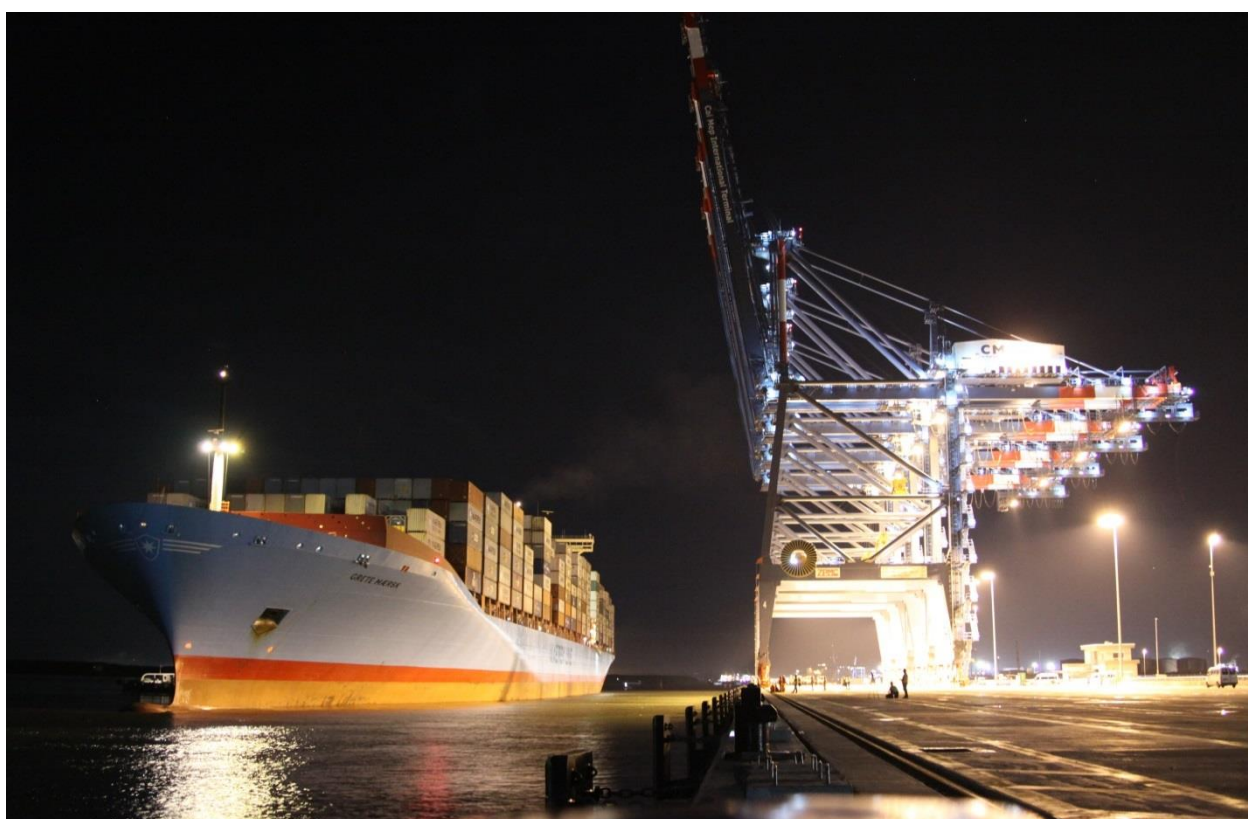




WORLD CUSTOMS ORGANIZATION

GUIDE TO COUNTER ORIGIN IRREGULARITIES (EXCLUDING FRAUD)



RP

Revenue Package

June 2015
(updated in June 2016)

Table of Contents

I.	Background and objectives	6
II.	Overview of the Origin Irregularity Typology Study	6
III.	Guidance on origin irregularities (excluding fraud).....	7
a.	Origin criteria	8
b.	Procedural malfunctions in determining origin	9
IV.	Case studies	11
A.	Origin Irregularity Case Study for Australia	11
1.	Introduction	11
2.	Irregularity.....	11
3.	Category	11
3.1.	Problem	11
3.2.	Solution.....	12
4.	Conclusion	12
B.	Case Study by Japan on Origin Irregularities	13
1.	Introduction	13
2.	Overview of origin irregularities	13
3.	Irregularities related to origin criteria	14
3.1.	Goods wholly obtained.....	14
3.2.	Product specific rules (PSR)	15
3.2.1	Change in tariff classification (CTC) rules	15
3.3.	Proof of origin	16
3.3.1	Certification of origin involving the competent authority of the exporting country.....	16
3.3.2	Self-certification by approved exporter	16
4.	Ways to counter origin irregularities	17
General – organization		17
4.1.	Seminars on rules of origin for importers.....	18
4.2.	Promotion of advance ruling system	18
4.3.	Meetings of origin experts	20
4.4.	Publication of EPA and GSP manuals	20
4.5.	Dissemination of information on origin irregularities to Customs officials.....	20
4.6.	Publication of interpretative notes on rules of origin	20
4.7.	Comparison of certificate of origin data requirements under different EPAs ...	20
4.8.	Clarification of the treatment of errors in the certificate of origin	21
4.9.	Guidelines on the “self-certification system”	21
5.	Conclusion	21

C. Case Study by Kenya on Origin Irregularities	22
1. Introduction	22
2. Overview of origin irregularities	23
3. Irregularities related to proof of origin	23
3.1. Wrong certificate	23
3.2. Missing information on the certificate	24
3.3. Printing of the certificate	24
3.4. Stamp on the certificate	24
3.5. Stamp on the certificate	24
3.6. Formal errors and missing information	25
3.7. Certificates issued according to derogation	25
3.8. Goods listed in the certificate	26
3.9. General solutions	26
4. Origin criteria	27
4.1. A product going to the East African Community (EAC certificate)	27
5. Administrative cooperation	27
5.1. Lack of response to verification requests	27
5.2. Random checks	28
6. Conclusions	28
D. Case Study by Korea on Countering Origin Irregularities	30
1. Organizational framework	30
2. Overview of origin irregularities	30
3. Irregularities related to origin criteria	31
3.1. Product specific rules (PSR) – change in tariff classification (CTC)	31
3.2. PSR – value added (VA) rules	32
3.3. Accumulation/cumulation	32
3.4. Other (supporting documents)	34
Ways to counter origin irregularities listed in Chapter 3	34
Customs administration	34
Private sector	36
4. Irregularities related to proof of origin	38
4.1. Self-certification by exporter or manufacturer	38
4.2. Self-certification by approved exporter	39
4.3. Self-certification by importer	39
Ways to improve the accuracy of proof of origin	40
Customs administration	40
Private sector	40

