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Guide
to the Protocol on rules of origin of the Economic Partnership Agreement (EPA) between the European Union and its Member States, of the one part, and the SADC[1] EPA States, of the other part

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[1] Southern African Development Community

Preliminary Remarks

This document does not constitute a legally binding act and is of an explanatory nature. Legal provisions of customs legislation take precedence over the contents of this document and should always be consulted.

The authentic text of the Economic Partnership Agreement between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part[2] *(hereinafter SADC-EU EPA) is the one published in the Official Journal of the European Union. There may also be national instructions or explanatory notes in addition to this document.*

This guide is merely a tool to facilitate the correct application of the provisions. Examples contained herein are to be taken purely as illustrating how the system works in practice.

[2] OJ L 253, 16.09.2019. p. 3 [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22016A0916(01)].

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PART 1 – Information concerning the concept of originating products

1. WHAT IS ORIGIN?

Simply put, origin is the "economic" nationality of goods in international trade. It is necessary to determine the nationality, value and tariff classification of goods in order to be able to determine the duties and equivalent charges or any customs restrictions or obligations applicable to them. There are two kinds of origin: non-preferential and preferential and the customs treatment of goods at importation is determined by the origin they have. As the rules for both types of origin are different, goods may have two origins: one non-preferential and one preferential.

2. WHAT IS NON-PREFERENTIAL ORIGIN?

Non-preferential origin confers an "economic" nationality on goods; it does not confer a tariff benefit on them, but is the basis for the implementation of other trade policy measures. Non-preferential origin is conferred either by the goods being "wholly obtained" in one country or, when two or more countries are involved in the manufacture of a product, origin is conferred in general in the country where the last substantial, economically justified working or processing is carried out. Non-preferential origin is used, for example, in determining whether or not goods are subject to anti-dumping measures or quantitative restrictions and for statistical purposes. It can also be used to determine origin in the context of the "origin marking" (i.e. the "made in" label) of goods.

3. WHAT IS PREFERENTIAL ORIGIN?

Preferential origin is conferred on goods from particular countries when they fulfil certain criteria. Preferential origin criteria demand that goods undergo a sufficient amount of working or processing. However, wholly obtained goods can also benefit from preferential origin status. Preferential origin confers certain benefits on goods traded between countries that have agreed such an arrangement, usually entry at a reduced level or free of duty.

In order to have preferential origin goods must fulfil the conditions of the Origin Protocol concerning the definition of the concept of "originating products". It means that the goods must either be wholly obtained or undergo a certain amount of working or processing. Annex II and Annex II A to Protocol 1 of the SADC-EU EPA contain the lists of the working or processing each product must undergo in order to obtain preference.

4. WHAT IS CUMULATION?

Cumulation allows, under certain conditions, for non-originating materials to be considered as originating, when used in the manufacture of another product. For example, sugar from Swaziland would be considered as originating in Botswana, when used in the manufacture of jam there.

PART 2 - Analysis of the Protocol on rules of origin of the SADC-EU EPA

Part 2 of this guide relates only to preferential origin.

Article 2 – General requirements

Goods can be qualified as originating when they are either wholly obtained, as defined in Article 7, or sufficiently worked or processed, as provided for in Article 8.

Acquiring originating status under article 8 needs to further take into account the provisions of Article 9 (Insufficient working or processing).

Article 3 – Bilateral cumulation

Bilateral cumulation applies between a SADC EPA State and the EU.

Paragraphs 2 and 3 – cumulation with originating materials

Manufacturers in either partner country can use materials originating in the other country as if they originated in their own country to confer preferential originating status on goods traded between them.

For example, materials of EU origin can be further processed or incorporated in a finished good in a SADC EPA State as if they had originated there. This helps the finished product acquire the preferential origin of the SADC EPA State (and qualify for export to the EU under preference) provided that the processing undertaken there on EU originating materials goes beyond the operations listed in Article 9(1).

Example

Product: Other made-up articles, including dress patterns (HS 6307)

Product specific rule (PSR): Manufacture in which the value of all the materials used does not exceed 40 % of the ex-works price of the product

All necessary materials originate in the EU (value 45 EUR) and are exported to Botswana where they are made into life jacket (value 100 EUR). The finished product is exported to the EU. If the materials had originated in a third country (e.g. China), with which bilateral cumulation can not be applied, the PSR would have not been fulfilled. In this case, thanks to bilateral cumulation the PSR is fulfilled: the materials originating in the EU are treated as originating in Botswana, therefore the finished product exported from Botswana to the EU is considered as originating in Botswana.

