.1 Irregularities related to origin criteria: Product specific rules (PSR) – change in tariff classification (CTC)

Actual case 1

Name of commodity: gold bar (HS 7108)
Exporting party: Country A
Origin criterion: CTH (change in HS four-digit code)
Reason for verification: importation of gold bars from Country A increased sharply (by 430 times) after the relevant FTA came into force
Verification method: Customs authority of exporting party A conducted verification

The exporter in Country A sold gold bars of high purity (HS 7108) to Korea. The gold bars were produced using the refining process, by mixing gold bars of low purity (HS 7108) imported from a third country and scrap of gold bars (HS 7112) purchased from a domestic supplier of the exporting party A. 80% of the final goods (scrap of gold) satisfied the CTH rule, but 20% (non-originating materials) did not fulfil the CTH requirement. Under the relevant FTA, the threshold for the de minimis rule, which does not require CTC for non-originating materials, was 10% or less of the ex-works price of the goods in question.

Therefore, in this case, origin was not conferred, because the de minimis threshold had been exceeded.



Actual case 2

Name of commodity: Dietary supplement (HS 2106)

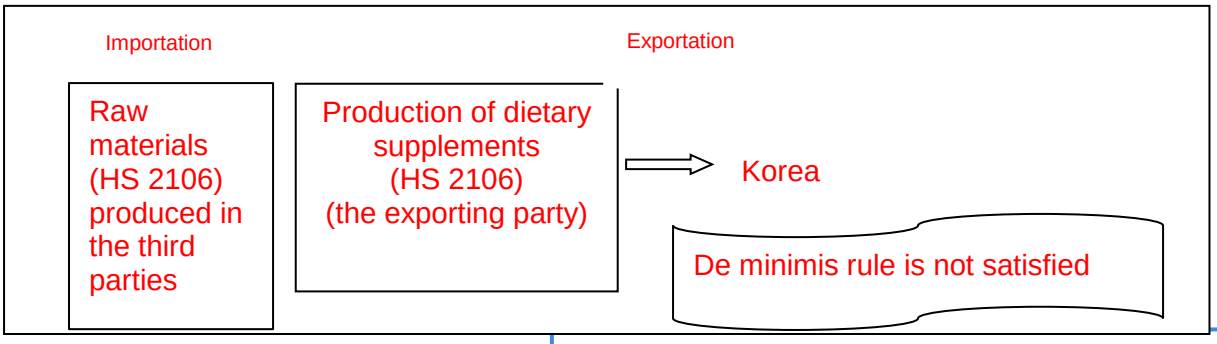
Exporting party: Country A

Origin criterion: CTH (change in HS four-digit code)

Reason for verification: importation of the materials of the same 4-digit HS code from the third parties in large quantity into CountryA

Verification method: retroactive origin verification by the Korea Customs Service (importing party)

In the FTA between Korea and country A, the origin criterion for dietary supplements (HS 2106) is changed in HS Tariff Headings (CTH). For the dietary supplements (HS 2106) exported from country A to be eligible for preferential treatment in Korea, they need to be made from the raw materials under different HS headings other than 2106. The KCS investigated this case based on reasonable doubts, as exporting party A had imported significant quantities of raw materials of the same HS heading from a number of third parties. As the result of origin verification, it turned out the product was made from the raw materials of the same HS heading and did not meet the de minimis threshold of 10% of the product price.



6.12.2.2 PSR – value added (VA) rules

Actual case

Name of commodity: treated copper foil (HS 7410)

Exporting party: Country B

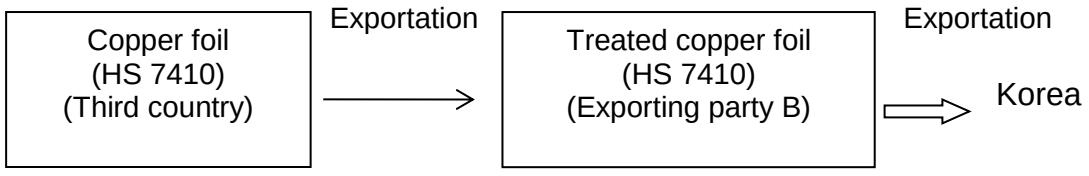
Origin criterion: CTH or 40% of regional value content (RVC)

Reason for verification: the raw materials for producing treated copper foil were imported from a third country and only the treatment process was carried out in exporting party B

Verification method: on-the-spot verification by the Korea Customs Service (the importing party) after the exporting party had conducted verification

The exporter sold treated copper foil to Korea. The treated copper foil was produced by treating copper foil imported from a third country, the price of which was determined by the London Metal Exchange (LME) market. Korea Customs had some doubts as to whether the exporter had complied with the RVC rule, because the only operation involved in the production of the goods in question was the treatment process.

The result of the first origin verification carried out by the exporting party was that originating status had been conferred, but the KCS found some errors in the calculation of the value of the raw materials. The exporting party had not calculated the value based on the CIF value at the time of importation of the materials in question. With the consent of the exporter in question, the KCS visited the company for on-site origin verification and found that some of the transactions verified did not satisfy the “40% of RVC” criterion because of an increase in the LME market price of the copper foil imported from the third country. The CTH criterion could not be met because there was no tariff shift between copper foil (HS 7410) and treated copper foil (HS 7410).



6.12.2.3 Accumulation/cumulation

Actual case

Name of commodity: gas compressor packages (HS 8414.80)

Exporting party: Country S

Origin criterion: CTH or RVC 40%

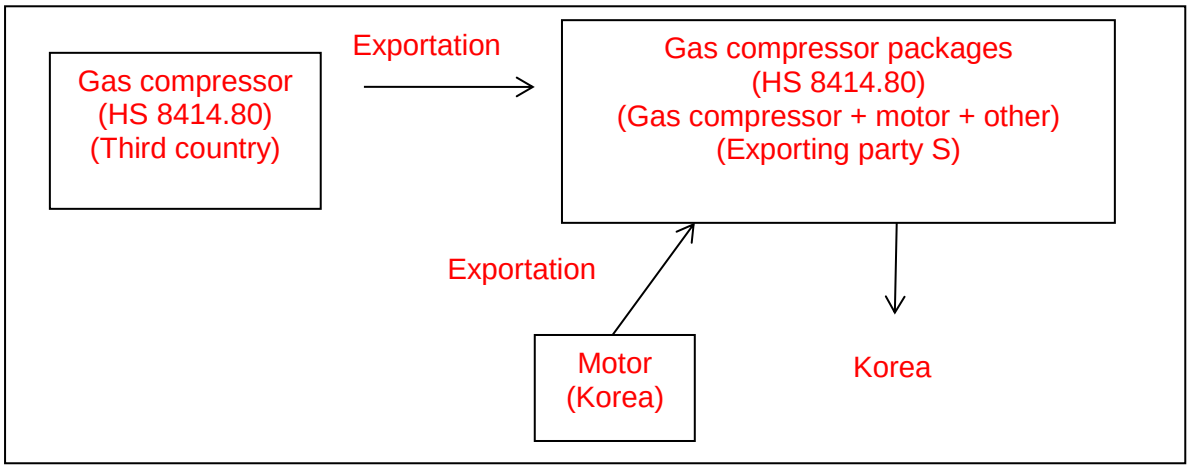
Reason for verification: doubts about the exporting country meeting the 40% RVC rule, as most of the raw materials were imported from a third country and two different CO

were submitted – one from the third country for non-preferential (origin marking) purposes, and the other from exporting party S for FTA preferential purposes.

Verification method: on-the-spot verification by the Korea Customs Service (importing party) after the exporting party had conducted verification. It turned out that some raw materials imported from Korea had been produced in Korea, but the CO supporting the originating status for those materials had not been issued by the relevant institution.

The exporter sold gas compressor packages to Korea. The goods in question had two different CO: one for origin marking purposes and the other for preferential purposes. The CO from the third country, which was for non-preferential purposes, was required to be submitted under the Foreign Trade Law (domestic regulation) which provides the origin marking regulations. The other CO, from exporting party S, was for FTA preferential purposes. Korea Customs requested the issuing authority of the exporting party to clarify the originating status of the product, and the latter notified that the originating status was positive (i.e. the product originated in the exporting party).

As most of the raw materials used for the final product did not originate in the exporting country, the KCS still wanted to double-check whether the 40% RVC rule had been met. The on-the-spot verification carried out by the KCS showed that the product did not qualify for originating status because the CO for the motor (of Korean origin and imported from Korea) had not been issued for the purpose of accumulation. The time limit for the retroactive issuing of the CO by the issuing authority of the exporting party was one year after the goods were exported to the importing party, and this one-year time limit had been exceeded. When the motor was deemed to be originating, the RVC rate was calculated at 62%, but when it was non-originating, the RVC fell to 31%, resulting in failure to qualify for originating status.



6.12.2.4 Other (supporting documents)

Actual case

Name of commodity: Grape Juice (HS 2009.69)

Exporting party: A

Origin criterion: CTH + RVC 45%

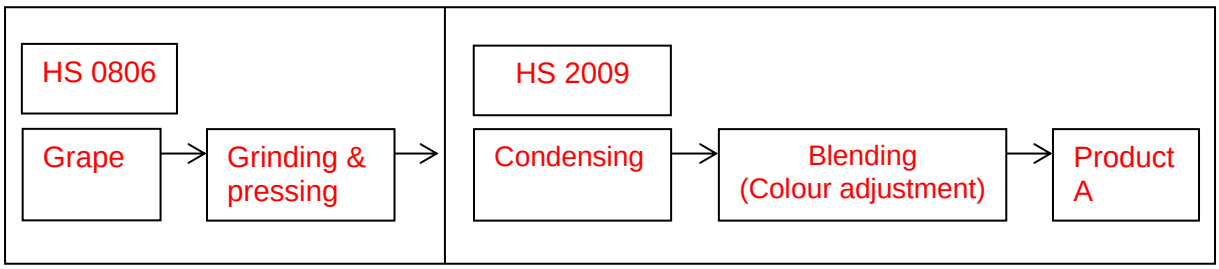
Exporters: X, Y and Z

Reason for verification: a natural disaster in exporting party A led to a sharp decrease in grape production there. However, imports of product A to Korea from exporting party A increased greatly. There was a possibility that grapes from a third country (located close to exporting party A) were being used.

Verification method: on-the-spot verification by the Korea Customs Service (importing party) following a review of the documents submitted by the exporters in question.

Exporting party A suffered a natural disaster which led to a sharp decrease in grape production. However, there was a sharp increase in the importation of grape juice to Korea. Therefore, there was a possibility that raw materials from a third country were being used. Three companies (X, Y and Z) were chosen to be part of the origin verification process.