Issuing authority (Chamber of Commerce)	41
5. Administrative cooperation	41
Ways to improve administrative cooperation	42
E. Mexico's Case Study on Misapplication of Origin	43
1. Organizational framework	43
2. Overview of origin irregularities	43
3. Irregularities related to origin criteria	45
3.1. Tariff classification change (ducks)	45
3.2. Change in tariff classification and RVC (coaxial cable)	48
3.3. Extended accumulation (jeans)	51
3.4. Technical requirements (textiles)	54
4. Ways to counter origin irregularities	57
4.1. Training the people who work for the Customs administration	57
4.2. Working together with the private sector	57
4.3. Certificate of origin	58
4.4. General remarks	59
5. Conclusions	59
F. Case Study by Nigeria on Origin Irregularities.....	61
1. Introduction	61
2. Overview of origin irregularities	61
3. Irregularities related to origin criteria	62
3.1 Goods wholly obtained	62
Measures taken in order to prevent these irregularities	63
3.2 Product specific rules (PSRs)	63
Measures taken in order to prevent these irregularities	65
3.3 Irregularities related to other conditions of general rules of origin (minimal operations)	66
Measures taken in order to prevent these irregularities	66
3.4 Proof of origin	67
Measures taken in order to prevent these irregularities	67
4. Ways to counter origin irregularities	67
4.1. Customs administration	67
4.1.1. Trainings	67
4.1.2. Customs Magazine	68
4.1.3. Communication and information sharing	68
4.2. Private sector	68
4.2.1. Stakeholders' consultative fora and trainings	68

Copyright © 2016 World Customs Organization. All rights reserved. Requests and inquiries concerning translation, reproduction and adaptation rights should be addressed to copyright@wcoomd.org.



I. 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 Study¹, published in July 2013). This addresses all origin irregularity cases except fraud², which is covered by other WCO tools³.

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 a number of 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). In June 2016 a case study from Nigeria was added. 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 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.

II. 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 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).

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).

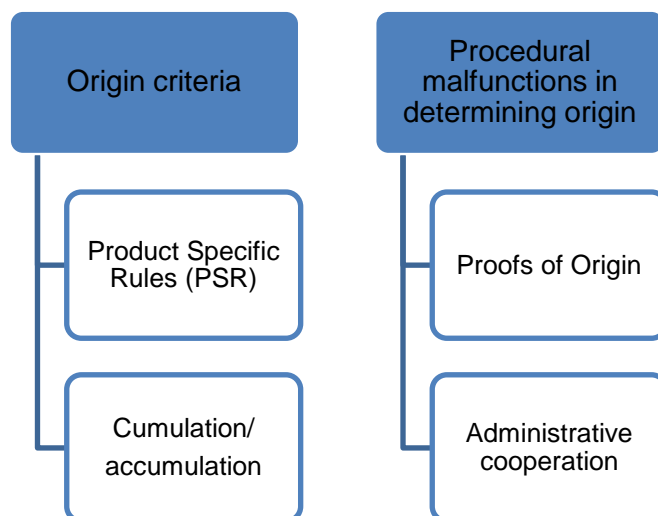
³ Commercial Fraud Typologies Summary, October 2010. Available at:

<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>.

The Customs administrations reported origin irregularities in four areas:



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 findings⁴:

- 1) The stakeholders involved in the implementation of preferential rules of origin are not sufficiently acquainted with Product Specific Rules;
- 2) 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;
- 3) There seems to be a general lack of knowledge regarding cumulation/accumulation provisions of free trade agreements (FTAs);
- 4) WCO Member Customs administrations often encounter simple and obvious, but unacceptable failures in the certificates of origin;
- 5) 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 four key areas referred to above, are addressed in the next Section and in the case studies.

III. 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

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

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 also with other Customs authorities and the private sector?

These questions are just a few examples of aspects that have to be taken into account 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 the area of rules of origin. Other relevant WCO publications on rules of origin are also referred to below.

a. 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 with regard to understanding the origin criteria are available to Customs administrations on the WCO Web site:

- 1) Database of Preferential Agreements and Related Rules of Origin⁶;
- 2) Comparative Study on Preferential Rules of Origin⁷;
- 3) Categorization and analysis on Preferential Rules of Origin⁸;
- 4) Study on the use of 'Change of Tariff Classification-based rules' in Preferential Rules of Origin⁹;

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).

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>.

5) Rules of Origin – Handbook¹⁰.

Product Specific Rules

In order 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 of these 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.

Cumulation/accumulation

A FTA can contain cumulation/accumulation¹¹ 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 in order 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.

b. 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 with regard to verification and certification:

- 1) Guidelines on Preferential Origin Verification¹²;
- 2) Guidelines on Certification of Origin¹³;

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>.

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>.

- 3) Comparative Study on Certification of Origin¹⁴;
- 4) World Trends in Preferential Origin Certification and Verification¹⁵.

Proofs of Origin

A Customs administration has to 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 non-compliance. Customs officials have to be familiar with the system(s) in place and know how to evaluate the information provided on proofs 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.

In order 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. However, as the exporter is not affected in the same way as the importer, who actually 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.

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.

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

IV. Case studies

A. Origin Irregularity Case Study for Australia

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.

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.

3. Category

Proof of origin

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 met. 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 met 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. Therefore the good, using the PSR relevant for the good classified on the declaration of origin, did not meet the rule, was not originating and therefore could not claim preferential tariff treatment under the FTA.

Further, the ACBPS verification confirmed that different tariff classifications had been provided on the declaration of origin and the corresponding import declaration. ACBPS ruled 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, 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.