Paragraphs 4 and 5 - cumulation of working/processing

If origin is determined applying bilateral cumulation of working/processing, operations carried out on non-originating materials in one partner country can be aggregated with the

operations carried out in another partner country if the materials in the latter undergo working or processing going beyond the operations referred in Article 9(1).

Example

Origin of materials: China (2 EUR)
Product: Plasters specially prepared for dentistry (value 5 EUR)
HS: ex 2520
PSR: Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product

In the EU the Chinese originating materials are processed more than minimally (value of operations 1 EUR; Article 9(1) is observed but the PSR is not fulfilled). The material so processed is exported to Botswana were it is further processed (value 2 EUR; more than minimal processing - Article 9(1) is observed). Cumulation provisions allow the aggregation of the operations carried out in the EU (value 1EUR) with the operations carried out in Botswana (value 2 EUR). The PSR is satisfied: 2 EUR (Chinese materials) is less than 50% of the ex-works price (5 EUR).The finished good gets Botswana preferential origin.

Article 4 - Diagonal cumulation

There are in fact three types of cumulation provided in this Article:

a) cumulation between materials originating in two or more SADC EPA States representing a form of 'regional cumulation' between the SADC EPA States themselves for the purpose of exporting their goods to the EU;

b) cumulation of materials originating in other ACP EPA states, OCTs or the EU, representing what is usually named 'diagonal cumulation';

c) cumulation of working or processing on materials in other SADC EPA States, other ACP EPA States, OCTs or the EU, usually referred to as "full cumulation".

Any combination of the three types of cumulation described above may be used in the manufacture of a product.

<u>a) Regional and b) diagonal cumulation</u>

Paragraph 2 stipulates that materials originating in the EU, a SADC EPA State, other ACP EPA States or OCTs may be incorporated into a product manufactured in another SADC EPA State; if the working or processing performed there goes beyond the minimal operations listed in Article 9(1), the resulted product is originating in the SADC EPA States where the last working or processing takes place.

Paragraph 3 stipulates that materials originating in a SADC EPA State, other ACP EPA States or OCTs may be incorporated into a product manufactured in the EU; if the working or processing there goes beyond the operations listed in Article 9(1), the resulted product is originating in the EU.

Paragraph 5 explains the allocation of origin in diagonal cumulation.

Where the working or processing carried out in a SADC EPA State or in the EU does not go beyond the operations referred to in Article 9(1), the product obtained shall be considered as originating in a SADC EPA State or in the EU only if the value added there is greater than the value of the materials used originating in any one of the other countries or territories.

First, the materials need to be originating. Furthermore, the value of any of the materials used need to be inferior to the value of the working or processing carried out in the SADC EPA State of the last working or processing, respectively in the EU. If this is not the case, the preferential origin of the product will not be that of the country where the last working or processing took place.

Example

South Africa manufactures heat shields for cars (HS 8708) which it exports to the EU. However, in order to be competitive, it needs to import aluminium. If it were to import it from India (third country), the product specific rule requirement would not be met (minimum 60% value added). If the aluminium is sourced from (and originates in) Mozambique under cumulation, it would be considered as originating in South Africa and, since the processing carried out there goes beyond the operations listed in Article 9(1), the finished product gets South African preferential origin.

c) Full cumulation

Paragraphs 6 and 7 describe the cumulation of working or processing (full cumulation) allowed in this EPA.

While other forms of cumulation require that materials be originating before being exported from one party to another for further working or processing, this is not the case with full cumulation. Full cumulation simply demands that all the working or processing foreseen in the list rules (captured in Annex II and Annex II A in this EPA) can be carried out on non-originating materials in order for the final product to obtain preferential origin.

At the end of all the working and processing performed within the full cumulation area it is required that *cumulatively (aggregately)* the product specific rule necessary to confer origin is fulfilled.

Full cumulation applies between the EU, ACP EPA States (including other SADC EPA States) and OCTs.

Example

Woven fabric of cotton (HS 5208 through 5212) valued 100 EUR is prepared and printed in Botswana and Lesotho from non-originating unbleached and unprinted cotton fabric originating in China and valued 45 EUR.

Manufacturers may choose between the two product specific rules listed in column 3 and column 4. We analyse the case when the rule in column 4 is used:

"Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerizing, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling) where the value of the unprinted fabric used does not exceed 47,5 % of the exworks price of the product"

The material imported from China is scoured and bleached in Lesotho, (value of operations = 25 EUR), and printed in Botswana (value of operation = 30 EUR). The value of non-originating materials represents 45% of the ExW price of the product being exported to the EU and, since the processing goes beyond the minimal operations listed in Article 9(1), the finished good acquires preferential originating status in Botswana. This is an example where full cumulation helps countries fulfil the PSRs and enjoy the EPA benefits.