The KCS requested X, Y and Z to send supporting documents. The supporting documents sent by company X satisfied the CTH and RVC 45% rules. In the case of companies Y and Z, the RVC 45% requirement was met, but the CTH rule was not satisfied because the companies did not submit the purchase data concerning the raw materials, or the production documents relating to warehousing, grinding, pressing and condensing, which are needed as supporting evidence for the CTH + RVC 45% rules.



Actual case

Name of commodity: nonwoven (HS 5603)

Exporting party: A

Importer: C

Origin criterion: CC

Reason for verification: inconsistency between the country of origin on the Preferential Tariff Claim Form and on the Import Declaration Form

Verification method: retroactive verification by the Korea Customs Service (importing party)

A regional trade agreement (RTA) in effect in Korea provides for tariff differentials, whereby different tariff rates are applied to the originating goods of an exporting Party pursuant to the importing Party's tariff commitments. In this RTA, nonwovens originating in an exporting Party B are eligible for a 0% preferential tariff in Korea, while nonwovens originating in another exporting Party A cannot enjoy preferential tariff treatment.

The KCS conducted origin verification on this case due to the inconsistency of the country of origin information between the Preferential Tariff Claim Form and the Import Declaration

Form. Importer C had correctly declared the country of origin as exporting party A on the Preferential Tariff Claim form. However, on the Import Declaration Form, the importer incorrectly applied the 0% preferential rate applicable to exporting Party B.

In order to benefit from preferential tariff treatment under this RTA, traders must check the Schedules of Tariff Commitments to ensure that the goods originate in the exporting Party entitled to preferential tariff treatment.

6.12.3 Irregularities related to proof of origin

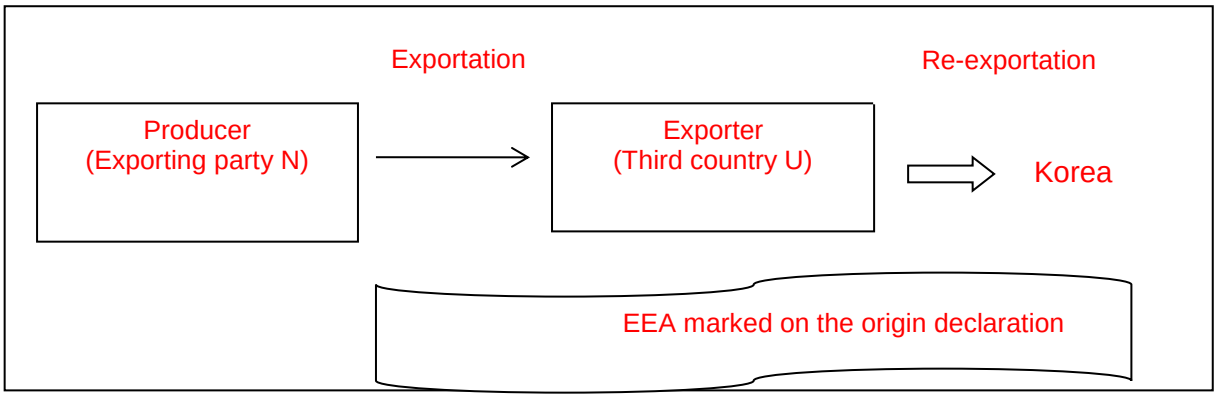
6.12.3.1 Self-certification by exporter or manufacturer

Actual case

Name of commodity: salmon
Exporting channel: exporting party (N), third country (U), Korea
Reason for verification: doubts about conferring origin to the third country
Verification method: the Customs authority of the exporting party conducted the verification

Salmon caught in exporting party N was exported to Korea through third country U. The CO of the good in question was not marked as FTA partner country N, but as being from its region.

The verification conducted by the exporting party confirmed that the CO was not issued in accordance with the relevant FTA. The issuer did not know the correct origin certification, and issued the CO in a wrong way.



6.12.3.2 Self-certification by approved exporter

Actual case

Name of commodity: Product X
Exporting Party: Approved exporter Z in Exporter Party A

Reason for verification: doubts about the authenticity of the CO because the approved exporter authorization numbering system used was different from the digit system provided by the European Commission's DG TAXUD (Taxation and Customs Union)

Verification result: the approved exporter authorization number written on the invoice by the exporter was in fact an AEO authorization number (EORI)

Korea Customs found that the approved exporter authorization number was not consistent with the approved exporter authorization digit system notified in advance by DG TAXUD of the European Commission.

The Customs authority of the exporting party notified the result of origin verification. The number written by the exporter in question was not the correct one, it was an EORI number issued for Authorized Economic Operator status.

The lesson from this case was that the exporter should have fully understood the AEO authorization numbering system.

6.12.3.3 Self-certification by importer

Actual case

Name of commodity: footwear

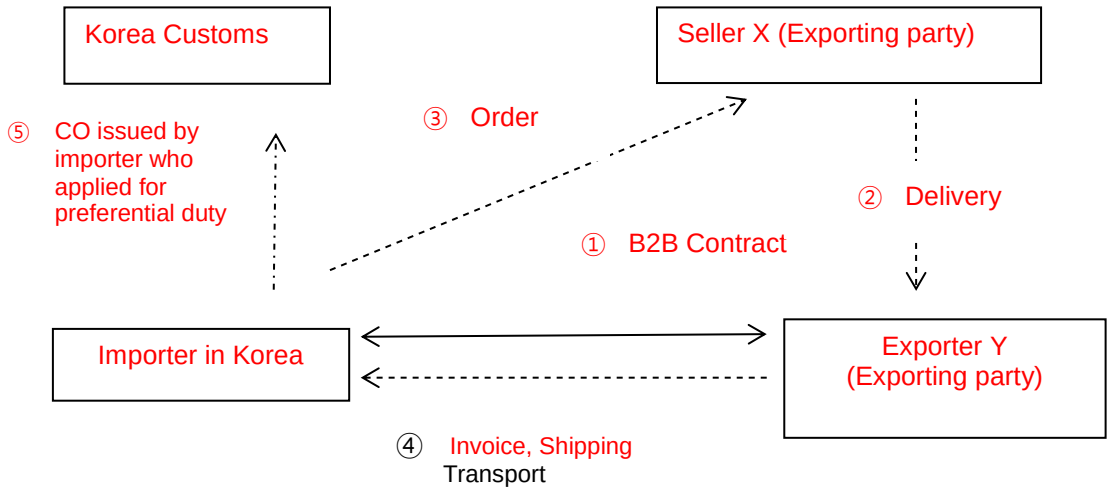
Exporter Party: Country A

Reason for verification: seller has several production facilities in third country

Origin Criterion: Administrative Procedure

The importer in Korea ordered footwear from a seller in country A. The seller X delivered the goods to the exporter Y in Country A. The exporter sent the goods to the importer in Korea, together with the commercial documents but without the CO. The relevant FTA permits self-certification of origin by the importer. The importer applied to Korea Customs for the FTA rate, having issued a CO for the goods in question, prepared by himself. However, he had no knowledge of the originating status of the goods, and also had no supporting documents.

As the result of origin verification, it was confirmed that the imported goods were marked as a brand from Country A, but they had been manufactured in a production facility located in a third country, not in Country A. The CO should have been issued by the importer with due knowledge of the originating status of the goods in question. The importer simply thought that if the goods came from Country A, they qualified automatically.



6.12.4 Ways to counter origin irregularities

6.12.4.1 Measures relating to Customs

In order to respond to origin irregularities, Korea Customs conducts retroactive origin verification at the seven regional Customs houses. The Origin Verification Division at Headquarters controls origin verification conducted by regional Customs and is the point of contact for administrative cooperation with the authorities of FTA partner countries.

For effective origin verification, it is crucial to build capacity of the Customs officials responsible for conducting origin verification. The Customs Human Resources Development Institute runs special training courses with a focus on origin verification as follows:

- Basic course on origin verification, targeting officers who have just begun origin verification. This is an online and offline combined course – two weeks of pre-learning online, followed by a one-week offline curriculum.
- Intermediate course for officers who have over one year's experience in origin verification. This is an online and offline combined course – two weeks of pre-learning online, followed by a one-week offline curriculum.
- Advanced course for origin verification team leaders. This off-line course consists of sessions to share key origin verification issues and how to address them.
- For 2024 in particular, special courses have been organized to provide in-depth training focusing on HS classification and accounting, in addition to the annual courses mentioned above.

Furthermore, to ensure the accuracy of origin certification and the application of preferential tariff treatment, Customs officials are being trained on FTAs and the issuance of CO as follows:

- FTA origin certification and authorization: The target trainees are officers working at the Customs Business Support Centres, or those responsible for FTA-related work. This is an online and offline combined course – two weeks of pre-learning online, followed by a one-week offline curriculum. Two courses are planned in 2024.

- Basic course on FTAs for those who are at the beginning of their work in the FTA field: This is an online and offline combined course – two weeks of pre-learning online, followed by a one-week offline curriculum. Two courses are planned in 2024.

- Online course on FTAs open to all officers: A two-week course is planned for 2024.

- Online course for the officers responsible for issuing CO: A two-week long course is planned for 2024.

6.12.4.2 Administrative cooperation

Actual cases

The cases listed below are examples of irregularities occurring in administrative cooperation:

1) The requested party (the issuing authority or the Customs authority of the exporting party under the relevant FTA) did not notify the KCS (the importing party) of the result of the origin verification of product A within the verification time limit;

2) The requested party (the Customs authority of the exporting party) sent a delayed positive reply to the KCS (the importing party) concerning product B;

3) The requested party (Customs authority of the exporting party) sent a negative reply (i.e. not qualifying) to the KCS (the importing party) concerning product C, and subsequently reversed the negative reply into a positive one (i.e. qualifying); and

4) Korea Customs classified product D of different qualities under HS heading 2504, whereas the exporting party classified it under HS heading 3824.

In addition, there are different interpretations of the agreement between Contracting Parties concerning the conduct of origin verification with regard to the scope of sufficient documents, exceptional circumstances, HS classification, and calculating the value of non-originating materials. This leads to trade disputes.

6.12.4.3 Ways to improve administrative cooperation

Establishment of contact points for dispute settlement

In order to solve conflicts, there are three ways to find solutions:

- Seek consultations with relevant competent authorities on a real-time basis;

- Bilateral origin cooperation meetings between the Customs authorities of the importing party and the origin verification authorities of the exporting party; and

- Refer issues to the FTA Implementing Committee under the terms of the relevant FTA.

Establishment of common guidelines on origin procedures

Furthermore, in order to eliminate obstacles to FTA utilization and non-tariff barriers based on no specific procedure in the FTA, the relevant authorities must standardize and harmonize their origin verification procedures. Korea Customs has a Memorandum of Understanding (MoU) on origin cooperation with Vietnam, Malaysia and Indonesia.