3.2. Solution

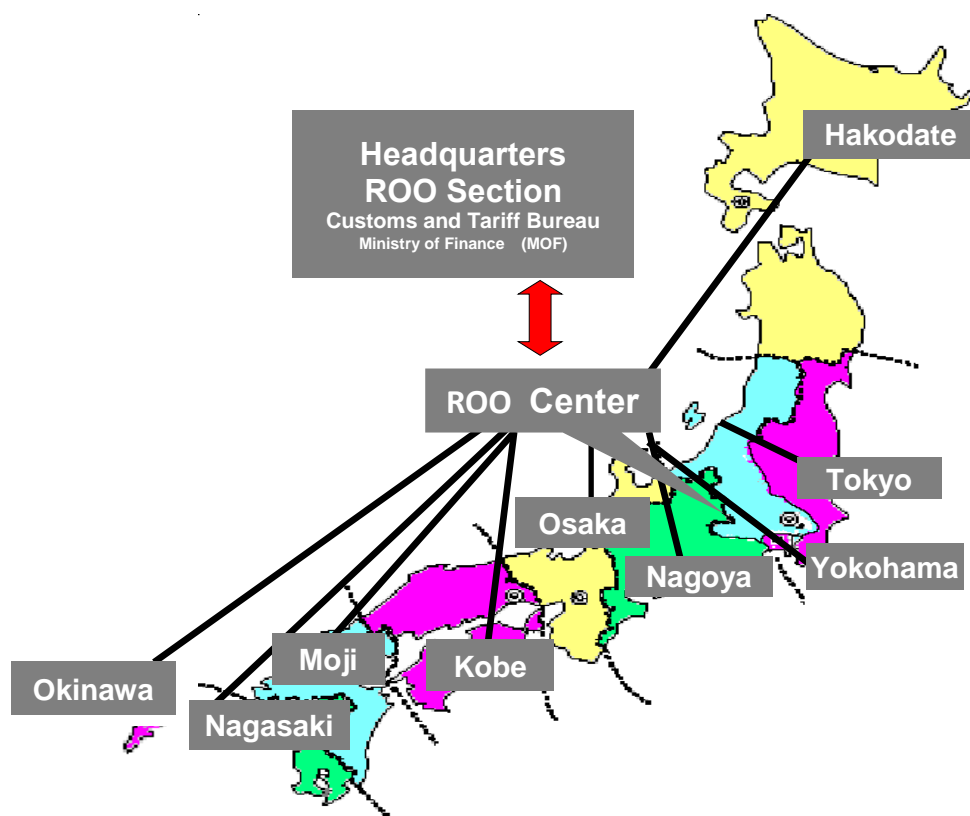
A new declaration of origin was completed by the producer to reflect the correct tariff classification and to identify the correct preference criteria. ACBPS accepted the claim of origin and allowed preferential tariff treatment.

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 good meets the rules of origin under the FTA.

B. Case Study by Japan on Origin Irregularities

1. Introduction



Japan Customs consists of the headquarters within the Ministry of Finance, and 9 regional Customs (Hakodate, Yokohama, Tokyo, Nagoya, Osaka, Kobe, Moji, Nagasaki and Okinawa). Each regional Customs has a dedicated section dealing with rules of origin (ROO).

The ROO section oversees the policy-making on, as well as the administration of, rules of origin matters, and the ROO Center coordinates the practical field operations. Specifically, the ROO section at headquarters is responsible for (i) policy matters, including 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 ROO National Center, located in Tokyo, is in charge of (i) ensuring 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 dedicated ROO sections at regional Customs carry out field-level services to manage origin inquiries and issues.

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 with regard to 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, but in recent years the trend has been shifting towards irregularities related to the originating status of the good. Taking into account 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.

3. Irregularities related to origin criteria

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 with regard to 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.

3.2. Product specific rules (PSR)

3.2.1 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 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 to be 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 conduct an investigation. 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.

3.3. Proof of origin

3.3.1 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.

3.3.2 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 with regard to 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.

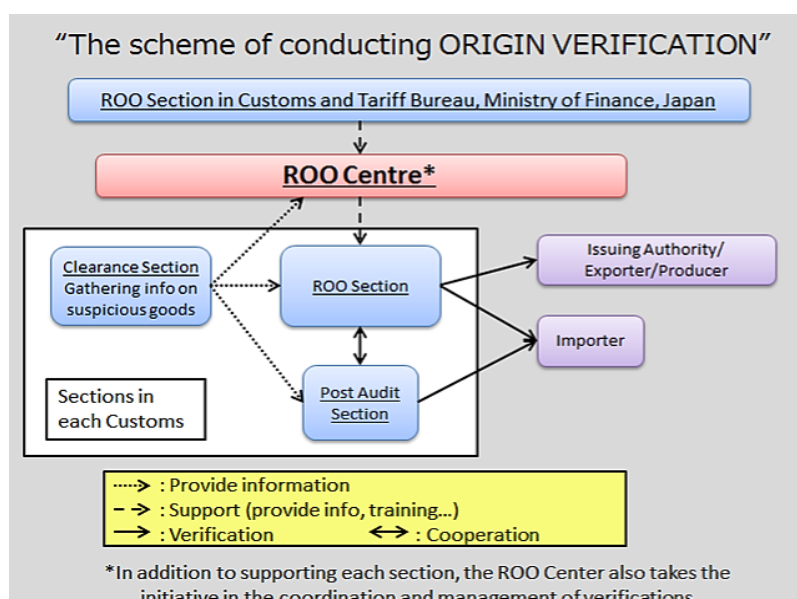
4. Ways to counter origin irregularities

General – organization

To prevent and detect origin irregularities, the Customs clearance section, the PCA section, the ROO section, the ROO Center and the 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 Center, and the ROO Center informs the Headquarters.

If Customs cannot determine, after the post-clearance audit, whether the goods are eligible for preferential tariff treatment or not, Customs may request the exporting country - through the Headquarters - 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 Center and the Headquarters cooperate with each other to ensure an appropriate clearance procedure.



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

4.1. 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.

4.2. Promotion of advance ruling system

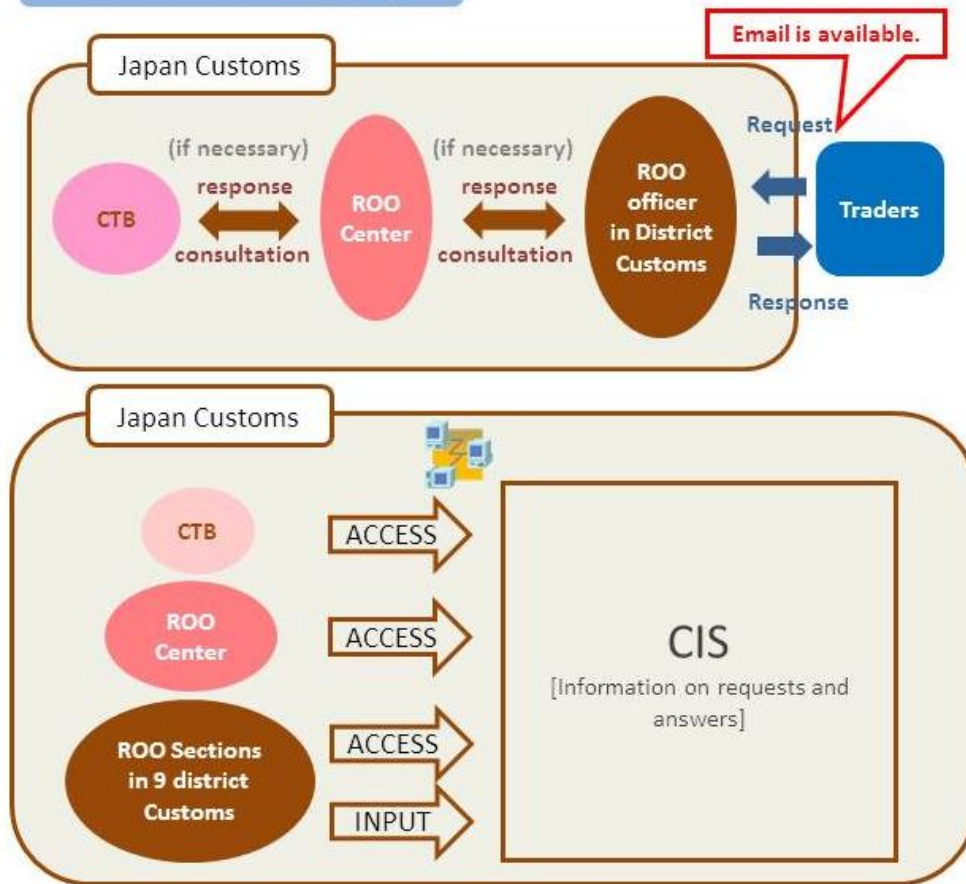
Japan Customs encourages the use of the advance ruling system on preferential origin of goods. A written advance ruling is valid for 3 years.