Paragraph 8 explains the allocation of origin in full cumulation when the working or processing does not go beyond the operations listed in Article 9(1).

Example

Product: Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); superheated water boilers of HS 8402

Non-originating Chinese materials valued 250 EUR are used in the manufacture.

PSR for 8402: Manufacture in which:
-all the materials used are classified within a heading other than that of the product;
-the value of all the materials used does not exceed 40 % of the exworks price of the product

Alternative rule: Manufacture in which the value of all the materials used does not exceed 25 % of the ex-works price of the product

The alternative rule is chosen by the manufacturers.

ACP EPA country of working/processing	Kenya	Botswana	South Africa	Total
Local value added (EUR)	200	250	300	750
Local value added (*% of ExW price of finished good)*	20%	25%	30%	75%
Insufficient working or processing	Yes	Yes	Yes	PSR met

The preferential origin of the goods exported to the EU is South Africa.

Paragraph 9 foresees the provisions on administrative cooperation which are necessary because not all the States/territories where cumulation is allowed from are parties to this agreement. Therefore, in order to ensure the administrative cooperation necessary to create the conditions for the proper implementation of the provisions of this Article, the participants in cumulation have to agree on the terms of their commitment to cooperate.

There are two possibilities: either bilateral agreements between the participants in cumulation or a joint undertaking including more than two participants which agree on a common text.
Paragraph 10: since the commitments to provide administrative cooperation between the EU and ACP EPA States (including SADC–EU EPA) are provided within their respective protocols on rules of origin and administrative cooperation, the EU only needs to conclude agreements or have arrangements with the OCTs.

Paragraph 11 provides for the simultaneous entry in force of cumulation once the administrative cooperation agreements have been signed.

The eligible ACP EPA countries for cumulation are listed in Annex I of Regulation (EU) 2016/1076 of the European Parliament and of the Council (page 15, http://eur-lex.europa.eu/eli/reg/2016/1076/oj).

The said list can also be consulted here:

http://exporthelp.europa.eu/thdapp/display.htm?page=cd/cd_EconomicPartnershipAgreements.html&docType=main&languageId=EN

http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list/countries-africa-caribbean-pacific-acp_en

Until 1.04.2017 the following ACP states signed the Joint Undertaking (JU): Botswana, Guinea, Kenya, Lesotho, Madagascar, Mauritius, Mozambique, Seychelles, Swaziland, Zimbabwe, Cameroon and Namibia.

The list of the ACP states signing the JU is also published at: http://www.acp.int

Article 5 - Cumulation with materials subject to MFN duty free treatment in the EU

This is a particular form of cumulation with materials of no specific origin.

Paragraph 1 stipulates that cumulation in a SADC EPA State is allowed with non-originating materials which at importation into the EU are free of customs duties by means of application of conventional rates of the most-favoured nation tariff. Materials do not need sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 9(1).

Example

Light-emitting diodes (LED) of 8541 (MFN 0) are imported from Singapore and manufactured into led bulbs (8543[3]) in Namibia. The PSR for led bulbs:

[3] http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&text=&pageIndex=0&part=1&mode=req&docid=186066&occ=first&dir=&cid=290768

ex Chapter 85	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles; except for:	Manufacture in which — all the materials used are classified within a heading other than that of the product; — 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 30 % of the ex–works price of the product

Although there is a change in tariff heading, let's consider the situation when the value of LEDs (40%) is not complied with therefore cumulation is necessary. The final product so obtained can be exported to the EU as Namibian originating product.

Exclusion of cumulation with materials affected by antidumping or countervailing duties

Paragraph 4 stipulates that *"The cumulation provided for in this Article shall not apply to materials:*
(a) which at importation into the EU are subject to antidumping or countervailing duties when originating from the country which is subject to these antidumping or countervailing duties;"

Footnote 1 on paragraph 4(a) adds that "*For the purpose of the implementation of this specific exclusion, EU non preferential rules of origin shall apply."*

In order to establish with certainty the country of origin for the materials in question, there have to exist clear rules; in case of goods/materials affected by anti-dumping or countervailing measures when imported in the EU these are defined in the non-preferential rules of origin.

The legal basis for the non-preferential EU rules of origin is defined in Articles 59 to 63 of Regulation (EU) No 2013/952 (Union Customs Code) of the European Parliament and of the Council; Articles 31-36 and Annex 22-01 of Commission Delegated Regulation No 2015/2446.

