Understanding rules of origin
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Rules of origin, a customs issue inducing a strong impact on business activity

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Understanding rules of origin

- 1. Definition of rules of origin
- 2. Application of rules of origin
- 3. A leverage for business
Understanding rules of origin

1. Definition of rules of origin
1. Definition of rules of origin - Information and sources

- EUROPA – Internet portal of the European Union
  - http://www.europa.eu

- The European Commission site

- The French customs sites
1. Definition of rules of origin

Description and explanation on rules of origin – EU Standard
1. Definition of rules of origin

French customs:
2 websites

General information

Customs website for businesses
1. Definition of rules of origin

A complete information is available for business purposes
1. Definition of rules of origin

Member states customs provide explanations on European legislation.

<table>
<thead>
<tr>
<th>Régimes préférentiels</th>
<th>Références au JOUE dans lequel figurent les textes applicables et le protocole définissant la notion de « produit originaire »</th>
<th>Documents justificatifs de l’origine préférentielle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone Asie</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UE/ Pays bénéficiaires du SPG (Schéma des Préférences Généralisées)</td>
<td>JOUE L 307 du 18/11/2010</td>
<td>Certificats FORM A (FLUX IMPORT) Déclaration d'origine sur facture DOF – 6000€ ou DOF sans limitation de valeur uniquement pour les exportateurs agréés communautaires (EA) dans le cadre du cumul bilatéral SPG (cf articles 84 et 97 tercevis du R 2454/93) Attention : à l'exportation depuis l'UE, l'EUR-1 ou la DOF possible en vue de l'application du cumul UE/pays SPG. Déclaration d'origine en vue de (DOF).</td>
</tr>
<tr>
<td>UE/ Ceuta (XC) et Melilla (XL)</td>
<td>Règlement (CE) n° 82/2001 du</td>
<td></td>
</tr>
</tbody>
</table>
1. Definition of rules of origin

The origin of a product is its economic nationality.

Several confusions have to be avoided:

- Origin and source or *provenance* (from where it has been sent)
- Origin and clearance (customs status)
- Non preferential origin and preferential origin
1. Definition of rules of origin - two different fields

Non preferential origin:
- Customs duties (MFN)
- Anti-dumping duties
- Trade defense instruments (quotas, ...)
- Statistics
- Origin marking

Preferential origin:
- Preferential tariff treatment
  - tariff benefits
- Movement certificate EUR 1
- Movement certificate EUR-MED
- Certificate of origin FORM A
- Invoice declaration/origin declaration

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Understanding rules of origin

2. Application of rules of origin

2.1 Non-preferential origin

2.2 Preferential origin
2.1 Application of non-preferential rules of origin

Non preferential origin

- Customs duties (MFN)
- Anti-dumping duties
- Trade defense instruments (quotas,...)
- Statistics
- Origin marking

CO for textile products (COT)
CO for agricultural products (COA)
CO universal (COU)
2.1 Application of non-preferential rules of origin

Legal framework

Community Customs Code (CC)

The Implementing Provisions of the Community Customs Code (IPC)
Commission Regulation (EEC) n° 2454/93 of 2 July 1993
2.1 Application of non-preferential rules of origin

Different concepts
«wholly obtained products» Art. 23 CC
«Last substantial transformation» Art. 24 CC

For textile products «complete process»
Art. 36 and 37 IPC
For other products Art. 39 IPC

Introductory notes
List rules for a few products

The rules used for products which are not in annexes 10 and 11 of the IPC are those published on the Internet site of the European Commission (current position of the European Union in WTO talks).
2.1 Application of non-preferential rules of origin

Products which are not in the annexes 10 and 11 of the IPC

Table of list rules applicable to products (following the classification in the CN)

Section I: Live animals; animal products:
- Chapters 1 to 5

Section II: Vegetable products:
- Chapters 6 to 14

Section III: Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes:
- Chapter 15

Section IV: Prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes:
- Chapters 16 to 24

Section V: Mineral products:
- Chapters 25 to 27
2.1 Application of non-preferential rules of origin

<table>
<thead>
<tr>
<th>HS Code Number</th>
<th>Description of goods</th>
<th>Primary Rule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 84</td>
<td>Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.</td>
<td><em>As indicated at the heading or subheading level</em></td>
</tr>
<tr>
<td>8401</td>
<td>Nuclear reactors; fuel elements (cartridges), non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation.</td>
<td>CTH; or 45 % value added rule</td>
</tr>
<tr>
<td>8402</td>
<td>Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers.</td>
<td>CTH; or 45% value added rule</td>
</tr>
</tbody>
</table>
2.2 Application of preferential rules of origin

Preferential origin

Preferential tariff treatment

tariff benefits

Movement certificate EUR 1
Movement certificate EUR-MED
Certificate of origin FORM A
Invoice declaration/origin declaration
The European Union has both unilateral (preference granted by the EU with no reciprocity) and conventional preferential arrangements (reciprocal agreements establishing free trade areas). These arrangements are based on the origin of the products benefiting from tariff preferences.