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.

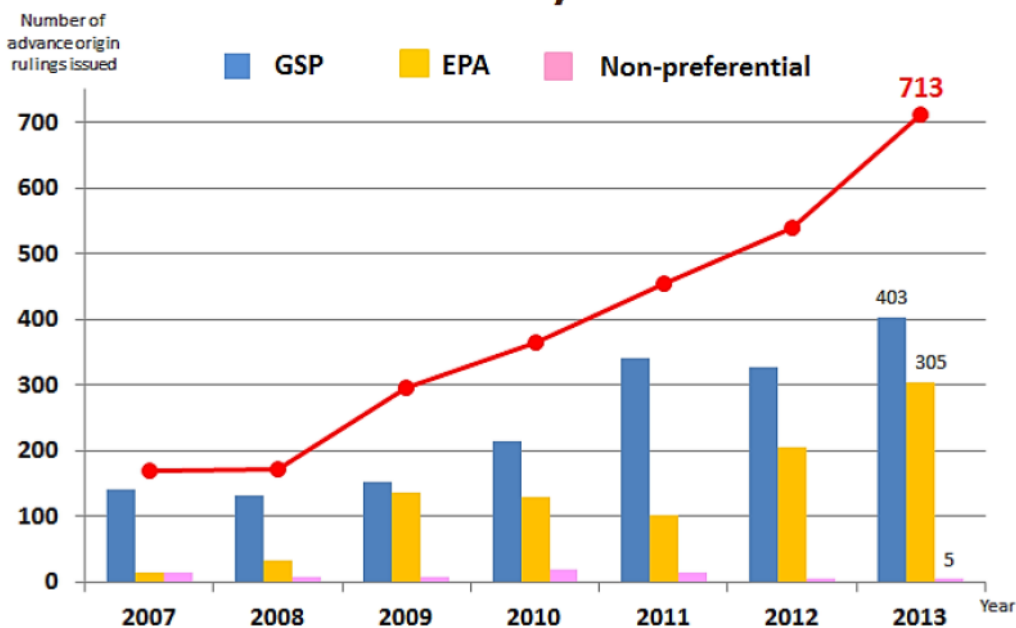
Also, all information on the advance rulings issued is stored in an internal system called the “Customs Intelligence database System (CIS)”. Customs officials can search and retrieve data on advance rulings issued, using the specific HS code, the description of the goods, key words, and so on.

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 3 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 been increasing recently (2012: 539 cases, 2013: 718 cases).

Flow of Advance Ruling



The number of advance rulings on Origin has increased steadily over time.



4.3. 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 the Headquarters, the ROO Center and regional Customs. In these meetings, difficult origin questions that arise out of origin disputes are discussed, and information on recent irregularities is reported.

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

4.4. 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.

4.5. 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.

Origin criteria

4.6. Publication of interpretative notes on rules of origin

The Customs provides an interpretative note for certain rules of origin for 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.

Proof of origin

4.7. 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.

4.8. Clarification of the treatment of errors in the certificate of origin

The 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.

4.9. 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 would 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.

5. 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.

C. Case Study by Kenya on Origin Irregularities

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; road transport fees; collection of agency fees on behalf of other government agencies; facilitation of trade; security and protection of society; and collection of statistical data.

In order to improve the work of Customs and Border Control, including origin matters, there are structural changes being prepared so that in future the Customs and Border Control will be a semi-autonomous agency, the same as Domestic Taxes Department.

The Rules of Origin section falls under the Trade Facilitation Division of the Customs Services 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 a signatory. Certificates of origin are issued for the: EAC, COMESA region, European Union, United States under the AGOA Programme and the various GSP schemes.

Stations where certificates of origin are issued are Nairobi, Mombasa, Kisumu, Nakuru and Eldoret stations.

Registration of exporters

Companies wishing to export goods under EAC, COMESA, EUR1, GSP or AGOA trade preference regimes are registered with the Rules of Origin office of the Customs Services Department.

A written application on the Exporter's Registration Form is made to the Commissioner of Customs Services Department.

These applications are submitted in advance of any intended export.

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

- Certificate of incorporation;
- PIN certificate;
- VAT registration certificate or letter of exemption;
- Export license from HCDA¹ where horticultural produce is involved.

¹ Horticultural Crops Development Authority is a government agency that authorizes all fresh produce and flowers exporters in Kenya to export the same upon meeting the sanitary and phytosanitary conditions as set out in Kenyan and Importer Country Legislation.

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 wholly obtained.

Once verification is done, the exporter is given a reference number which the exporter quotes each time certificates are issued to that exporter.

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.

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.

3. Irregularities related to proof of origin

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.

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.

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 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.

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 of time at a fixed price. However, as new agreements are moving toward the approved exporter system supported by an invoice declaration in place of the certificates, this issue will naturally disappear.

3.4. 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.

3.5. 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.

3.6. 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.

3.7. 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.

3.8. 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.

3.9. General solutions

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 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.

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.

4. Origin criteria

4.1. 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 told 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).

5. Administrative cooperation

5.1. 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.

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.

5.2. 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.

Solutions

- 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. 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 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.

D. Case Study by Korea on Countering Origin Irregularities

1. Organizational framework

The FTA Implementation Bureau under the Korea Customs Service (KCS) was established in April 2011 in order to implement, effectively and efficiently, the FTAs in force. The Bureau has three divisions: the FTA Implementation Planning Division, the Origin Verification Division and the FTA Cooperation Division.