More information on this issue can be found at:
http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/non-preferential/article_410_en.htm

Article 6 - Cumulation with materials originating in countries benefiting from duty-free quota-free access to the EU

This Article allows for cumulation with originating materials from EU GSP beneficiaries and EU FTA partner countries which can be imported duty-free quota-free in the EU, under certain conditions. The materials need to be worked or processed beyond the minimal operations described in Article 9(1).

Cumulation with materials originating in EU's FTA partner countries is not automatic: the interested SADC EPA State needs to apply for such cumulation.

Agricultural materials are excluded from cumulation if they originate in a FTA partner country. In the future this issue may be revised in case of materials originating in a non-ACP African State with which both Parties have an FTA, provided that such materials benefit from duty-free quota-free access to the EU. The agreement of both Parties will be needed.

For the exclusion referred to in paragraphs 1.2 a) and 2.2.b) please see above the explanation for paragraph 4.a).

Paragraph 7 In order to ensure the administrative cooperation necessary to create the conditions for the proper implementation of the provisions of this Article, the participants in cumulation have to agree on the terms of their commitment to cooperate.

The eligible EU FTA partner countries and the list of EU GSP beneficiaries can be consulted here:

http://exporthelp.europa.eu/thdapp/display.htm?page=cd/cd_ReglesDOrigineSPG.html&docType=main&languageId=en

http://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/arrangements-list_en

Article 7 - Wholly obtained products

This Article lists the goods which can be considered as wholly obtained in the territory of a SADC EPA State or in the territory of the EU.

Examples:

1. *Fabric woven in Swaziland from flax harvested and spun in Swaziland is wholly obtained in Swaziland.*

2. *Wine bottle corks manufactured in South Africa using natural cork produced in South Africa. The corks are wholly obtained in South Africa.*

3. *Fish caught in Mozambique territorial waters (i.e. territorial sea) by any fishing vessels is regarded as wholly obtained in Mozambique for the purpose of preferential export to the EU.*

4. *Fish caught outside territorial waters by a vessel flying the Mozambique flag and satisfying the other vessels' conditions of Article 7(2) of Protocol 1 is considered as wholly obtained in Mozambique.*

5. *As an exceptional measure, by application of Article 43(11) of Protocol 1, for a period of 5 years from the entry into force (or provisional application) of the EPA, Mozambique is waived from the application of Article 7(2)(c) of Protocol 1 in relation to catches of shrimps, prawns and lobsters of HS Headings 0306 and 1605 caught in the Exclusive Economic Zone of Mozambique, landed and processed in Mozambique.*

Article 8 - Sufficiently worked or processed products

As a result of the international division of labour and changing technology most traded goods contain raw materials, components, etc., which originate in more than one country.

A product can obtain preferential origin in such cases if it undergoes a specific working or process or a number of workings or processes during its manufacture. This applies only to non-originating materials used in the production of goods for which originating status is claimed.
The minimum obligatory operations or processing required on non-originating materials are outlined in columns 3 and 4 of Annex II and Annex II A to Protocol 1. Where there is a rule set out in column 4, the exporter may opt for either the rule in column 3 or the one in column 4. Where Annex II A indicates an alternative rule for the same product, economic operators can choose between fulfilling the rule of Annex II or that of Annex II A.
There are three criteria used in determining sufficient working or processing:

a) value percentage**,** which means that the value of the non-originating materials must not exceed a certain percentage of the ex-works price of the finished product;

b) change of tariff classification**:** where the non-originating materials used must have a different HS tariff heading or subheading from the one of the finished good;

c) specific rules**:** where specific criteria to be fulfilled are indicated.

Examples:

Value-added
Goods: cars
HS headings 8703
Rule: Manufacture in which the value of all the materials used does not exceed 40 % of the ex-works price of the product

Explanation: All the non-originating materials used in the manufacture of cars must account for maximum 40% of the ex-works price of the car.

Change of tariff heading:

Goods: Hand-woven tapestries of the types gobelins, flanders, aubusson, beauvais and the like, and needle-worked tapestries (for example, petit point, cross stitch), whether or not made up
HS heading 5805
Rule: Manufacture in which all the materials used are classified within a heading other than that of the product
Explanation: This simply means that all non-originating materials used must come from a heading other than that of the finished product.