Building mutual trust and understanding through joint workshops or training programmes

The KCS has been hosting international origin seminars since 2011, inviting origin experts from FTA partner countries. The aim is to harmonize the FTA implementation system between relevant parties, and also to make the business sector more familiar with FTA regulations.

In particular, Korea Customs held the "FTA 2.0 Seminar" in Seoul, Korea, in April 2024 to celebrate and commemorate Korea Customs achievements over the past 20 years and to shape the future. A total of 350 participants from 37 FTA partner countries, the private sector and international organizations attended the seminar, where they shared and discussed cutting-edge issues, including enhancing the utilization of FTA benefits, streamlining cross-border data exchange of CO, implementing new technologies, and navigating rules of origin in the context of the Circular Economy.

6.12.4.4 Measures concerning the private sector

Currently, as many as 21 FTAs are in force with 59 countries in Korea. This is a great opportunity for the business enterprises as they can expand their business activities abroad. But at the same time, complicated rules of origin of different FTAs may pose difficulties in origin management and a potential rise in trade costs.

Globalized supply chains add complexity to origin management. Goods are not generally produced by one producer in one specific country but are produced through intermediary material supplier(s), from raw material supplier(s) in more than one country. For the goods to enjoy preferential tariff treatment, the origin of each raw material requires traceability through supporting documents so that the originating status of the goods can be ensured.

In order to address the challenges faced by the private sector in origin management and to prevent origin irregularities, the Korea Customs Service has been proactive in providing technical assistance and maintaining cooperation with the private sector.

Outreach programme for stakeholders

The Korea Customs Service runs the outreach programme for stakeholders, with the aim of promoting FTA utilization to the maximum. The Customs Business Support Centres in six regional Customs houses are at the forefront of Korea Customs' outreach programme, focusing on creating a trade-friendly environment for small and medium-sized enterprises (SMEs) and capacity building for SMEs.

Big companies have their own capacity to ensure that they are able to take advantage of FTA benefits and comply with FTA-related rules and regulations. On the other hand, SMEs are likely to encounter various challenges due to insufficient resources and lack of origin expertise. Therefore, empowering SMEs to strengthen their origin management is essential for full utilization of FTA benefits and for enhancement of their compliance level. Korea Customs' industry outreach programme includes the following activities:

- For applicant companies wishing to ensure accurate origin management and prepare for retroactive origin verification, Korea Customs offers tailor-made consultancy services by the Customs brokers trained and certified by Korea Customs.
- YES FTA Portal, an information hub, is operated by Korea Customs. The Portal provides

comprehensive information on FTA utilization, offering up-to-date information on FTAs, regulations, and trade opportunities.

- In February 2024, Korea Customs signed an MoU with the Korea Federation of Micro Enterprise (KFME) for mutual cooperation in supporting SMEs, including FTA utilization.

Advance ruling system

When the importer or producer/exporter of goods is not sure about the originating status, tariff classification, Customs value, etc. of those goods, the importer or producer/exporter can request an advance ruling from the Customs authority of the importing party by submitting all the necessary information.

In particular, advance ruling applications for the originating status are submitted to the Origin Verification Division of Korea Customs Headquarters prior to the declaration of the goods for import. Korea has an advance ruling system for tariff classification, Customs value and origin in most of its FTAs.

Korea Customs has made continuous efforts for industry to actively benefit from the system, such as promoting best practices, and working to amend domestic legislation to allow the application of advance rulings for all FTAs, even though advance ruling is not specified in the agreement.

Guidebook for Business on FTA Origin Verification

A Guidebook for Business on Origin Verification in FTAs has been published for importers, exporters and producers who are subject to origin verification (when they are requested by Korea Customs officials to submit evidence documents).

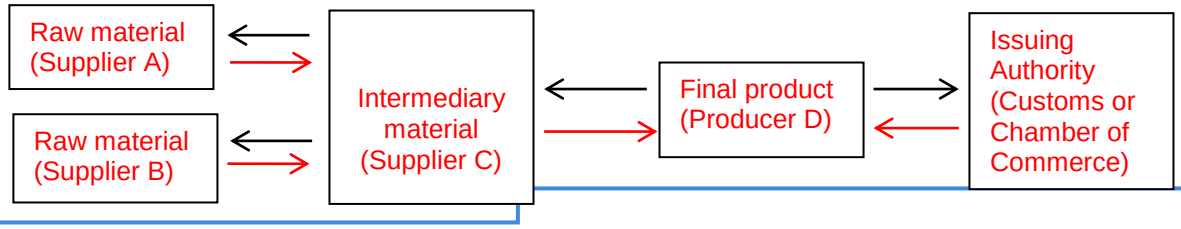
However, the Guidebook can also be used by Korea Customs officials to request a standardized document for each origin criterion from the companies in question, in order to avoid discrepancies between different Customs officials or different Customs offices in Korea.

Issuing and keeping evidence documents in order to validate a claim of origin

In order to reflect domestic accumulation in the final goods that will be exported, the Korea Customs Service provides the following guidance:

- Declaration of inward processing issued by the manufacturer or supplier of raw materials used for the production of the goods to be exported, for the purpose of proving the domestic manufacturing of such materials to the subsequent supplier or manufacturer; and

- Declaration of origin issued by the manufacturer or supplier of materials used for the production of the goods to be exported, for the purpose of proving the qualifying originating status of such materials to the subsequent supplier or manufacturer.



(Request) (Issuing)

Introduction of Qualification Certificate on Origin Management

The Qualification Certificate on Origin Management was created in March 2010, in order to increase the number of civil experts on FTA origin regulations. As of 2024, the number of civil experts is around 8,077.

In order to be awarded the Qualification Certificate on Origin Management, applicants have to pass an exam on FTA law and regulations, HS classification, Customs clearance for import and export, and the origin criteria for goods in every FTA.

FTA-PASS

Korea Customs, in partnership with the Korean Institute of Origin Information (KIOI), developed FTA-PASS, a digital platform designed to simplify origin management for SMEs. It provides features ranging from automatic calculation of origin status to the secure management of origin-related data.

The system enables accurate and instant determination of the origin status of goods based on origin data. Users can also efficiently issue and exchange origin-related documents, as well as apply for CO through the system. Another benefit is in the area of record-keeping – it helps SMEs in responding to retroactive origin verification that may occur in the future.

Electronic Origin Data Exchange System (EODES)

The KCS has implemented a system – namely, EODES – enabling real-time exchange of CO data between the Customs authorities of the FTA partner countries since December 2016. EODES is now in operation with four countries, including China, Indonesia, Viet Nam and India. The electronic exchange of the CO, a mandatory document to be presented to the Customs authority of the importing party in order to benefit from preferential tariff treatment, significantly reduces trade costs and time, by streamlining the logistics and Customs process. Complexities in Customs clearance can also be largely avoided through the assurance of the authenticity of the CO.

Cooperation with the Issuing Authority

Pursuant to Article 11-3 of the FTA Customs Special Act, the Commissioner of the Korea Customs Service shall educate issuing officials of the Korea Chamber of Commerce and Industry (KCCI) on HS classification, Customs valuation, and origin criteria and requirements related to origin certification. The purpose of this provision is to ensure that the issuing officials acquire knowledge related to the issuing of CO, so that they can carry out their roles in the right manner. The areas covered are origin criteria, HS classification, Customs valuation, FTA legislation, cases of violation of rules of origin, etc.

In line with this role of Korea Customs, the Customs Human Resources Development Institute organizes training courses on the issuance of CO for the officials of the Chambers of Commerce. Two one-week offline courses are planned for 2024.

6.13 Case Study by Kosovo on Cumulation

6.13.1 Overview of origin irregularities

The following FTAs are in force in Kosovo:

- SAA with EU
- CEFTA
- FTA with Turkey
- FTA with Great Britain and Northern Ireland
- GSP with USA, Switzerland, Norway and Japan, EM Convention

Legislation and policy

- Kosovo Customs and Excise Code

6.13.2 Irregularities related to origin criteria

6.13.2.1 Product Specific Rules

Actual case

Name of commodity: textile goods – apparel
Origin criterion: Product Specific Rules
Reason for verification: Misapplication of the origin criteria
Verification method: Request from a partner country for post-verification of the invoice declaration

There was a request from a partner country for the invoice declaration to be post-verified. The trader purchased the “textile goods apparel” from a local producer, exported the textile goods to a partner country and issued an invoice declaration for those goods. The trader and producer were unaware of the specific criteria for “textiles” to obtain preferential origin.

Upon verification, the Customs Administration sent a negative response for the goods to the partner country. During the verification procedure, they contacted the trader to inform them about the situation, but they also contacted the producer of the goods and explained the specific criteria for textile products.

6.13.3 Ways to counter origin irregularities

6.13.3.1 Customs Administration

The Origin Section organizes training on rules of origin and free trade agreements once or twice a year and whenever a new agreement or change happens.

Customs are usually involved in FTA negotiations. Experienced officials have been working on the rules of origin for some years now and receive notices from the CEFTA Secretariat and the Commission on recent developments and changes.

6.13.3.2 Private sector

The private sector is usually informed through the Customs website. However, when necessary, Customs make visits to the premises of companies or meet them at our premises and explain to them the applicable rules.

Stakeholders are usually informed through the Customs website about existing agreements, or by contacting the Origin Section by telephone or email. They are not very familiar with the different rules in place.

6.13.3.3 Administrative cooperation

Communication with the competent authority of the exporting party is usually made by post (by sending and receiving hard copies of relevant documents). Currently, we can communicate only by mail with some countries.

The Administration keeps a simple record of sent requests and we check them periodically. If there has been no reply for some time, the responsible office sends a reminder of the request to the party involved.

6.14 Case Study by Malaysia on Regional Value Content

6.14.1 Overview of origin irregularities

The relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin are as follows:

Free Trade Agreement (FTA) List

- ASEAN Free Trade Area (ATIGA)
- ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)
- ASEAN-China Free Trade Area (ACFTA)
- ASEAN-India Free Trade Area (AIFTA)
- ASEAN-Korea Free Trade Agreement (AKFTA)
- ASEAN-Japan Comprehensive Economic Partnership (AJCEP)
- Developing Eight (D8) Preferential Tariff Agreement (D-8 PTA)
- ASEAN-Hong Kong Free Trade Agreement (AHKFTA)
- Regional Comprehensive Economic Partnership (RCEP)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
- Trade Preferential System Among OIC Members (TPS-OIC)
- Malaysia-Australia Free Trade Agreement (MAFTA)
- Malaysia-New Zealand Free Trade Agreement (MNZFTA)
- Malaysia-Chile Free Trade Agreement (MCFTA)
- Malaysia-Pakistan Closer Economic Partnership Agreement (MPCEPA)
- Malaysia-Japan Economic Partnership Agreement (MJEPA)
- Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA)
- Malaysia-Turkey Free Trade Agreement (MTFTA)

National Legislation:

- Section 11 Customs Act 1967 – Power of Minister to fix Customs duties by order to be approved by the Dewan Rakyat by issuing Customs Duty Order for each FTA.