The FTA Implementation Planning Division provides detailed regulations on FTA implementation and carries out an outreach program for businesses. The Origin Verification Division¹ provides origin verification guidelines, performs origin risk management and controls origin verifications carried out by the six main Customs offices. The FTA Cooperation Division is involved in FTA negotiation and FTA implementation meetings with Korea's FTA partner countries, and is also a contact point for settling disputes on certain FTA issues in the area of Customs.

2. Overview of origin irregularities

Korea has ten FTAs in force as of 2014. The types of FTA origin irregularities that have occurred in practice can be divided into five categories: Application of wrong FTA duty rate by incorrect classification; Non-compliance with certification of origin (CO) requirements; Violation of rule on direct transport (required between exporter and importer); Origin criterion not satisfied; and Other².

Statistics on types of irregularities as of 2014:

(Unit: Number of Companies ³)				
Type of irregularities	2011	2012	2013	2014
Application of wrong FTA duty rate	6	74	59	81
Non-compliance with certification of origin requirements	25	43	145	267
Violation of direct transport rule	3	5	8	4
Origin criterion not satisfied	2	25	92	57
Other	17	68	26	33
Total	53	215	330	442

As shown by the information provided in the above table, the main types of violations are, in descending order, non-compliance with origin certification requirements, application of wrong FTA duty rate, and origin criterion not satisfied. Formal errors still account for a large proportion of the total number of violation cases. Formal errors consist primarily of the issuing of wrong CO, non-authorized approved exporters issuing origin certificates, and discrepancies in the signatures of CO-issuing officials.

¹ This Division deals with preferential origin verification. Non-preferential origin verification is handled by the Korea Chamber of Commerce and Industry.

² "Other" may include third party CO, forged CO, invalid CO, etc.

³ The KCS counts irregularities by company rather than by case.

3. Irregularities related to origin criteria

3.1. Product specific rules (PSR) – change in tariff classification (CTC)

Actual case

Name of commodity: gold bar (HS 7108)

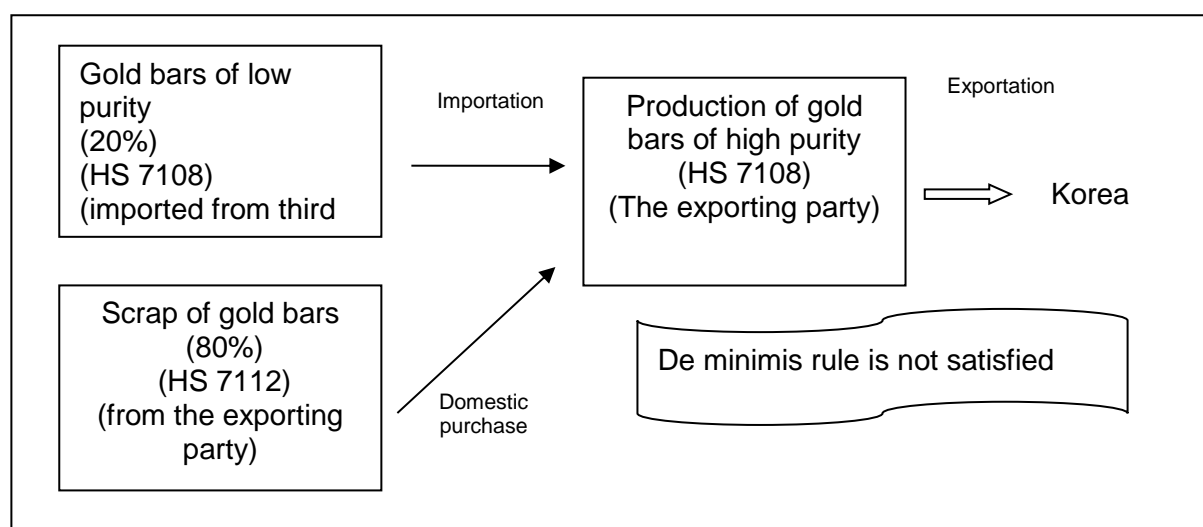
Exporting party: A

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

Reason for verification: importation of gold bars from S increased sharply (by 430 times) after the relevant FTA came into force

Verification method: Customs authority of exporting party S conducted verification

The exporter 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. 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 allow 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.



3.2. PSR – value added (VA) rules

Actual case

Name of commodity: treated copper foil (HS 7410)

Exporting party: B

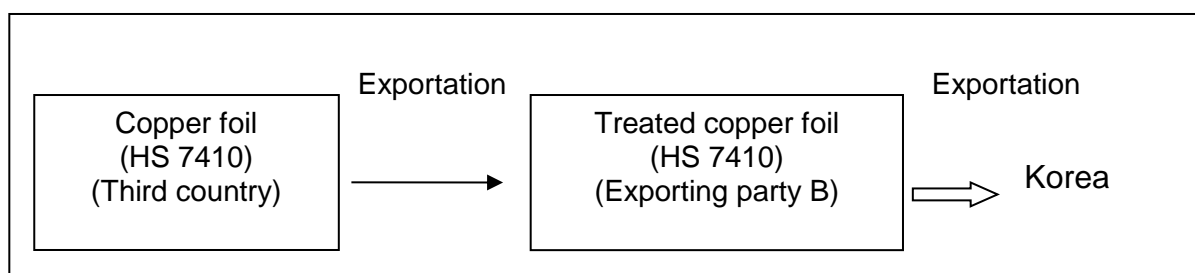
Origin criterion: CTH or 40% of regional value content (RVC)

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 P

Verification method: on-the-spot verification by 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).



3.3. Accumulation/cumulation

Actual case

Name of commodity: gas compressor packages (HS 8414.80)

Exporting party: S

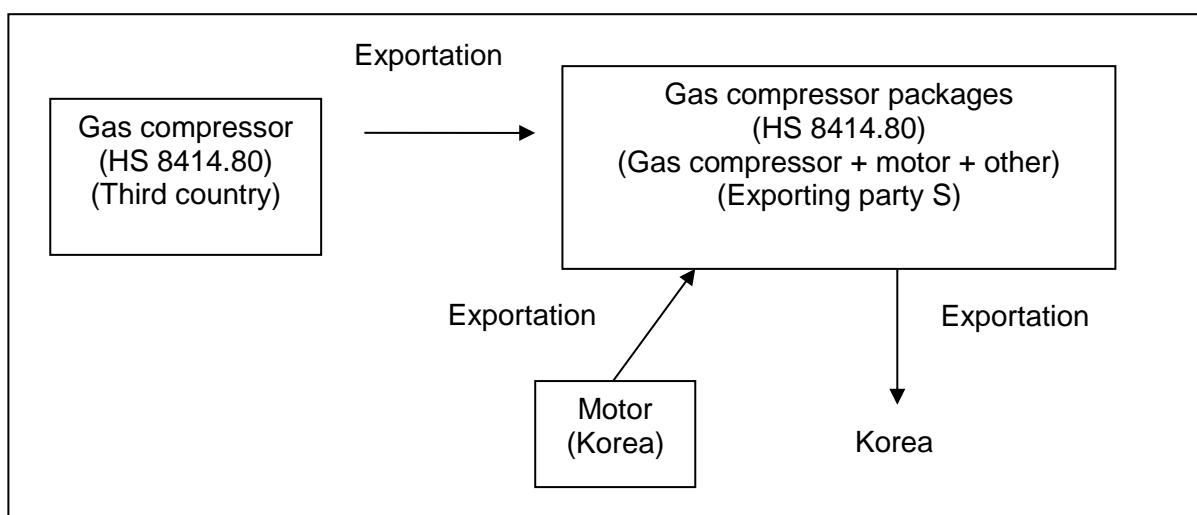
Origin criterion: CTH or RVC 40%

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



3.4. Other (supporting documents)

Actual case

Name of commodity: product A (HS 2009.69)