Specific rule:

Goods: Laminated slabs of crepe rubber for shoes
HS heading ex 4001
Rule: Lamination of sheets of natural rubber
Explanation: This rule demands that a particular process be performed on non-originating materials.
A combination of the 3 rules listed above:

Goods: Medicaments (excluding goods of heading No 3002, 3005 or 3006):
- Obtained from amikacin of heading No 2941
HS heading 3003 and 3004

Rule: Manufacture in which all the materials used are classified within a heading other than that of the product. However, materials of heading No 3003 or 3004 may be used provided their value, taken together, does not exceed 20 % of the exworks price of the product
Explanation: This rule is a combination of the rule of change in tariff classification and value added.

Paragraph 1

Examples

Product specific rule: Manufacture in which:
- all the materials used are classified within a heading other than that of the product;
- the value of any materials of Chapter 17 used does not exceed 30 % of the ex-works price of the product

1. Citrus fruits of Chapter 8 of any origin are imported into Swaziland where they are used to produce fruit juice of Heading 2009 (valued 1EUR). They fulfil both the change of heading criteria and the requirement that the value of materials of Chapter 17 used (valued 0.25 EUR) does not exceed 30% of the ex-works price of the product. In this case the fruit juice originates in Swaziland because the fruit has been sufficiently processed.

2. Peaches of chapter 8 of any origin are imported into Botswana where they are used to produce jam of heading 2007(valued 1EUR). They fulfil both the change of heading criteria and the requirement that the value of materials of Chapter 17 used (valued 0.28 EUR) does not exceed 30% of the ex-works price of the product. In this case the jam originates in Botswana because the fruit has been sufficiently processed.

3. Pineapple in fruit juice of heading 2009 (valued 1EUR) is produced in Swaziland from pineapple of chapter 8 of any origin. They fulfil both the change of heading criteria and the requirement that the value of materials of Chapter 17 used (valued 0.27 EUR) does not exceed 30% of the ex-works price of the product. In this case the product originates in Swaziland because the fruit has been sufficiently processed.

4. Indian aluminum bar (HS 7604) valued 0.045 EUR is imported in Mozambique where aluminium screws (HS 7616) are manufactured, valued 0.10 EUR (ExWorks).

PSR for ex 7616: Manufacture in which:

- all the materials used are classified within a heading other than that of the product. However, gauze, cloth, grill, netting, fencing, reinforcing fabric and similar materials (including endless bands) of aluminium wire, or expanded metal of aluminium may be used;

-the value of all the materials used does not exceed 50 % of the exworks price of the product

The finished good has Mozambique preferential origin because the PSR has been met (the non-originating material has been sufficiently processed).

Paragraph 3: *Accordingly, it follows that if a product, which has acquired originating status by fulfilling the conditions set out in either Annex II or Annex II A, is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.*

This provision allows keeping the originating status of inputs when they are used in further manufacturing of originating goods, within the same country or sourced through cumulation, and to disregard the part of non-originating materials contained in intermediate inputs when assessing preferential origin.

Example

The PSR for car seats (HS 9401) is change of tariff heading or the use of non-originating materials which value doesn't exceed 40% of the ex-works price of the car seat.

A car seat manufacturing plant in South Africa fulfills the origin requirement, as non-originating materials represent no more than 40% of the ex-works price of the car set.

The car seat is used in the manufacturing of cars in South Africa. Through the absorption principle, the car seat is considered as 100% originating in South Africa when assessing the originating status of the car.

The product specific rule for car manufacturing in South Africa also requires a 60 % value added in South Africa. The car seat is considered to be 100 % originating and it is possible to use further 40 % of non-originating materials in the manufacturing of the car. Thus, the absorption principle permits that the car may end up containing non-originating materials of more than 40 % of the ex-works price of the car.

Non–originating materials which, according to the conditions set out in Annex II and Annex II(a) should not be used in the manufacture of a given product, may nevertheless be used, provided that: (a) their total value does not exceed 15 per cent of the ex–works price of the product; (b) any of the percentages given in Annex II and Annex II(a) for the maximum value of non–originating materials are not exceeded through the application of this provision. This provision does not apply to products of Chapters 50 to 63[4].

Article 9 - Insufficient working or processing

Just as there is "sufficient working or processing" there is also "insufficient working or processing" sometimes referred to as "minimal processing" or "minimal operations". Certain processes are considered as having such a minor effect on the finished product that they can never be regarded as conferring originating status, whether carried out individually or in a combination of processes.