6.14.2 Irregularities related to origin criteria

6.14.2.1 Product Specific Rules: Regional Value Content (RVC)

Actual case

Name of commodity: Detergents and ceramic plates Exporting party: Origin criterion: Product Specific Rules: Regional Value Content (RVC)   Reason for verification: Doubt on Origin Criteria Verification method: Administrative cooperation

A company imported Detergents and ceramic plate from country A, claiming preferential tariff treatment under one of Malaysia's FTAs. When checking the Proof of Origin (POO) during Custom clearance, the Customs officer had doubts on the origin criteria of the goods. The POO showed that the goods detergent and ceramic plates) shared the same HS code and origin criteria – RVC 54.56%.

A verification request was sent to the issuing authority of country A to check the goods' origin compliance under the agreement, as well as to check supporting documents for proof of origin compliance. The preferential claim for both goods was suspended while awaiting the verification results from the issuing authority of country A. The issuing authority of country A replied that the verified goods satisfied the origin criteria as follows:

Description of Goods Origin Criteria Compliance detergent (HS 3402.20) RVC 54.56% Ceramic plates (HS 6912.00) RVC 100%. Preferential tariff treatment was granted for both goods based on the verification reply received from the issuing authority of country A.

6.14.3 Ways to counter origin irregularities

6.14.3.1 Customs Administration

Capacity building activities

The Rules of Origin Unit, and other Customs sections like, the Headquarters, Customs Clearance Section, Compliance Section and Enforcement Section are responsible for detecting origin irregularities. The Rules of Origin Unit, and the Headquarters conduct briefings and training on Rules of Origin on a regular basis, as well as upon request, to ensure that Customs officials are knowledgeable and up-to-date with Rules of Origin issues.

The list of briefings and training is as follows:

1. Training at the Customs Academy on a yearly basis
   i. One basic level training course on Rules of Origin and Customs Rulings on Origin
   ii. One advanced level training course on Rules of Origin and Customs Rulings on Origin
2. Seminar and briefings on Rules of Origin
   i. Briefing to Customs officials at State level Done at least three times a year
   ii. Updated information on the existing and new agreements implemented in Malaysia
   iii. Discussion of existing issues and those encountered at the time of importation

Communication and information dissemination

Malaysia has an internal storage portal to disseminate all ROO-related information. Customs officers can query and request additional information and supporting documents. Preferential tariff treatment will not be granted under domestic laws and regulations in cases where an incorrect Certificate of Origin format is submitted. The Administration records the date of the verification request sent to the issuing authority in the exporting country, and a reminder or follow-up notice is sent to the issuing authority in the exporting country to obtain the status of the verification request.

6.14.3.2 Private sector

Malaysia conducts pocket talks and webinars with the private sector to update them on current changes and relevant procedures relating to Rules of Origin, with the aim of enhancing compliance. Relevant information is provided on a regular basis on the official website, in line with national laws and publication regulations related to Rules of Origin.

6.14.3.3 Administrative cooperation

All the FTAs enforced in Malaysia are gazetted and publicly available as the legal basis for the issuance procedure. In line with the requirements of the FTAs, when any verification requests are received, the issuing authority records the date of the verification request received from the Customs of the importing country and it can request a time extension, when needed.

6.15 Mexico's Case Study on Misapplication of Origin

6.15.1 Organizational framework

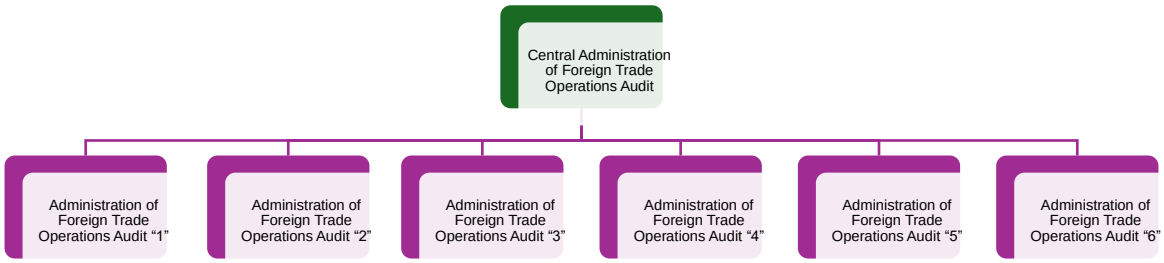
In July, 2012, the Internal Rules of the Tax Administration Service **(SAT)** were reformed, which led to the creation of the General Administration of Foreign Trade Audit (**AGACE**). The AGACE arises from the need to have an area that concentrates the faculties and powers to perform post-Customs clearance actions.

The AGACE consists of seven Central Administrations and 6 Regional Administrations:

- Foreign Trade Planning and Programming;
- Foreign Trade Legal Affairs;
- Foreign Trade Research and Analysis;
- Foreign Trade Special Operations;
- Foreign Trade Operations Audit;
- Foreign Trade International Affairs;
- Foreign Trade Strategic Coordination;
- Foreign Trade Audit Regional Administrations (North Pacific, Central Northern, Western, North Eastern, Central and Southern).

Responsibility for performing origin verifications in accordance with the Free Trade Agreements signed by Mexico lies with the Central Administration of Foreign Trade Operations Audit (**ACAOCE**), which is overseen by the AGACE.

The **ACAOCE** consists of six Administrations:



6.15.2 Overview of origin irregularities

6.15.2.1 Origin verification

Based on the statistical information on origin verifications carried out from 2011 to 2014, Table 1 below illustrates the main risk sectors. 76% of the 1,182 origin verifications already concluded relate to goods belonging to the sectors listed below. The remaining 24% cover goods of various other sectors.

Table 1

Sector	2011	2012	2013	2014	Total
Textiles/clothing	242	166	44	208	661
Meat and offal	1	27	19	75	122
Base metals and their manufacture	28	68	12	3	111
Other	66	58	98	66	288

Table 2 gives an overview of the positive and negative determinations recorded in the origin verification process. The main procedure used is the written questionnaire, employed in 87% of all verifications conducted.

Table 2

Method	2011		2012		2013		2014		Total
	Neg.	Pos.	Neg.	Pos.	Neg.	Pos.	Neg.	Pos.	
Written questionnaire	212	101	180	118	75	94	151	91	1,022
Origin verification visit	18	6	15	7	0	3	66	45	160
Total	230	107	195	125	75	97	217	136	1,182

6.15.2.2 Main Treaties/Agreements

The NAFTA countries are Mexico's main trading partners.[19] This is why origin verification procedures under NAFTA represent 90% of all procedures conducted in recent years.[20]

Table 3

Treaty/Agreement	2011	2012	2013	2014	Total
NAFTA	287	287	165	319	1,058
Mexico – Northern Triangle FTA	10	17	3	6	36
EU – MX FTA	13	6	1	8	28
Mexico – Colombia FTA	8	1	1	11	21
Other	19	9	2	9	39

Based on the total number of negative determinations of origin, the following causes were identified:

[19] As the NAFTA countries are Mexico's main trading partners, many of the examples and solutions given in this Case Study are based on NAFTA.
[20] Under NAFTA the importer receives preferential treatment. Therefore, if the exporter fails to comply with the formalities, the requirements or the RoO, the importer is denied preferential treatment.

1) Failure to comply with formalities and requirements

- The exporter did not respond to the written questionnaire.
- The exporter did not respond to the origin verification visit proposal.
- The exporter did not consent to the origin verification visit.
- The exporter denied issuing the certificates of origin (COs).

In these cases, preferential tariff treatment is denied. 49% of the negative determinations of origin are due to the lack of a response from the company concerned.

2) Failure to comply with rules of origin (RoO)

- It is determined that the goods subject to verification do not comply with one of the origin criteria, such as change in tariff classification, regional value content, etc.

In these cases, the originating status of the goods is not accepted, and preferential tariff treatment is denied.

6.15.3 Irregularities related to origin criteria

Chapter 3 covers various examples of actual cases dealt with by the Mexican Customs Administration, and ways to reduce the number of irregularities of these kinds. The actual cases are explained in detail and studying them provides some good indications on how to review origin cases.

Where there are specific solutions to an individual case, these are explained after the description of the relevant case, under the heading “Solutions”. Otherwise, the solutions applicable in all cases, together with ways to improve the system, are covered in Chapter 4.

6.15.3.1 Tariff classification change (ducks)

Actual case

Name of the commodity: duck meat Exporting country: B Origin criterion: change in tariff classification (CTC) Reason for verification: lack of certificate of wholesomeness for the ducks Verification method: contact with the importer, followed by an on-site visit to the exporter/producer

In order to obtain preferential treatment for duck meat, the live ducks should have been reared and slaughtered in one or more of the Parties to the relevant FTA. The Mexican Customs Authority did not receive a certificate, with the necessary proof, showing that the duck meat came from live ducks that were reared and slaughtered in one or more of the Parties to the FTA.

As a result of an office audit conducted with the Mexican importer, the Mexican Customs Authority was able to obtain the name and address of the importer's supplier (exporter/producer) abroad.

Based on the information received from the exporter/producer and the origin verification visit, it was concluded that the subheadings relevant to this case and subject to verification were 0207.33, 0207.36 and 0207.42.

Rule of origin

"Article 401: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

(a) the good is wholly obtained or produced entirely in the territory of one or more of the Parties, as defined in Article 415;"

Article 415:

"Goods wholly obtained or produced entirely in the territory of one or more of the Parties means:

[…](j) goods produced in the territory of one or more of the Parties exclusively from goods referred to in subparagraphs (a) through (i), or from their derivatives, at any stage of production;[…]"

To determine whether the good is originating, the exporter/producer should have provided the following documentation:

a) certificates of origin.

b) purchase orders for purchasing the ducks from the exporter/producer's farms.

c) health and temperature records of the ducks from the day they were born.

d) sale invoices.

e) certificates issued by the authority concerned (certifying wholesomeness).

f) bills of lading.

g) letter certifying that the vehicles and containers used for transporting the ducks were cleaned and disinfected prior to loading; and

h) inventory records.

However, during the origin verification visit, only the certificates of origin, the purchase orders for purchasing the ducks from the exporter/producer's farms, the sale invoices, the bill of lading and the inventory records were provided. The exporter/producer certified that the live ducks had been slaughtered in one of the Parties to the FTA. However, there was no proof of change in tariff classification.

The specific rule of origin applied to duck meat, classified under tariff items 0207.33.01, 0207.36.99 and 0207.42.01 of the Tariff Schedule of the General Import and Export Duties Law

(subheadings 0207.33, 0207.36 and 0207.42 in the Harmonized Commodity Description and Coding System) contained in the FTA, states the following:

02.01 – 02.10 "A change to heading 02.01 through 02.10 from any other chapter".