Exporting party: A

Origin criterion: CTH + RVC 45%

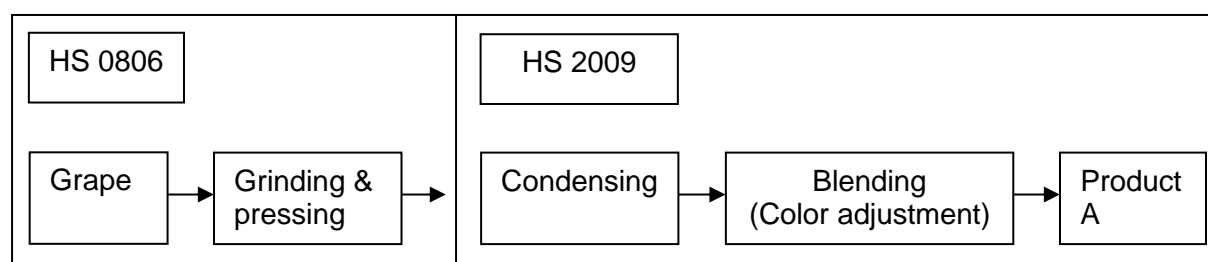
Exporters: X, Y and Z

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 C 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 product A 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.

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 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.



Ways to counter origin irregularities listed in Chapter 3

Customs administration

A. Capacity building program for Customs officials

As part of the capacity building program for Customs officials who are involved in origin certification and verification, the Korea Customs Border Control Training Center runs

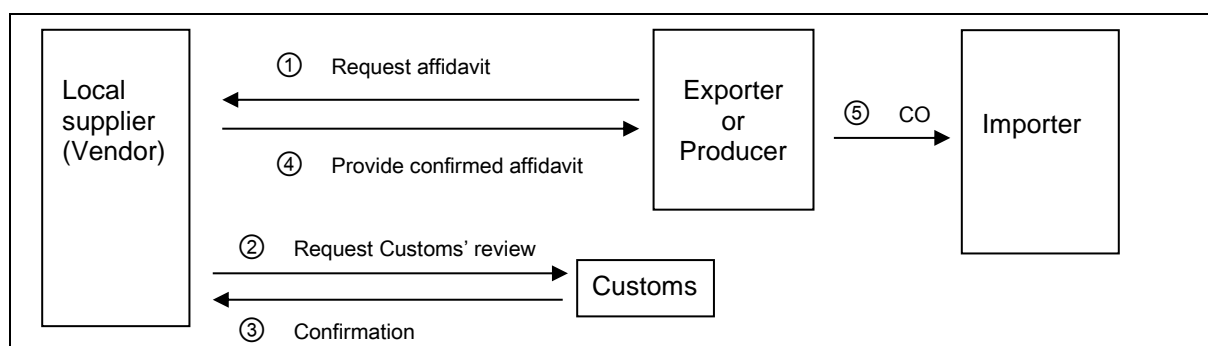
education courses for the effective and efficient administration of Customs origin. The education courses held are listed below:

- Offline advanced education course on origin verification (twice per year, duration: one week). This is an intensive course for Customs officials who have already been involved in origin verification. They understand FTA rules of origin and have some experience of origin verification;
- Online and offline basic education course on FTAs (three times per year, duration: two-week online course and one-week offline course). This is for low-level Customs officials who have just started performing origin verification. They have to study the basic rules of origin verification, using a cyber-education program, before they attend the face-to-face training course;
- Online and offline mid-level education course on FTAs (once per year, duration: two-week online course and one-week offline course). This is for mid-level Customs officials who are due to retire soon, for their future jobs;
- Offline mid-level education course on origin verification (once per year, duration: one week). This is for mid-level Customs officials who have just started working on origin verification.

B. Customs advance confirmation of manufacturer's affidavit

Domestic suppliers are reluctant to provide their documents to the subsequent supplier, because confidential information such as profit margin, cost of raw material, etc., could be revealed to their buyers in cases where a value added rule is the origin criterion. On the other hand, big companies have some doubts about the accuracy and credibility of domestic suppliers' affidavits on origin status, because there is a higher possibility of lack of full knowledge of origin criteria, as well as origin management to small companies.

In order to boost FTA utilization, Korea Customs confirms in advance whether the manufacturer's affidavits issued by local suppliers were made accurately and truthfully. At the final stage, the exporter can issue origin certification based on a manufacturer's affidavit which has been confirmed by Customs, as shown below.



Since January 2014, the Korea Customs Service has been implementing an enforcement guideline on KCS advance confirmation of manufacturer's affidavits. This will soon be provided for in the Enforcement Rule of the Customs Special Act for the implementation of Free Trade Agreements.

The purpose of this system is to help the final producer to easily cumulate the production carried out by several different producers for the final producer concerned, by tracing the flow of the supporting documents for the goods.

C. 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 Korea, advance ruling applications are submitted to the Korea Customs Valuation and Classification Institute under the Korea Customs Service, prior to the declaration of the goods for import, for the above categories of issues (namely tariff classification, customs value and origin). Korea has an advance ruling system in most of its FTAs.

D. Guide Book for Business on FTA Origin Verification

A Guide Book 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 Guide Book can also be used by Korea Customs officials so that they 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.

E. Outreach program for stakeholders

The outreach program for stakeholders is run by the Korea Customs Service with the aim of promoting FTA utilization to the maximum.

Big companies have their own capacity to ensure that they are able to take advantage of the benefits offered by FTAs. However, small companies have encountered obstacles in utilizing FTA benefits because of insufficient capital, lack of origin expertise and limited human resources. Therefore, in order to assist stakeholders in this regard, Korea Customs runs an outreach program which includes the following activities:

- Holding domestic FTA utilization seminars for sharing best practices regarding FTA benefits;
- Training job seekers for small-sized companies;
- Teaching University students about the practicalities of FTA utilization in business; and
- Operating an FTA Call Center at Customs headquarters – the FTA Call Center can be contacted via email, telephone or fax.