Examples:

[4] Product specific rules for textile products (chapter 50 to 63) are set out in annex II

1. *Raw coffee is imported in bulk into Swaziland from a third country. The origin rule for coffee is "manufacture from materials of any heading". In Swaziland it is dusted, sorted and simply split up into different packaging. As neither of these are sufficient operations to confer origin, the coffee retains its third country origin.*

2. *Raw coffee is imported in bulk from a third country into Swaziland, where it is dusted, roasted, ground, sorted and split up into different packaging. As the operations are sufficient to confer origin, the coffee obtains Swazi origin.*

The first example details a combination of minimal operations being carried out on the raw coffee. As has already been stated, such operations whether carried out separately or in a combination do not confer origin. Therefore, the coffee retains its origin.

In the second example the coffee has not only been dusted and split up into different packaging, but also has also been significantly processed. Therefore, although some minimal operations have been carried out, the more substantial processing of roasting and grounding must also be considered and it is that processing which, because it fulfils the rule listed in Annex II, confers to the product Swazi origin.

Article 14 – Principle of territoriality

The principle of territoriality means that the working or processing must be carried out in the territories of the parties. In order to remain competitive, it is not always possible to fulfil this requirement. It may be necessary to do some processing in a country not party to the preferential arrangement on materials exported from the EU or from a SADC EPA, which are subsequently re-imported to the EU or the SADC EPA State.

SADC-EU EPA allows that some working or processing is carried out outside the SADC EPA State or outside the EU of up to a value of 10% of the ex-works price of the finished product. In addition, the processing must be carried out on materials wholly obtained in the EU or in a SADC EPA State or on materials exported from the EU or a SADC EPA State that have undergone processing beyond insufficient operations prior to being exported. The processing shall respect other conditions specified in Article 14.

The total added value outside the EU or outside a SADC EPA State shall consist of all costs arising outside the EU or a SADC EPA State, including the value of the materials incorporated there.

The derogation from the principle of territoriality does not apply to textile products of Chapters 50 to 63 (inclusive) and nor can a product benefit from both this derogation and the general tolerance rule (Article 8(4)) at the same time.

Failure to comply with the specified conditions will result in the returning product being treated as non-originating.

When determining the origin of the final product, working or processing performed outside the territory of the contracting parties is not to be taken into account. However, when calculating the value added, the total added value of the working or processing done outside

the territory of the contracting parties must be taken together with the value of the non-originating materials incorporated in the territory of the other contracting party.

The combined values (the value added outside the territory and the value of the non-originating materials) should not exceed the percentages stated in the relevant list rule.

Example:

Goods: cars
HS headings 8703
Rule: Manufacture in which the value of all the materials used does not exceed 40 % of the ex-works price of the product

Application of Article 13(3) of Protocol 1: Car manufacturing is done in South Africa. After assembling, the car is sent to Botswana (not under cumulation) to add seat belts and leather car seat covers produced in South Africa. After this processing, the car returns to South Africa for finalizing the production.

Explanation: The ex-work price of a car manufactured in South Africa is 10 000 EUR. The value of the non-originating materials used in South Africa in the manufacture of that car amounts to 3 500 EUR. The value added in in Botswana, including the cost of the seat belts and the leather car seat, is 450 EUR (4,5%). The valued added to the car in Botswana does not exceed 10% of the ex-works price of the car. The value of the non-originating materials and the valued added outside South Africa (3 950 EUR) account for 39,5% of the ex-works price of the car. The car qualifies for obtaining South African origin.

Article 15 – Non alteration

The non-alteration rule means that the products declared for release for free circulation in the EU or in a SADC EPA State must be the same products as exported from the country in which they are considered to originate. Those products must not have been altered, transformed in any way or subjected to operations other than those to preserve them in good condition. The rule also allows for storage and splitting of consignments in the territory of third countries of transit.

Under this rule, evidence of compliance with this provision shall be provided only when customs authorities of the importing party have reasons to believe that the goods may have been altered in a country of storage or transit, or that they were not kept under customs supervision. In other words, compliance shall be considered as satisfied unless the customs authorities have reason to believe the contrary.

The evidence of compliance may be given by any documentation which shows that the imported goods left the SADC EPA country in which they are considered to originate and that they are the same goods as left that country.

The evidence could be (the list is not exhaustive):
- a purchase order/contract of a EU importer with a supplier in a SADC EPA State and

- a transport document (bill of lading), showing that the goods were loaded in and transported from a SADC EPA State.