To qualify a good classified in subheadings 0207.33, 0207.36 and 0207.42 of the Harmonized Commodity Description and Coding System as originating, the non-materials used in the production of such goods shall be classified in a different Chapter from Chapter 02.

However, the exporter/producer did not provide the certificates issued by the authority involved, which would have certified that the product (duck meat) had been officially inspected before and after the slaughter of the ducks, in accordance with the applicable laws and regulations which determine whether meat is suitable for human consumption.

Therefore, according to the specific rule of origin, there is no document that proves that the duck meat underwent a change in tariff classification.

In this regard, the authority in country B did not certify that the ducks were alive and underwent a production process in order to obtain frozen duck meat and frozen duck breast (these being the states in which the duck meat was exported to Mexico), meaning that there was no change in tariff classification; thus, the specific rule of origin applicable to the goods subject to verification had not been complied with.

Solutions

When the Mexican Customs Authority denies preferential treatment, the importer is informed, and the process is explained. The importer is given a chance to obtain the necessary documents to prove that preferential treatment should be granted. The Customs Administration should contact both the importer and the exporter to explain the rules of origin and the requirements regarding the documents.

The importer and the exporter have to keep all the necessary records. The situation is not that the exporter/producer does not (want to) comply with the relevant rule of origin and does not understand the origin criterion; the problem is lack of compliance with the requirements linked to record-keeping. The main irregularities relate to the formalities, not the rules of origin themselves.

Origin is not only about complying with the rules – it is a question of being able to prove it and produce the right document at the right time.

6.15.3.2 Change in tariff classification and RVC (coaxial cable)

Actual case

Name of the commodity: coaxial cable Exporting country: K Origin criteria: CTC and regional value content (RVC)

Reason for verification: exporter declared, in the certificates of origin, two different preference criteria for the same good, indicating that there was a missing link.

Verification method: on-site visit

For coaxial cable, the exporter declared in the certificates of origin either preference criterion “B” or preference criterion “C”, which in accordance with the FTA means:

B Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification because of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable regional value content; or

C The exported goods were produced entirely in the territory of one or more of the Parties exclusively from originating materials.

The Company declared that the regional value content of the goods was determined using the transaction value method, not the net cost method.

In this case, the following documents and information were required:

1) a flowchart.
2) sales invoices issued to Mexican importers.
3) certificates of origin.
4) production records.
5) inventory records.
6) bill of materials.
7) if applicable, regional value content records.
8) purchase invoices for materials.
9) certificates of origin or affidavits from suppliers.
10) letter of authorization or power of attorney.

By analyzing the bill of materials and the Company’s statements, the Mexican Customs Authority learned that the Company imports from a related enterprise in country N, under subheading 8544.20, the central core of the RG6 coaxial cable, including the PVC insulation and the braided shield. In its plants located in country K, the Company only adds extra aluminum foil insulation and the external plastic cover, before final packaging and shipment for export to Mexico. However, when looking at the bill of materials it was difficult to understand exactly what materials were used.

RG6 coaxial cable is classified under subheading 8544.20 of the Harmonized System. In accordance with the FTA, the rule of origin for subheading 8544.11 through 8544.60 is as follows:

A change to subheading 8544.11 through 8544.60 from any subheading outside that group, except from heading 74.08, 74.13, 76.05 or 76.14[21]*; or*

[21] Part I.

A change to subheading 8544.11 through 8544.60 from heading 74.08, 74.13, 76.05 or 76.14, whether or not there is also a change from any other subheading, provided there is also a regional value content of not less than:

() *60 percent where the transaction value method is used, or*

() *50 percent where the net cost method is used*[22].

Rule of origin analysis: Part I

1) What goods are subject to the rule of origin?

Any good classified in subheading 8544.11 through 8544.60, including all types of coaxial cables of subheading 8544.20.

2) Does the rule of origin require a specific change in tariff classification?

The rule of origin requires a change to subheading 8544.11 through 8544.60 from any other subheading outside that group. This means that all non-originating inputs, raw materials and components used in the production of coaxial cable must be classified in any other subheading outside subheading 8544.11 through 8544.60.

3) Are there any exceptions in the rule of origin for the change in tariff classification?

The rule of origin does not allow the use of non-originating components classified in heading 74.08, 74.13, 76.05 or 76.14, even if those non-originating components undergo the necessary change in tariff classification:

74.08. – Copper wire; 74.13. – Stranded copper wire; 76.05. – Aluminum wire.

76.14. – Stranded aluminum wire.

Rule of origin analysis: Part II

1) Does the rule of origin require a specific change in tariff classification?

The rule of origin requires that all non-originating raw materials and components must undergo a change to subheading 8544.11 through 8544.60, from any other subheading, including from any subheading within that group or from the headings that were previously excluded, i.e., headings 74.08, 74.13, 76.05 and 76.14.

2) Does the rule of origin require compliance with regional value content in addition to the change in tariff classification?

In addition to the change in tariff classification, the rule of origin requires the goods to attain a regional value content of not less than 60% where the transaction value method is used, or not less than 50% where the net cost method is used.

Because non-originating materials classified in Harmonized System subheading 8544.20 were incorporated in the production of the goods, under the terms of the applicable rule of origin the Company was obliged, in order to demonstrate the origin of such goods, to keep RVC records such as:

[22] Part II.

a) Copies of the invoices covering the purchase of the materials used to produce the goods subject to verification, including proof of payment, and the journal entry corresponding to each purchase;

b) Inventory management records of the goods subject to verification, showing the materials used to produce the goods;

c) If any of the materials were imported, copies of the corresponding entry summary forms;

d) Regional value content calculations.

However, the Company failed to provide such documents and was not able to demonstrate compliance with the RVC requirement. In consequence, preferential tariff treatment was denied.

Solutions

Lack of proof/records cannot demonstrate compliance no preferential treatment.

When a rule of origin includes a regional value content requirement, enterprises must keep all the information and documents in order to demonstrate their compliance with that requirement.

A simple calculation is not enough to demonstrate compliance with a regional value content requirement. Enterprises must provide all documents showing the costs of both originating and non-originating materials, as well as the corresponding proofs of payment.

Inventory records showing the use of the materials in the production of the goods subject to verification are also very important in these cases.

Before signing a certificate of origin, enterprises must determine whether they have the adequate inventory control records to demonstrate fulfilment of a regional value content requirement, and must keep the necessary information and documents to support their calculations.

Before conducting an on-site visit, the auditors learn about the process of producing the specific product concerned – in this case, how coaxial cable is made. This allows them to understand the origin of the product.

6.15.3.3 Extended accumulation (jeans)

Actual case

Name of the commodity: jeans
FTA: Mexico – Northern Triangle FTA
Exporting country: B
Origin criterion: extended accumulation
Reason for verification: doubts as to whether the requirements for extended accumulation were met
Verification method: on-site visit

Background

Mexico has signed a decree with country C (this decree takes into consideration the agreement between the exporting country B and country C).

The countries which are part of the Mexico – Northern Triangle FTA have signed an agreement on accumulation that complements the decree.

Country B is a Party to the Northern Triangle FTA.

Accumulation definitions

Goods accumulation

Each Party member of an FTA shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another Party, must be considered originated in the territory of that other Party.

Productive Processes Accumulation

Each Party member of an FTA shall provide that a good is originating where the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements that qualify a good as originating according to the FTA.

With regard to Productive Processes Accumulation, Article 6.8 of the Mexico – Northern Triangle FTA states:

In order to determine if a good is originating, an exporter or producer can accumulate its production with the production of one or more producers, in the territory of one or more of the Parties, from materials that are incorporated in the production of the good, in the event that the production of the materials shall be considered as carried out by the same exporter or producer provided that such producer or exporter complies with Article 6-03 (Goods that qualify as originating).

Extended Accumulation

This provision allows the Parties to an FTA to accumulate inputs from third party countries, in the event that these third-party countries have valid FTA's with each Party that applies this provision in its FTA. This type of accumulation can be applied for products or sectors.

As shown above, there are different types of accumulation. This case covers extended accumulation.

Case study

The producer/exporter (hereinafter Company A) received an origin verification visit proposal pursuant to Art. 7-07(2)(b) of the Mexico – Northern Triangle FTA.

The objective of the origin verification visit was to review the origin of goods classified under tariff item 6204.62.01, produced and exported to Mexico by Company A and imported into Mexico by the Mexican importer (hereinafter Company B) under preferential tariff treatment by virtue of certificates of origin issued by Company A.

In compliance with Art. 7-07(2), second paragraph and (9) of the Agreement, Mexico's Customs Authority notified Country B´s authority (and the exporting Party) of its intention to perform an origin verification visit to the premises of Company A.

After Company A had agreed to the visit, the origin verification procedure took place at the company's facilities; it required the presence and legal identification of the legal representative.

The verification process included: legal identification of the visitors; observers' designation; inspecting the facilities; checking confidential records in accordance with Article 7-08 (1); and receiving documents and records (such as purchase orders, raw materials commercial invoices, production records, bill of materials, origin declarations from suppliers, formats for the transfer of goods between users of duty free zones).

From the bill of materials it was possible to identify three materials used for the production of jeans (62.04, 62.01):

Country B used three suppliers (countries E, D and C). Country E supplied thread (5508.10), country D supplied denim (5209.42) and country C supplied jeans pockets (5513.13). Country B (exporter) has signed a decree with country C. Countries E and D are not Parties to the FTA, nor are they Parties to the decree.

Information about the decree

The decree contains an additional provision for accumulation regarding textiles, applied to the Mexico – Northern Triangle FTA.

Annex 3-20. Preferential Tariff Treatment for goods classified in Chapter 62 of the Harmonized System that incorporate materials from "country C" as originating goods:

Paragraph 7: In order to determine if a good from Chapter 62 of the Harmonized System is originating and can receive preferential tariff treatment, the good has to satisfy the requirements contained in this Chapter concerning the rules of origin of The Agreement (Chapter VI).

Paragraph 8: Nevertheless, any other provision contained in the Chapter concerning rules of origin, for purposes to the preceding paragraph:

a) Textile materials used in the production of a good from Chapter 62 of the Harmonized System produced in the territory of "country C" that would be considered originating under this Agreement if it is produced in the territory of one or more of the Parties, will be considered as produced by the Export Party.

Rule of origin

The applicable rule of origin in the Mexico – Northern Triangle FTA is "Chapter 62: Articles of apparel and clothing accessories, not knitted or crocheted.

Note: To determine the origin of a product from this chapter, the applicable rule for that good will comply exclusively with the materials that gives the essential character to its tariff classification and these materials must meet the requirements for tariff classification change pursuant to the rule of origin for which the good is applicable to determine the origin of the good.