Private sector

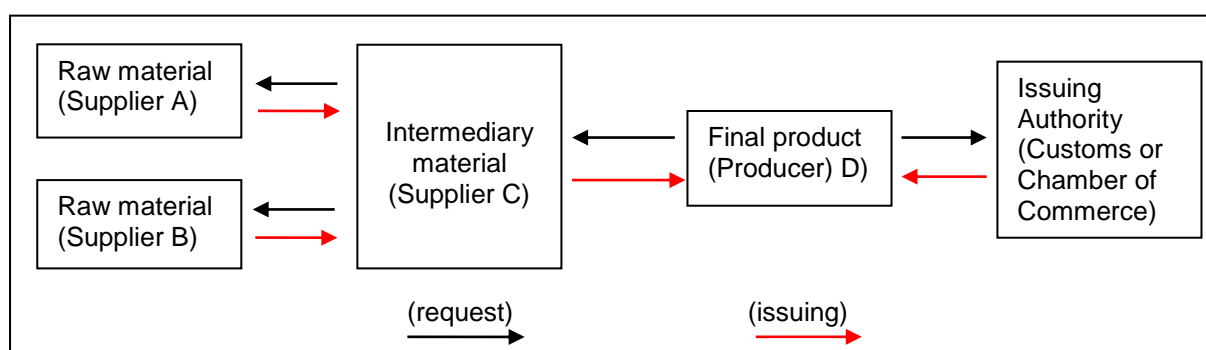
Because of globalized supply chains, goods are not generally produced by one producer in one specific country. They are produced through intermediary material supplier(s), from raw

material supplier(s) in more than one country. For goods to enjoy FTA preferential duty treatment, traceability of their status is required in order to be able to verify whether the goods qualify for originating status according to the origin criterion, as indicated by the supporting documents.

A. 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, 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;
- 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 qualified originating status of such material to the subsequent supplier or manufacturer.



B. Guide Book for Business on FTA Origin Verification

A Guide Book 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).

For an easier understanding of the subject, this Guide Book contains general information for the company in question, details of the necessary supporting documents for each origin criterion (wholly obtained rule, CTC rule, RVC rule and rules for processing), a case study on each origin criterion, and a Q & A corner.

C. 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 2014, the number of civil experts is around 13,000.

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.

D. FTA-PASS (origin management program)

For the purpose of determining the originating status of goods, the KCS has developed an origin management program for small and medium-sized enterprises, which can decide on originating status, keep data on evidence and circulate the origin determination to the subsequent supplier, using this program.

This program incorporates the rules of origin under each FTA, for each item, BOM input module, and so on. If a company inputs its data into the program using the ERP system or Excel format, the program shows whether the goods in question qualify for originating status; if so, the origin certificate is issued by the exporter, or it can be used for the domestic supplier or authority issuing procedure.

4. Irregularities related to proof of origin

4.1. Self-certification by exporter or manufacturer

Actual case

Name of commodity: salmon

Exporting channel: exporting party (N) → third country (U) → Korea

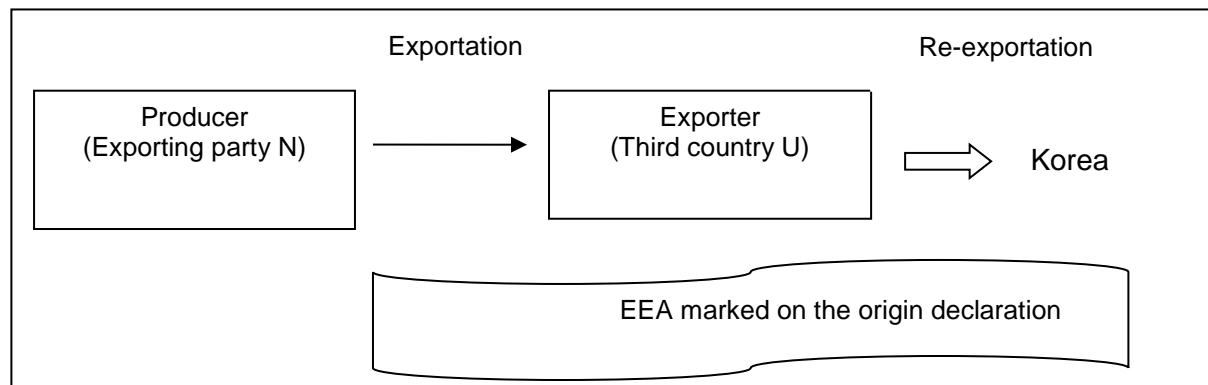
Reason for verification: doubts about conferring origin to the third country

Verification method: the Customs authority of the exporting party conducted the verification

Party N has many FTAs and has many different and diversified country names for FTA preference with other countries. The third country does not belong to N's economic

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.



4.2. Self-certification by approved exporter

Actual case

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.

4.3. Self-certification by importer

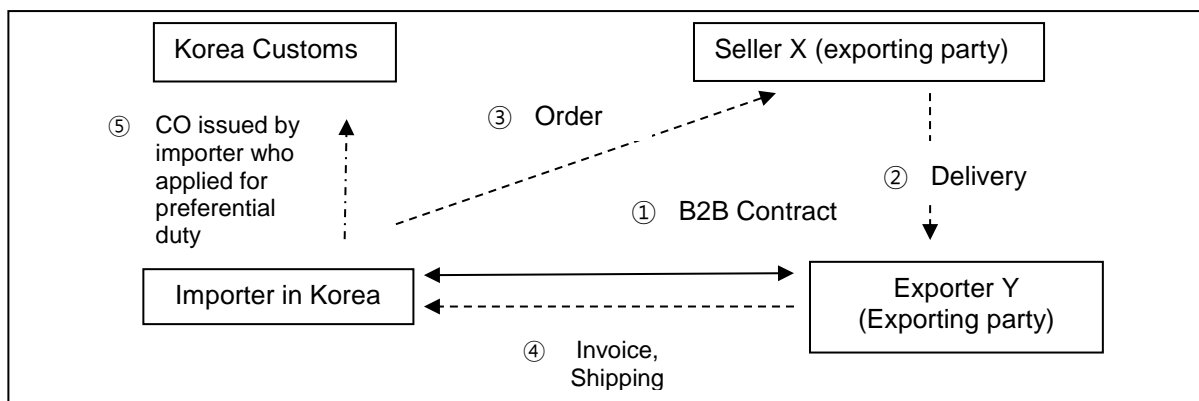
Actual case

Name of commodity: footwear

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

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 on 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.