2.2 Application of preferential rules of origin

Country benefiting from preferential arrangement (FTA, GSP...)

Tariff benefits: entry at a reduced or zero rate of duty

Proof of the preferential origin

EU
2.2 Application of preferential rules of origin

In each Free Trade Agreement (EU standard), one protocol concerning the definition of the concept of « originating products » is enclosed.

Each arrangement has an annex containing the list of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status ("The list rules") and is preceded by an annex containing introductory notes to the list rules.
2.2 Application of preferential rules of origin

The reading of an origin protocol
PROTOCOL

concerning the definition of ‘originating products’ and methods of administrative cooperation

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SECTION A
RULES OF ORIGIN

TITLE I GENERAL PROVISIONS
Article 1 Definitions

TITLE II DEFINITION OF ‘ORIGINATING PRODUCTS’
Article 2 Originating products
Article 3 Cumulation of origin
Article 4 Wholly obtained products
Article 5 Sufficiently worked or processed products
Article 6 Insufficient working or processing
Article 7 Unit of qualification
Article 8 Accessories, spare parts and tools
Article 9 Sets of goods
A protocol of origin is based on several principles/rules that are discussed during the negotiation rounds.

- **Wholly obtained product**
- **Minimal operations**
- **Tolerance rule**
- **Sufficiently worked or processed products**
- **Principle of territoriality**
- **Direct transport rule**
- **Drawback of customs duties**

- **Positive list**
- **Positive list**
- **% in value or weight**
- **List rules**
- **Strict or with tolerance**
- **Strict or with tolerance**
- **Allowed or prohibited**
2.2 Application of preferential rules of origin

**Wholly obtained product**

*Article 5*

**Wholly obtained products**

1. The following shall be considered as wholly obtained in the Community or in Croatia:

(a) mineral products extracted from their soil or from their seabed;

(b) vegetable products harvested there;

(c) live animals born and raised there;

(d) products from live animals raised there;

(e) products obtained by hunting or fishing conducted there;

(f) products of sea fishing and other products taken from the sea outside the territorial waters of the Community or of Croatia by their vessels;

(g) products made aboard their factory ships exclusively from products referred to in (f);

(h) used articles collected there fit only for the recovery of raw materials, including used tyres fit only for retreading or for use as waste;

(i) waste and scrap resulting from manufacturing operations conducted there;

(j) products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;

(k) goods produced there exclusively from the products specified in (a) to (j).
2.2 Application of preferential rules of origin

Article 7

Insufficient working or processing

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 6 are satisfied:

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(b) breaking-up and assembly of packages;

(c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles;

(e) simple painting and polishing operations;

(f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;

(g) operations to colour sugar or form sugar lumps;

(h) peeling, stoning and shelling, of fruits, nuts and vegetables;

(i) sharpening, simple grinding or simple cutting;

(j) sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);

(k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing of products, whether or not of different kinds;

(n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) a combination of two or more operations specified in (a) to (n);

(p) slaughter of animals.

2. All operations carried out either in the Community or in Croatia on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.
2.2 Application of preferential rules of origin

Art. 6§2 Paneuromed rules of origin:

Tolerance rule

2. Notwithstanding paragraph 1, non-originating materials which, according to the conditions set out in the list, should not be used in the manufacture of a product may nevertheless be used, provided that:

(a) their total value does not exceed 10 per cent of the ex-works price of the product;

(b) any of the percentages given in the list for the maximum value of non-originating materials are not exceeded through the application of this paragraph.

This paragraph shall not apply to products falling within Chapters 50 to 63 of the Harmonized System.
2.2 Application of preferential rules of origin

Principle of territoriality

Article 12

Principle of territoriality

3. The acquisition of originating status in accordance with the conditions set out in Title II shall not be affected by working or processing done outside the Community or Croatia on materials exported from the Community or from Croatia and subsequently re-imported there, provided:

(a) the said materials are wholly obtained in the Community or in Croatia or have undergone working or processing beyond the operations referred to in Article 7 prior to being exported;

and

(b) it can be demonstrated to the satisfaction of the customs authorities that:

(i) the re-imported goods have been obtained by working or processing the exported materials;

and

(ii) the total added value acquired outside the Community or Croatia by applying the provisions of this Article does not exceed 10 per cent of the ex-works price of the end-product for which originating status is claimed.