62.01-62.17 A change to headings 62.01 through 62.17 from any other chapter, except from headings 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 55.08 through 55.16 or 58.01 through 58.02 or chapter 54 or 60, provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the parties."

Interpretation of the rule of origin

1) This rule of origin covers jeans classified under Harmonized System subheading 6204.62.

2) The requirement for the CTC is a change to heading 62.01 through 62.17 from any other Chapter.

3) The exceptions are for the CTC from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08, 53.10 through 53.11, 55.08 through 55.16 or 58.01 through 58.02 or Chapter 54 or 60**.**

As stated above, country E supplied thread (5508.10), country D supplied denim (5209.42) and country C supplied jeans pockets (5513.13).

All three materials supplied from outside of country B fall under the exceptions, and therefore should be originating from country B. However, as there is a decree with country C, the use of jeans pockets from country C is permitted. For countries E and D, this does not apply. Therefore, the rule of origin is not complied with and preferential access to Mexico was denied.

Solutions

Once all of the legal procedures contained in the provisions and agreements to which Mexico is a Party have been complied with, and after reviewing the installed facilities, the productive process and the accounting records provided by the exporting Party, as well as analyzing the rule of origin applied, it is possible to reach a conclusion as to whether or not the goods subject to the origin verification are originating, and whether it is appropriate to grant or deny preferential tariff treatment.

6.15.3.4 Technical requirements (textiles)

Actual case

Name of the commodity: textiles (6104.43, 6106.20, 6204.62, 6206.30 and 6206.40)
Exporting country: B
Origin criterion: CTC
Reason for verification: there was doubt as to whether the rule of origin was complied with, and whether non-originating goods might have been used
Verification method: on-site visit

Following an office audit conducted with Mexican importers Company A and Company B, the Customs Administration was able to ascertain the name and address of their supplier abroad.

In order to determine whether the good is originating, Companies A and B should have provided the following documentation/met the following requirements:

- written statement from the Company authorizing the person or employee who is to serve as legal representative during the origin verification visit;
- appoint two observers (with valid ID) to act as witnesses during the origin verification visit;
- written statement describing the production process of the goods subject to verification;

- copy of the certificates of origin covering the goods subject to verification, issued in favor of the Mexican importers;
- copy of the sale invoices covering the goods subject to verification, issued to the Mexican importers;
- copy of the inventory management records and production records covering the goods subject to verification;
- written statement regarding the specific rule of origin applied to each of the goods subject to verification, in accordance with NAFTA Article 401 and Annex 401;
- bill of materials of the goods subject to verification. The bill shall include: HS classification of the material (six digits), technical description of the material, including style, item or identification number, unit price of the material, quantity of the material used in the production process, style code or identification code of the material and country of origin of the material (and any other information related to the production process);
- if applicable, copy of the commercial invoices covering the acquisition of the originating and non-originating materials used in the production of the goods subject to verification;
- if applicable, copy of the cutting tickets covering the goods subject to verification;
- if originating materials were used in the production process, copy of the documentation and information that prove the originating status of those materials;
- for all the invoices provided, proof of payment of those invoices;
- any other information and records that prove the originating status of the goods subject to verification;
- if the company is not the producer of the goods subject to verification, copy of all the records and documents (that can prove the originating status of the goods) provided to the company by the producer.

After the origin verification visit to Company C had been carried out, the following conclusions were reached:

a) The company's facilities consist of the following areas: design area, moulds and design patterns cutting area, production control area, warehouse divided into a cellar, cutting, packaging and shipment area, and a showroom;

b) There is no sewing area;

c) The company has a store and a warehouse where the production process, with exception of the sewing, is carried out;

d) The production process is carried out via purchase orders from the clients;

e) Not all inputs used in the production of the goods are originating from country B; materials originating from other countries are incorporated;

f) The fabrics used in the production of the goods are provided by suppliers from country B. However, the origin and provenance of these fabrics are unknown. Some fabrics are imported;

g) The producer does not have any documentation that would certify the originating status of the goods and the fabrics. In addition, there is no documentation that would prove compliance with the rules of origin established in NAFTA Annex 401.

Based on the above, NAFTA Article 401 states the following:

"Article 401: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

"(b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;".

Examples of the specific rules of origin contained in Annex 401:

61.05 - 61.06

A change to heading 61.05 through 61.06 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08 or 53.10 through 53.11, Chapter 54, or heading 55.08 through 55.16 or 60.01 through 60.02, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the Parties.

62.06 - 62.10

A change to heading 62.06 through 62.10 from any other chapter, except from heading 51.06 through 51.13, 52.04 through 52.12, 53.07 through 53.08 or 53.10 through 53.11, Chapter 54, or heading 55.08 through 55.16, 58.01 through 58.02 or 60.01 through 60.02, provided that the good is both cut and sewn or otherwise assembled in the territory of one or more of the Parties.

In other words, the rules of origin basically state the following (technical requirements):

The production process shall be performed using one or more of the following originating materials (which have to be 100% NAFTA, i.e., made in the United States, Canada or Mexico): wool, cotton, other synthetic textile fibers, and any other kind of textile materials, man-made filaments, knitted or crocheted fabrics; moreover, such materials have to be cut, knitted, assembled or made-up in the United States, Canada or Mexico.

This means that if the fabric or one or more of the materials described above, used in the production process, is not 100% NAFTA, then the goods are not NAFTA originating.

It is worth mentioning that the fact that a fabric was acquired from a supplier in the United States, Canada or Mexico is not enough to determine that the fabric is NAFTA originating; the supplier may have imported said fabric from a non-NAFTA country and then sold it in the United States, Canada or Mexico. Before issuing a NAFTA certificate, a company must have the documents from the fabric supplier that demonstrate that the fabric was NAFTA originating.

6.15.4 Ways to counter origin irregularities

6.15.4.1 Training the people who work for the Customs administration

- When teaching Customs officers how to approach rules of origin and the requirements related to them, the best way is to start with the most straightforward cases and move on, step by step, to more complicated ones;

- For verification visits, a team of experienced auditors is gathered and new auditors are also included for internal capacity building. This way, they are able to learn about the process and the specific RoO relevant to that case;

- Work together with the importers. If possible, during the preparation phase ask a producer (production process) in your country for help, as it is often necessary to understand the production process before conducting a verification.

6.15.4.2 Specialized English for origin procedures

With reference to specific needs in the field of origin verification procedures, at the beginning of 2014 an Introduction Course on Specialized Basic English for Origin Procedures was delivered to auditors, so that they could acquire specialized terminology on origin verification procedures and use it fluently and accurately when communicating and reviewing documents.

The course was so successful that it was decided to establish a program with an enhanced structure and content; therefore, a course entitled “Specialized Advanced English for Origin Procedures” was created, consisting of several modules in English. The success of the course lay in the fact that it did not just address the substantive side of origin verification procedures – it also taught the attendees to apply the knowledge acquired. The course activities encouraged attendees to use all four language skills (listening, speaking, reading and writing). A significant element of the course was the course material supplied, which constituted a complete and clear learning tool.

6.15.4.3 Working together with the private sector

To facilitate access to information on the origin verification process for foreign exporters, the Mexican Customs Administration has developed a “micro website” including the following sections:

1) Verification of origin – contains general information about the procedures;

2) Frequently asked questions – contains the answers to frequently asked questions about verification procedures;

3) Selective sampling – in order to make the procedure less complicated for the exporter, the Tax Administration Service has applied selective sampling since November 2012;

A verification performed under selective sampling implies the application of an audit procedure that consists of selecting a dataset called (“universe”), which is a partial set of information, in such a way that all units that are part of the universe have the same opportunity to be selected. This procedure will allow the auditor to obtain and evaluate enough supporting and competent evidence to reach conclusions.

4) Contacts – contains a directory and details of the public services offered by the General Administration of Foreign Trade Audit to assist exporters with their questions and further steps.

Educate the producers – it is necessary to make sure that your FTA partners understand the RoO. Mexico provides seminars in Party countries. However, this has to be done in co-operation with the national authority of the Party country concerned.

When the Mexican Customs Authority denies preferential treatment, the importer is informed and the procedure is explained. The importer is given a chance to gather the necessary documents to prove that the goods should in fact receive preferential treatment. The Customs Administration should contact both the importer and the exporter to explain the rules of origin and the requirements regarding the documents.

During verification visits, the Customs Authority takes the time to ensure that the company/exporter understands the RoO as well as the process. The specific case is explained in detail and the Customs Authority provides feedback to the exporter. This way, the exporter can use the explanations in order to avoid facing the same problems in the future.

6.15.4.4 Certificate of origin

As the overview of origin irregularities in Mexico is related to verification, the most important document for the Mexican Customs Authority is the proof of origin. To enjoy preferential tariff treatment, the producer/exporter must have a certificate of origin certifying that the good complies with the rule of origin and other FTA requirements.

The certificate of origin is used as a means of control. It is the Authority's responsibility to determine the stated origin criteria and to verify compliance with the applicable rule of origin. The certificate of origin does not validate, per se, the origin of a good.
When the exporter is not the producer of the good, the exporter should complete and sign the certificate of origin based on:

- Its *knowledge* of whether the good qualifies as originating;
- A *written statement* by the producer in a free format, stating that the good is originating in accordance with the rules of the FTA;
- A *certificate of origin* provided voluntarily to the exporter by the producer, which certifies that the good is originating in accordance with the rules of the FTA.

<u>Obligations related to the CO</u>

Obligations of the importer:

- Handwriting a declaration based on a valid CO, stating that the good qualifies as originating;
- Possession of the CO at the time of writing out the declaration;
- Providing a copy of the CO when so requested by the Customs Authority;
- Promptly making a correct declaration and paying any duties, if the exporter/producer has reason to believe that the information in the CO is incorrect.

Obligations of the exporter:

- Providing a copy of the CO when so requested by the Customs Authority;

- At the request of an importer, completing and signing a CO for the export of a good for which an importer may claim preferential tariff treatment at the time of introducing it into the country;

- Notifying all persons who have received a CO if it has reason to believe that the information on the CO is incorrect.

6.15.4.5 General remarks

- In addition to the reasons stated above, origin irregularities may occur as a result of badly drafted rules of origin. Countries should consider updating their rules of origin. As goods and their production are constantly changing, the same should apply to rules of origin.

- The origin irregularity cases encountered have shown that non-fulfilment of the formalities is the main irregularity, not non-compliance with the rules of origin themselves. Even if preferential tariff treatment is denied, this does not necessarily mean that a company has not complied with the RoO; it may have overlooked the formalities and requirements. Sometimes a company has the infrastructure to produce the good, but not to prove the process. Therefore, compliance with the rule of origin is important, but keeping all the records is important as well.

6.15.5 Conclusions

Based on the work carried out in recent years, we have identified three main aspects that can contribute to the improvement of origin verification procedures.