Ways to improve the accuracy of proof of origin

Customs administration

A. Education courses for Customs officials

As part of the capacity building program for Customs officials who are involved in origin certification and verification, the Korea Customs Border Control Training Center runs education courses for the effective and efficient administration of Customs origin. The education courses held are listed below:

- Online and offline basic education course on FTAs (three times per year, duration: two-week online course and one-week offline course). This is for low-level Customs officials who have just started to issue origin certificates and approved exporter authorizations;
- Online and offline mid-level education course on FTAs (once per year, duration: two-week online course and one-week offline course). This is for mid-level Customs officials who are involved in issuing origin certificates and approved exporter authorizations;
- Online basic course on FTAs for senior Customs officials (twice per year, duration: two weeks). This is for senior Customs officials who are interested in FTAs and are due to retire soon.

B. Establishment of online CO referral program

The Korea Customs Service has established an online CO referral program for the Customs authorities of exporting parties, or for exporters to check the authenticity of the CO on the internet in real-time, leading to a reduction in the frequency of verification requests. However, for new FTAs, Korea Customs is trying to eliminate the requirement that the signature of issuing officials must appear on the CO form, which has become a key hindrance to the FTA implementation process because of the frequent movement of personnel.

Private sector

As part of the capacity building program for company employees, especially the employees of small and medium-sized enterprises which utilize FTA benefits, the Korea Customs

Border Control Training Center runs education courses aimed at familiarizing companies with the FTA preferential duty system and maximizing their utilization of FTA benefits. The education courses held are listed below:

- Online and offline basic education course on FTAs (once per year, duration: two-week online course and one-week offline course). This is for private citizens who are interested in FTAs and are working, or will work, for companies of this kind. They will attend a face-to-face training course after they have completed the cyber-education program on rules of origin under each FTA, points to check on origin certifications, etc;
- Online education course on FTAs (duration: four weeks). This is for private citizens who are interested in FTA utilization, and is a cyber-education program on rules of origin under each FTA, origin procedures, etc.

Issuing authority (Chamber of Commerce)

A. Education course for officials who issue COs

As part of the capacity building program for officials from the issuing authority who issue COs (i.e., Chamber of Commerce), the Korea Customs Border Control Training Center runs education courses to enhance the officials' ability to check the applications and their supporting documents, and issue COs correctly. There is a:

- Training course on issuing COs for the Korea Chamber of Commerce and Industry Officials (four times per year, duration: two-week online course and one-week offline course).

Pursuant to Article 6-2(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 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 COs, 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.

5. 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 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 qualified) to the KCS (the importing party) concerning product C, and subsequently reversed the negative reply into a positive one (i.e., qualified);

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

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

Ways to improve administrative cooperation

A. 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.

B. 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.

C. Building mutual trust & understanding through joint workshops or training programs

KCS has been hosting an International Origin Conference since 2011, inviting origin experts from Korea's 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.

E. Mexico's Case Study on Misapplication of Origin

1. Organizational framework

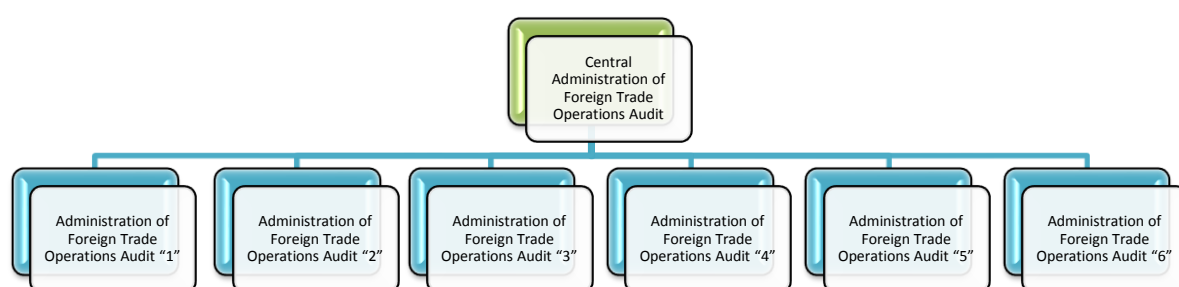
On July 13th, 2012, the Internal Rules of the Tax Administration Service (**SAT**) were reformed, which led to the creation of the General Administration of Foreign Trade Audit (**AGACE**). The AGACE arises from the need to have an area that concentrates the faculties and powers to perform post-Customs 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:



2. Overview of origin irregularities

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

Main Treaties/Agreements

The NAFTA countries are Mexico's main trading partners.¹ This is why origin verification procedures under NAFTA represent 90% of all procedures conducted in recent years.²

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

¹ 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.

² 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.

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

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.

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.

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;[...]"

In order 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”.

In order 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 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.

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 as a result 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 76.14³; or

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:

- (a) 60 percent where the transaction value method is used, or
- (b) 50 percent where the net cost method is used⁴.

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?

³ Part I.

⁴ Part II.

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:

- 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.

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.

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:

- 1) written statement from the Company authorizing the person or employee who is to serve as legal representative during the origin verification visit;
- 2) appoint two observers (with valid ID) to act as witnesses during the origin verification visit;
- 3) written statement describing the production process of the goods subject to verification;
- 4) copy of the certificates of origin covering the goods subject to verification, issued in favor of the Mexican importers;
- 5) copy of the sale invoices covering the goods subject to verification, issued to the Mexican importers;
- 6) copy of the inventory management records and production records covering the goods subject to verification;
- 7) 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;

- 8) 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);
- 9) 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;
- 10) if applicable, copy of the cutting tickets covering the goods subject to verification;
- 11) if originating materials were used in the production process, copy of the documentation and information that prove the originating status of those materials;
- 12) for all the invoices provided, proof of payment of those invoices;
- 13) any other information and records that prove the originating status of the goods subject to verification;
- 14) 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.

4. Ways to counter origin irregularities

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.

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.

4.2. 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.

4.3. 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 certificate of origin. In order 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.

Obligations related to the CO

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.

4.4. 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.

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

- Tariff Classification
- Customs Valuation
- Origin of Goods (general criteria and specific rules)

Customs procedures

- Written questionnaires
- Visits to the producer's facilities

Additional

- Advanced English
- Advanced use of software and computer equipment
- Research and analysis skills.

F. Case Study by Nigeria on Origin Irregularities

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.

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.

3. Irregularities related to origin criteria

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.

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).

3.2 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.

Measures taken in order 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.

3.3 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 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.

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.

3.4 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.

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.

4. Ways to counter origin irregularities

4.1. 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.

4.1.1. 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.

4.1.2. 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.

4.1.3. 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.

4.2. Private sector

4.2.1. 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.