Article 16 – Accounting segregation

Conditions for the use of "accounting segregation" for the management of stocks of materials used in manufacture:

i) Authorisation to use accounting segregation for the management of stocks of materials used in manufacture shall be granted to any manufacturer who submits to the customs authorities a written request to this end and who satisfies all the conditions for the granting of the authorisation.

ii) The applicant must demonstrate a need to use accounting segregation on the grounds of unreasonable costs or impracticability of holding stocks of materials physically separate according to origin.

iii) The originating and non-originating materials must be fungible, meaning of the same kind and commercial quality and possess the same technical and physical characteristics. It must not be possible to distinguish materials one from another for origin purposes once they are incorporated into the finished product.

iv) The use of the system of accounting segregation shall not give rise to more products acquiring originating status than would have been the case had the materials used in the manufacture been physically segregated.

v) The accounting system must:

- maintain a clear distinction between the quantities of originating and non-originating materials acquired, showing the dates on which those materials were placed in stock and, where necessary, the values of those materials;
- show the quantity of:

(a) originating and non-originating materials used and, where necessary, the total value of those materials;

(b) finished products manufactured;

(c) finished products supplied to all customers, identifying separately:

(i) supplies to customers requiring evidence of preferential origin (including sales to customers requiring evidence other than in the form of a proof of origin), and

(ii) supplies to customers not requiring such evidence;

- be capable of demonstrating either at the time of manufacture or at the time of issue of any proof of origin (or other evidence of originating status), that stocks of originating materials were deemed available, according to the accounts, in sufficient quantity to support the declaration of originating status.

vi.a) The stock balance to which reference is made in paragraph 5 final indent shall reflect both originating and non-originating materials entered in the accounts. The stock balance shall be debited for all finished products whether or not those products are supplied with a declaration of preferential originating status.

vi.b) Where products are supplied without a declaration of preferential origin, the stock balance of non-originating materials only may be debited for as long as a balance of such materials is available to support such action. Where this is not the case, the stock balance of

originating materials shall be debited.

vi.c) The time at which the determination of origin is made (i.e. time of manufacture or date of issue of proof of origin or other declaration of origin) shall be agreed between the manufacturer and the customs authorities and be recorded in the authorisation granted by the customs authorities.

vii) At the time of the application to commence using a system of accounting segregation, the customs authorities shall examine the manufacturer's records to determine opening balances of originating and non-originating materials that may be deemed to be held in stock.

viii) The manufacturer must:
- accept full responsibility for the way the authorisation is used and for the consequences of incorrect origin statements or other misuses of the authorisation;
- make available to the custom authorities, when requested to do so, all documents, records and accounts for any relevant period.

ix) The customs authorities shall refuse authorisation to a manufacturer who does not offer all the guarantees that the customs authorities deem necessary for the proper functioning of the accounting segregation system.

x) The customs authorities may withdraw an authorisation at any time. They must do so whenever the manufacturer no longer satisfies the conditions or no longer offers the specified guarantees. In this case the authorities shall invalidate the proofs of origin or other documents justifying origin that have been incorrectly issued.

Comments

Often producers have to source their raw materials from both originating and non-originating sources. An economic operator who applies for an authorisation to use accounting segregation must be able to prove that physical segregation of materials would be either impractical or would involve unreasonable financial costs to him.

The primary condition attached to this method of accounting is that it must be evident that, at any time, the number or the quantity of originating products would be the same if the originating and non-originating materials or products had been physically separated. In other words, the amount of originating products resulting from the use of originating and non-originating materials or products must be the same, no matter the method of segregation used.

It must also be impossible to distinguish the originating and non-originating materials once they have been incorporated in the finished good. The accounting system must be able to maintain a clear distinction between the quantities of originating and non-originating materials acquired and show the dates they were put in stock. It may be necessary to also indicate the values of the materials, both originating and non-originating. It must also be possible to identify the quantities of finished goods manufactured by using the originating and non-originating materials as well as the quantities of the products supplied to those economic operators requiring proof of originating status and to those who do not have such requirements.

The purpose of this Article is to benefit those producers who are not in a position to physically separate originating and non-originating materials as well as to minimise the financial burden placed on manufacturers that physical segregation would incur. However, only economic operators who have been authorised by the customs authorities can make use of accounting segregation and the conditions for granting the authorisation will be laid down by the customs authorities.

However, the customs authorities also have the right to withdraw an authorisation should the manufacturer no longer satisfy the conditions of his authorisation or no longer offers the guarantees specified in it. The customs authorities will also invalidate any proofs of origin incorrectly issued as a result of the incorrect application of accounting segregation.

Article 17 - Shipment of sugar

This Article allows loading sugar of different origins in the same hold of the ship in order to save transport costs. However, only sugar of SADC EPA States origin can claim tariff preferences after being loaded in the same hold with non-originating sugar (from the SADC-EU EPA perspective even sugar of another EPA State is non-originating; in order to enjoy tariff preferences, sugar of other origin which is entitled to preferences, should not be loaded in the same store unless similar provisions with those contained in this Article are present in the FTA for which origin preferences are claimed).