A tolerance can be accepted
2.2 Application of preferential rules of origin

Direct transport rule

A direct link with the supply chain

Article 13
Direct transport

1. The preferential treatment provided for under the Agreement applies only to products, satisfying the requirements of this Protocol, which are transported directly between the Community and Croatia. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, trans-shipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.
2.2 Application of preferential rules of origin

Drawback of customs duties

Prohibition of drawback (ex. EU-CH)

Prohibition of drawback of, or exemption from, customs duties

1. (a) Non-originating materials used in the manufacture of products originating in the Community, in Switzerland or in one of the other countries referred to in Articles 3 and 4 for which a proof of origin is issued or made out in accordance with the provisions of Title V shall not be subject in the Community or in Switzerland to drawback of, or exemption from, customs duties of whatever kind.

1. After five years from the entry into force of this Agreement, upon the request of either Party, the Parties shall jointly review their duty drawback and inward processing schemes. One year after entry into force, and subsequently on a yearly basis, the Parties shall exchange available information on a reciprocal basis on the operation of their duty drawback and inward processing schemes, as well as detailed statistics as follows:
2.2 Application of preferential rules of origin

Sufficiently worked or processed products

Article 6

Sufficiently worked or processed products

1. For the purposes of Article 2, products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Annex II are fulfilled.

List rules are available for each product in Annex II (protocol of rules of origin)
2.2 Application of preferential rules of origin

Each arrangement has list rules defining if a product (HS 4) is sufficiently worked or processed.

Annex II of the origin protocol in FTA
Annex 13 a) IPC for GSP
Annex 15 IPC for other countries

- Wholly obtained product
- % in value
- Specific processing
- Change in tariff heading
### 2.2 Application of preferential rules of origin

**ANNEX II**

**LIST OF WORKING OR PROCESSING REQUIRED TO BE CARRIED OUT ON NON-ORIGINATING MATERIALS IN ORDER FOR THE PRODUCT MANUFACTURED TO OBTAIN ORIGINATING STATUS**

The products mentioned in the list may not be all covered by the Agreement. It is, therefore, necessary to consult the other parts of the Agreement.

<table>
<thead>
<tr>
<th>HS heading</th>
<th>Description of product</th>
<th>Working or processing, carried out on non-originating materials, which confers originating status</th>
<th>(3) or (4)</th>
</tr>
</thead>
</table>
| 8402       | Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers | Manufacture:  
- from materials of any heading, except that of the product, and  
- in which the value of all the materials used does not exceed 40% of the ex-works price of the product | Manufacture in which the value of all the materials used does not exceed 25% of the ex-works price of the product |
2.2 Application of preferential rules of origin

Questions to be asked:

• 1- What is the final product to export and what are the duties? (HS 4)
• 2- What is the country associated with the product?
• 3- Is it a wholly obtained product?
• 4- Is it a minimal operation?
• 5- Warnings: principle of territoriality and direct transport rule, duty drawback?
• 6- Are the list rules fulfilled?
• 7- Others: tolerance + cumulation of origin
Understanding rules of origin

3. A leverage for business
3. A leverage for business

Suppliers' products must comply with the rules of origin present in the protocol of origin.

- Supplier A
  - Manufacturer – Shopkeeper
    - Exported product.
    - Respect of the protocol of origin according the FTA
  - Importer 1

- Supplier B
  - Importer 2
  - Importer 3
3. A leverage for business

- Different tools for knowing the origin of a product for an exporting company:
  - Contact with the local customs office
    - AE status
  - Contact with the regional customs directorate (general expertise – Business advisory unit)
  - Contact with the General Directorate of Customs and Excise
    - Binding origin information (BOI)
    - Large Business Task Force
3. A leverage for business

• The Approved Exporter status

What are the advantages?

- Streamlined formalities for proving preferential origin
  - Commercial documents (invoices, etc.) may be used to certify origin

- Safer trade with the help from the customs office
3. A leverage for business

- The Approved Exporter status

- The AE status simplifies export formalities and guarantees the correctness of the preferential origin information

- The preferential origin is certified by the approved exporter directly, by including the proof on the commercial document used
3. A leverage for business

- Why is the Approved Exporter status safer than regular proof of origin?
  - Customs work with you to evaluate the characteristics of your products
  - Customs explain the specific rules that will allow you to verify on your own whether or not your goods benefit from preferential origin, based on the importing country
  - Customs approve you for AE status
  - Understand the rules of origin and make your trade operations safer
Conclusion

How can businesses comply with FTAs and their protocol concerning origin?

- Importance of the protocol of the rules of origin (negotiation phase)
- Be sure of the preferential origin of their products
- Appropriate sourcing of certain materials
Conclusion

Acting for an improvement of the rules of origin in FTAs, understanding the protocol and its application, can make a significant commercial difference.
Workshop on Offsets, Customs and Trade