First, in relation to importers - it is important to raise awareness of the responsibility for applying preferential tariff treatment and assuming the burden for paying taxes in the event of any irregularity. It is therefore important to understand the following:

- Obligations regarding domestic legislation;
- Obligations regarding the FTA;
- Ensuring that the supplier is aware of the importance of compliance with the RoO and the required documentation in case of a verification procedure.

Second, in relation to exporters - it is important to be aware of all the relevant characteristics of the product that they are exporting, and of:

- Obligations regarding the FTA;
- RoO applicable to the product;
- The need to identify and keep all documentation required during a verification procedure;
- All Customs procedures carried out to verify the origin of the goods.

More importantly, they must understand that they are not issuing Certificates of Origin simply as a requirement of the sale; they need to be aware of the implications and obligations when issuing and signing a Certificate of Origin.

Third, in relation to the auditors – it is important to be aware of, and receive training on:

Fundamentals

1. Tariff Classification
2. Customs Valuation
3. Origin of Goods (general criteria and specific rules)

Customs procedures

4. Written questionnaires
5. Visits to the producer's facilities

Additional

6. Advanced English
7. Advanced use of software and computer equipment
8. Research and analysis skills.

6.16 Case Study by Nigeria on Origin Irregularities

6.16.1 Introduction

Nigeria Customs Service is a paramilitary organization. The functions of the Nigeria Customs Service include collection of revenue (import/excise duties & other taxes/levies), anti-smuggling activities and security functions among others.

Nigeria Customs Service is made up of a National Headquarter, 4 Customs Regional Zones (A, B, C and D) and 27 Customs Area Commands. All the commands have dedicated desks for rules of origin management, coordination and application.

A national office at the headquarters coordinates and manages all origin activities in the area commands.

The national office is involved in the following activities:

a) implementation and application of the preferential trade agreements (PTAs) provisions and protocols.
b) national policy matters.
c) negotiations of rules of origin (bilateral, regional, continental and the ongoing D-8 (the Developing Eight) Preferential Trade Agreement. The D-8 group comprises of eight countries: Egypt, Turkey, Iran, Bangladesh, Pakistan, Indonesia, Malaysia, and Nigeria.
d) origin verification.
e) training of Customs personnel and the private sector.

The origin offices at the area command levels perform the field-level services of managing issues and inquiries pertaining to origin.

6.16.2 Overview of origin irregularities

Day to day cases of origin irregularities are caused by misinterpretation of rules of origin due to several technical reasons, inappropriate certification of origin and in some cases fraudulent intentions. These are observations made in Nigeria's implementation of the Regional Trade Liberalization Scheme known as the ECOWAS Trade Liberalization Scheme, the US-GSP and the EU-GSP.

Nigeria's origin irregularities are identified in two major areas: origin criteria and procedural oversight.

The origin criteria irregularities are related to Product Specific Rules (PSRs) and to wholly obtain goods while, that of procedural oversight are proofs of origin, implementation strategies and administrative cooperation. Minimal operation is exemplified for rice, nails and other goods such as tomato pastes and aluminium rods. The PSR irregularities are shown in the area of car assembling products.

6.16.3 Irregularities related to origin criteria

6.16.3.1 Goods wholly obtained

Actual case

Name of commodity: 1) crude palm oil; 2) tomato pastes and 3) many other wholly produced goods from the Free Trade Zones of the Member countries Exporting party: country K Origin criterion: wholly obtained Reason for verification: quantity and frequency of importation of crude palm oil and tomato pastes does not match the production capacity of the exporting country Verification method: joint verification between the importing party (Nigeria) and the exporting party (K)

The fifteen Member countries of the ECOWAS Customs Union are operating different electronic platforms which do not interact with each other.

The Free Trade Zones (FTZs) of the ECOWAS countries are not specifically codified or prefixed to reflect the status of FTZs in the Single Administrative Document (SAD) of Member States. This constitutes irregularities in origin application for goods coming from the FTZs.

Nigeria has in several occasions been confronted with the challenge of misapplication of rules of origin where wholly produced goods, such as cited above, are imported into Member countries through the FTZ-s (e.g. Tema FTZ in Ghana; Oil and Gas FTZ in Onne Port, Nigeria) by a company that is a beneficiary of the Regional Trade Agreement (RTA).

Goods produced in FTZs are subject to duties once exported within the Member countries. Therefore crude palm oil and tomato paste wholly produced through FTZs should be subjected to duties once imported to Nigeria. These goods should not enjoy preferential treatment.

6.16.3.2 Measures taken in order to prevent these irregularities

In several cases when the quantity and frequency of shipment of the products are in question compared to the capacity of production of the beneficiary company, verification of origin is usually requested from the country of export. Mostly it is jointly conducted by the two Member States (the importing and the exporting country).

6.16.3.3 Product specific rules (PSRs)

Protocol A/P1/1/03 of 31st January 2003 relating to the definition of the concept of products originating from Member States of the Economic Community of West African States provides the legal framework for the ECOWAS Community rules of origin.

There are three rules in place:

Rule 1: Wholly produced goods in the Member States

Rule 2: Change in Tariff Heading (CTH)

Rule 3: Value added (VA) criteria

A finished product is considered as a product originating in ECOWAS if it requires the exclusive use of materials which are classified under a different Tariff Heading from that of the finished product – Rule 2 (Change in Tariff Heading)**.**

This change of Tariff Heading shall be reflected in the first 4 digits of the HS Code. There is a list of exceptions to this rule mentioning the cases where the change in Tariff Heading is not substantial enough to grant originating status in Regulation C/REG.1/07/04 (list of exemptions to the criterion for change in tariff classification).

If input materials receive a value addition of at least 30% of the ex-factory price of the finished goods, the goods are considered as originating from the region and can be traded duty-free within the region. This is Rule 3 (Value Added criteria – ad valorem percentages) and it is also referred to as local/regional content test.

Actual case

This case is about two motor vehicle assemblers operating in Nigeria: Peugeot Assembler Nigeria (PAN) and Anambra Motor Manufacturing Company (ANAMMCO).

ANAMMCO:

Name of commodity: Mercedes 911 (1414) buses assembled by ANAMMCO
Exporting party: country B
Origin criterion: Change in Tariff Heading (CTH) rule
Reason for verification: not in compliance with the CTH rule

Verification method: Customs officers deployed to the production sites to monitor the production processes

ANAMMCO assembles two categories of vehicles:

Category 1:

Assembly starting with chassis fitted with axle and engine (HS code headings 8704 to 8706). This qualifies for preferential treatment as there is a change in Tariff Heading.

Category 2:

Assembly starting with completely knocked down (CKD) parts. The parts fall under subheading change of 8704.3219.19 to 8704.3219.20 and as it is on subheading level it does not meet the CTH rule.

PEUGEOT:

Name of commodity: Peugeot product by PAN (Peugeot Assembler Nigeria) Exporting party: country C Origin criterion: Value added (VA) rule Reason for verification: the local content criterion was not satisfied Verification method: deployed Customs officers to the production sites to monitor the production processes

Peugeot Nigeria assembles two categories of vehicles which should fulfil either the CTC rule at the heading level or 30% value addition/local content.

Local content addition:

Category 1:

a. Imported completely knocked down (CKD) parts;
b. local parts; and
c. local labour.

This product satisfies the local content criterion and meets the origin status.

Category 2:

CKD assembly without local parts using:

a. Imported CKDs; and
b. local labour.

This category does not satisfy the local content criterion nor change in Tariff Heading criterion (HS codes 8703.3111 to 8703.3119).

The two categories of products are closely similar and difficult to differentiate for the purpose of administering preferential rules of origin. Hence they constitute irregularities in the origin application.

6.16.4 Measures taken to prevent these irregularities

In order to ensure that the origin criteria were met for the benefit of the importing Member countries of the PTA, Customs officers were posted to PAN and ANAMMCO to monitor the production and to note the differences between the two products of the two automobile assemblers.

More so, since the modernization and automation of Customs' clearance processes in 2008, importation by manufacturers and assemblers are monitored through the Customs electronic platform to ascertain the nomenclature of the imported goods. In conclusion, these cases require close monitoring of the production process and the importation data of the manufacturers.

6.16.4.1 Irregularities related to other conditions of general rules of origin (minimal operations)

Name of the commodity: rice and nails
Exporting party: more than one country
Minimal operation: repackaging
Reason for verification: Member States import from non-contracting parties. These goods are repackaged and exported as if it they originate from Member States.
Verification method: conducting joint verifications

These are operations or processes which, by themselves or in combination are considered to be minimal and shall not be taken into account in determining whether goods have been wholly obtained in one country:

a. ensuring preservation of goods in good condition for the purposes of transport or storage;

b. facilitating shipment or transportation; and

c. packaging or presenting goods for sale.

It has been noted that Member States import into Nigeria several commodities that those Members States are not capable of producing themselves as in most cases they do not have the large production capacity for it. Member States, import several commodities which in most cases do not have production capacity into Nigeria. Goods are imported from third party countries and repackaged as made in Member States with merely minimal operations which do not confer the origin status.

6.16.4.2 Measures taken in order to prevent these irregularities

Where irregularities of minimal operations or other general rules are suspected, the importer, manufacturer, country of origin and the volume of imports are profiled using the importation information of these commodities. The intelligence gathered from the profiling is compared to the documented information of the approved beneficiary/manufacturer of the PTA. If the manufacturer's production capacity is in question, then a verification process begins with the desk officer at the local office which is later forwarded to the national office for inspection and investigation. It is usually conducted as a joint verification.

6.16.4.3 Proof of origin

Origin certifications are done by competent authorities of the exporting countries for ECOWAS Trade Liberalisation Scheme (ETLS), EU and US GSP which Nigeria is a party to. In the course of implementing and applying these PTAs, Nigeria has been confronted with proof of origin irregularities arising from minor documentation errors, format, illegible stamp impression, irregular signature and falsification.

One of these could be exemplified by a request for proof of origin from Bremerhaven, Germany in January, 2015 to Nigeria Customs for verification to ascertain the authenticity of the certificate of origin and the originating status of the goods due to incorrect information supplied by the exporter. On verification by the competent authority, Nigeria Chamber of Commerce, Industry, Mines and Agriculture (NACCIMA), it was confirmed that the goods actually originated from Nigeria and the certificate was issued by NACCIMA.

6.16.4.4 Measures taken in order to prevent these irregularities

In the event of an identified irregularity of proof of origin, verification is usually requested from the exporting country.

6.16.5 Ways to counter origin irregularities

6.16.5.1 Customs administration

From time to time, trainings, workshops and seminars are organized for Customs officials and private sector in collaboration with NACCIMA to ensure adequate knowledge on proof of origin criteria.