Article 19 – Proof of origin and Article 24 – Conditions for making out an origin declaration

What is the "any other commercial document" on which the text of the origin declaration is made out?

There is no legal definition of what constitutes "any other commercial document", which nonetheless can be considered as a written record of a commercial transaction.

It therefore covers, apart from the invoice itself, different types of documents such as a pro-forma invoice, a shipping document (packing list, delivery note), etc.

The only legal requirement for the invoice or any commercial document to be considered as the basis for an origin declaration is that it shall contain a description of the originating products in sufficient detail to enable their identification. Other products, which may be included in the same invoice or other commercial document, shall be clearly distinguished from the originating products.

An origin declaration can be printed on a separate paper (e.g. a blank paper or a paper with a company letterhead), other than on an invoice or other commercial document, where:

- that invoice or any other commercial document makes a reference to that separate paper, or
- that separate paper makes a reference to the invoice or any other commercial document.

The separate paper can then be seen as integral part of the invoice or other commercial document.

Article 30 – Information procedure for cumulation purposes

Suppliers must provide by means of a declaration, information concerning the status of products with regard to the preferential rules of origin. Supplier's declarations must be used by exporters as evidence in support of applications for the issue of movement certificates EUR.1 or as a basis for making out origin declarations.

The supplier must furnish a separate declaration for each consignment of goods and must include that declaration, for each consignment, on the commercial invoice or on a delivery note or any other commercial document that describes the goods concerned in sufficient detail to enable them to be identified. The supplier may provide the declaration at any time, even after the goods have been delivered/exported.

When a supplier regularly supplies a particular customer with goods whose status in respect of the rules of preferential origin is expected to remain constant for a considerable period of time, he may provide a single declaration to cover subsequent shipments of those goods. This document is called a long-term supplier's declaration and may be issued for a period of up to one year from the date the declaration was issued.

Article 35 – Administrative conditions for products to benefit from this Agreement

Administrative cooperation is the framework for cooperation between the competent authorities of the partner countries, enabling them to verify that the EPA rules of origin are being properly applied. In short, it allows customs administrations to make post-import checks on the authenticity and the accuracy of proofs of origin.

One of the main conditions for the proper implementation of the EPA is to ensure that a functional cooperation exists between the Customs Administrations of the Parties so that the legal framework covering compliance controls for traded goods is applied.

Close cooperation and mutual administrative assistance between the national Customs administrations of the SADC EPA States, as well as between the Customs administrations of the SADC EPA States and those of the States with which the SADC EPA States have concluded Administrative cooperation agreements in order to apply cumulation are also necessary.

The practical cooperation between the responsible authorities should include the following:

a. the establishment of contacts between Customs Authorities – at strategic, management and operational expert level;

b. the transposition of the EPA provisions into operational procedures. For example, the Participants in cumulation will need to agree on a procedure to certify origin of another Party in case of allocation of origin in diagonal/full cumulation of Article 4(5) and (8) when the conditions of Article 9(1) are not fulfilled;

c. Participants in cumulations must provide each other with impressions of the stamps they use to authenticate certificates of origin.

SADC EPA States should put in place and maintain the necessary administrative structures to implement and manage the rules of origin and procedures relating to the EPA, including the arrangements for applying cumulation.

SADC EPA States must be able to carry out verifications of the originating status of products at the request of the customs authorities of EU Member States as well as at the request of the authorities of the countries where SADC EPA States exported materials for cumulation and must also be able to carry out regular checks on exporters at their own initiative.

Ensuring the correct application of customs rules and related provisions of the EPA requires resources to be allocated at central customs administration and as far as operational functions are concerned at regional and local levels, as appropriate.

The customs administration should ensure the existence of an adequate number and structure of staff selected to deal with the implementation of the EPA. Furthermore, a training strategy should be in place, which ensures initial and regular training.

Article 36 – Notification of customs authorities

Trade partners must provide each other with the addresses of the customs authorities responsible for issuing and verifying movement certificates EUR.1 and origin declarations or supplier's declarations, and with specimen impressions of the stamps. The customs authorities of the SADC EPA States shall transmit the above-mentioned information, and its updates, to the Directorate General TAXUD of the European Commission.

Article 40 – Dispute settlement

In a complex system such as this, disputes over interpretation may arise. Disputes over verification procedures between the customs of the importing country and those of the exporting country may be submitted to the Committee for resolution.