Trainings

Trainings, seminars and workshops on rules of origin are organized for Customs officials periodically to ensure that officials have adequate knowledge on origin related matters and origin interpretation. It is part of the basic course for Customs officers after recruitment. The Human Resource Department (HRD) and Tariff and Trade Department jointly conduct periodic trainings as need arises. Nigeria Customs periodically trains officers working on origin desks by engaging internal experts on rules of origin and other related courses. Some of these experts are WCO trained and accredited on various aspects of Customs topics while others are products of train-the-trainer programs.

In order to make sure that all Customs officials working on Origin desks are aware of the existing Free Trade Agreements (FTAs) and Generalized System of Preferences (GSP) schemes, the Unit Heads present the officials with protocols and relevant documents of the applicable FTAs for ease of references. The different rules in place are taught in trainings, basic Customs courses and refresher courses.

The trainings are done periodically based on availability of financial and personnel resources, in most cases, twice a year.

Customs Magazine

The administration publishes a Customs Magazine monthly called “Monthly Order” to update officers about information on core Customs procedures and other information relevant to Customs.

Communication and information sharing

Nigeria Customs ICT system is an upgraded version of ASYCUDA (Automated System for Customs Data) known as ASYCUDA++. The upgrading was done in 2008, through the integration of the Trade World Manager (TWM) Platform to give capabilities for electronic payment, interconnectivity with stakeholders, audit trail, tracking, report generation, e-manifest and Direct Trader Input. The ICT system covers all the Customs Area Commands in the country. Data/information are transmitted to and from in real time.

For internal communication in the Customs administration, there is an ICT system in place for daily Customs transactions. There is a dedicated Customs website where information is posted for officers through the Public Relations Unit of the administration.

There is also a Customs information website for e-trade transactions called Nigeria Customs Trade Hub (www.nigeriatradehub.gov.ng).

The Customs administration also has a Customs mailing/messaging system in place where correspondences are sent to every Command and Units of the administration.

6.16.5.2 Private sector

Stakeholders’ consultative fora and trainings

Nigeria ensures the awareness of the private sector on rules of origin through stakeholders’ consultative fora that are organized periodically by the Public Relations Unit in collaboration with the Tariff and Trade Department to educate the private sector on their roles in the FTAs transactions.

Customs periodically conduct trainings to educate the private sector on the different FTAs and their rules to reduce errors caused by lack of knowledge by the private sector.

6.17 Case Study by Portugal on the Substantial/Sufficient Transformation Criterion

6.17.1 Overview of origin irregularities

The relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin are as follows:

Free Trade Agreement (FTA) List
Union Customs Code Regulation (EU) No. 952/2013 of the European Parliament and of the Council (UCC), Commission Delegated Regulation (EU) 2015/2446 (UCC-DA) and Commission Implementing Regulation (EU) 2015/2447 (UCC-IA).

6.17.2 Irregularities related to origin criteria

6.17.2.1 Product Specific Rules: Substantial/sufficient transformation criterion

Actual case

Name of commodity: Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn.
Origin criterion: Failure to meet the working or processing requirements
Reason for verification: Doubt on Origin Criteria
Verification method: Administrative cooperation and importer interviews

Goods from HS 5309 (Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn) did not meet the working or processing requirements carried out on non-originating materials, which confer originating status. The PSR for the product is:
Manufacture from: — coir yarn, — jute yarn, — natural fibres, — man-made staple fibres, not carded or combed or otherwise prepared for spinning, — chemical materials or textile pulp, or — paper Or Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerizing, heat setting, raising, calendaring, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling), provided that the value of the unprinted fabric used does not exceed 47.5% of the ex-works price of the product.
Commercial and accounting documentation was requested in the verification of origin control performed by the competent Customs Service. The audited exporter company failed to provide evidence that the applicable origin criteria had been met.

The company was informed about the nature of the incurred irregularity, and an official answer, with the verification of preferential origin results and conclusions, was sent through the administrative cooperation channels in place to the requesting partner country.

6.17.3 Ways to counter origin irregularities

6.17.3.1 Customs Administration

The Customs officials working in the Importation Sections of the Regional Customs Offices, Local Customs Offices and Anti-Fraud Department are responsible for handling origin issues. The Central Service dealing with origin issues regularly publishes on the organization's Intranet updated information concerning all existing agreements and new agreements entering into force. An updated handbook is also available concerning both preferential and non-preferential origin.

Training on Rules of Origin is regularly delivered to Customs officers. All communication between the Services/Offices/Sections concerned is made in an internal, secure electronic workflow environment.

Further information or supporting documentation is requested to ensure the completeness of the proof of origin, in the legally applicable timeframe. If any legally mandatory information or supporting documentation is missing, the proof of origin is rejected, according to the applicable legal framework.

Usually, the proof of origin is rejected according to the applicable legal framework of the Agreement/Scheme in question. The Customs officials in charge receive the requested information and are aware of the required timeframe for each type of verification process.

6.17.3.2 Private sector

The Central Service dealing with origin issues regularly publishes on the organization's Website updated information concerning all existing agreements and new agreements entering into force. An updated handbook is also available concerning both preferential and non-preferential origin. Information sessions and workshops concerning origin issues are sometimes organized and delivered to the private sector.
There are no available statistical figures concerning the level of awareness of the private sector about the different rules in place. However, the above-mentioned actions and initiatives are promoted in order to provide all the available information on the subject.

6.17.3.3 Administrative cooperation

The Central Service dealing with origin issues regularly publishes on the organization's Intranet updated information concerning all existing agreements and new agreements entering into force. An updated handbook is also available concerning both preferential and non-preferential origin. Communication is established in accordance with the legally applicable communication procedures and channels provided in each Agreement/Scheme. The Central Service dealing with origin issues coordinates at national level the administrative cooperation concerning verification of proofs of origin, and accordingly records the verification requests sent to the authorities of partner/beneficiary countries in a dedicated database, which contains timeframe warning alerts.

6.18 Case Study by Seychelles on Wholly Obtained

6.18.1 Overview of origin irregularities

The relevant international, multilateral, bilateral, and national laws, agreements, and/or policies that are being enforced in Rules of Origin are as follows:

Free Trade Agreement (FTA) List

- Interim Economic Partnership Agreement EU-ESA
- COMESA
- SADC
- AfCFTA
- IOC
- Economic Partnership Agreement UK-ESA

National Legislation

- Customs Management Act 2011

6.18.2 Irregularities related to origin criteria

6.18.2.1 Proof of origin

Actual case

Name of commodity: Frozen Fish
Exporting party: X
Origin criterion: Wholly Obtained
Reason for verification: Doubt on Origin authenticity
Verification method: Unapproved stamp impression and signature

This case relates to an export of Frozen Fish that is Wholly Obtained and was exported from Seychelles to Country X by a local fish product processor in Seychelles. The processor was claiming preferential treatment under the SADC Protocol on Origin.

Proof of origin

- The consignment was supported by a certificate of origin, signed and stamped by the Classification, Valuation and Origin (CVO) Office in accordance with Rule 9 of the SADC Protocol on Trade.
- The Catch Certificate, endorsed by the Seychelles Fishing Authority as part of the national requirements.

- Exporter Declaration Document, as part of the national requirements.

The consignment was held at the port of Country X, as the certificate of origin was rejected by Country X's Authority. This was on the basis that the stamp impression and signature were not recognized.

The irregularity detected was that the online database of SADC had not been updated by the SADC Secretariat, which resulted in the Customs officials from Country X rejecting the endorsed certificate of origin submitted by the importer.

The Classification, Valuation and Origin (CVO) Unit office contacted the Secretariat to confirm authenticity of the certificate, and the Authorized Signatory list was re-circulated to the SADC Secretariat so that they might update the online database.

To prevent such matters arising again, this matter will be raised in the next SADC NTB Meeting so that appropriate measures can be tabled with a view to finding a solution.

6.18.3 Ways to counter origin irregularities

6.18.3.1 Customs Administration

The Entry Processing Unit, Query and Amendments Unit, Classification, Valuation and Origin Unit and the Examination Unit are responsible for detecting origin irregularities. All officers who are mandated with the maintenance and application of the FTAs are aware of all existing agreements and are familiar with the rules that govern these agreements.

Information regarding agreements is filed appropriately on the Unit server and CVO Unit staff benefit from various types of training and workshops or meetings to gain necessary exposure to the topic. Officers of the other Units who detect origin irregularities are also exposed to training on origin.

All communication regarding origin issues is done via email for any instances where the authenticity of a certificate attached to a Customs declaration needs to be verified.

The importers or exporters are advised through written means to complete formalities or provide proof of origin where necessary. They are also advised through written means of the applicable procedure. In addition, they are reminded of their responsibilities as the companies or individuals responsible for compliance, and the consequences of non-compliance. The timeframes prescribed in the protocols of these agreements are taken into consideration when handling any requests for verification, and these timeframes are adhered to.

The general practice of this office is to provide feedback and complete the verification process in a timely manner; all queries or origin issues are treated as urgent matters so as to meet one of our key mandates, which is trade facilitation.

6.18.3.2 Private sector

The CVO Unit maintains the Customs Approved Exporter system. Upon registration with the Office for Preferential Export, the exporters receive copies of the protocols and are advised to familiarize themselves with the protocols. If these clients need any clarification or need interpretation of the protocol, officers of the CVO Unit help provide clarity.

Additionally, the modes below are employed:

- Meetings with the Chamber of Commerce, which represents most of the business community.
- Regular refresher training/workshops with the private sector.
- Utilization of the Committee for Trade Facilitation through meetings with stakeholders.
- Regular communication with the private sector through the ASYCUDA emailing system.

The private sector can access all this information both from:
- the Trade Division online portal (https://www.tradeportal.sc/seychelles-trade-agreements/) and
- the Seychelles Revenue Commission website, which contains links to the FTA websites (https://src.gov.sc/).

Additionally, these exporters are advised of these rules when they apply to the CVO Unit to become approved exporters.
The division also avails itself of every opportunity to educate the public on Customs procedures, including provisions on Rules of Origin, when needed.

6.18.3.3 Administrative cooperation

In Seychelles, the issuing authority of certificates of origin is the Customs Division, Classification, Valuation and Origin Unit, and the team is aware of all existing agreements.
As the issuing authority, the Customs Administration receives the protocols from the Secretariats of these FTAs and EPAs. The officers also attend FTA and EPA meetings to keep themselves well informed of any developments and updates on any Rules of Origin protocols.

There are systems in place to communicate to the exporting country and these are:

- From the Seychelles Customs Administration to the exporting country Customs administration;
- Through our parent Ministry, the Ministry of Finance, the communication then being transmitted through the Ministry of Foreign Affairs; and
- Though contact with Rules of Origin focal points in the Member States.

In terms of the timeframe for conducting the verification process, the Administration ensures that it adheres to the timeframe, conducting constant follow-up communication with the exporting country.