Practical Guide

Determination of preferential origin in the European Union

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Warning

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Who is this practical guide for?

This guide is targeted at any person who purchases or sells goods internationally, and who wishes to verify their preferential origin. This guide explains the method and rules to follow to determine the preferential origin of imported goods or goods marketed within the European Union (EU).

Why must one determine preferential origin?

Preferential origin allows to benefit from reduced or removed customs duties on imported goods. These privileges are specified under preferential agreements that the EU maintains with a large number of third countries in free trade agreements (FTA), Economic Partnership Agreements (EPA), or through unilateral tariff concessions such as the Generalized Scheme of Preferences (GSP).

The rules of preferential origin aim to guarantee that removed or reduced customs duties apply only to products originating in the countries or territories that are parties to such agreements. They establish a minimum required level of working or processing that must occur in the exporting country for the finished product to receive preferential treatment in the importing country.

What to do if you have a doubt concerning a preferential origin?

The preferential origin of goods is that of the country in which the goods have been entirely obtained or, when several countries are involved in the manufacturing process, that of the country in which the goods were last substantially worked or transformed.

If there is any doubt on the preferential origin of goods, the operator may request a Binding Origin Information from the Customs and Excise Administration.

Understanding the implications of a preferential origin

The **Preferential Origin (PO) of goods** is determined by the conditions of their manufacture or last substantial transformation or working.

One must distinguish the PO:

- from the **provenance** of the goods, which is a geographical notion and provides information on the physical flow of the goods between several countries (for example the place where an unloading or reloading of the goods occurred).
  - Goods with Swiss provenance do not necessarily originate in Switzerland: they may have been simply stored in Switzerland prior to delivery in the EU

- from **Union Goods status** that allows goods that were released for free circulation to circulate freely within the EU, without however giving the goods the EU origin unless substantial transformation occurred in the EU territory.
  - Goods purchased in the EU do not necessarily originate from the EU: they may have been imported from a third country by the supplier.

- from **non-preferential origin,** to the extent that:
  - it is not used to monitor compliance with commercial policy measures that could involve payment of anti-dumping duties, etc… In this case it would be a matter of non-preferential origin
  - the production of proof of PO is always mandatory, whereas proof of non-preferential origin is only required in certain cases
  - the proof of PO on export is established by the Customs and Excise Administration, whereas proof of non-preferential origin is established by the Luxembourg Chamber of Commerce
  - when two or more countries take part in the production of a product whose origin is to be determined, the rules to follow for determining PO or non-preferential origin are different. Please see below and consult our guide "Determination of non-preferential origin".

It is useful to specify that the same goods may have two different origins.

Take, for example, an **aluminum wheel manufactured in China and imported to Switzerland where it is subject to various services prior to being imported to the EU:**

- the free trade agreement between Switzerland and the EU requires, for Swiss preferential origin, that added-value is generated in Switzerland. Such an **added-value implies that certain operations are performed on the wheel, but these operations, even if they are minimal**, do not constitute "substantial working or processing" in the meaning of non-preferential origin.

- for example, some of the following fees **may allow Swiss preferential origin without changing the non-preferential origin of the goods**: fees for calibrating, assembling, testing, modifying the presentation of goods, fees for bringing up to compliance with EU standards/fees of royalties and licenses, etc.

- The wheel may thus in some conditions obtain **Swiss preferential origin while keeping its Chinese non-preferential origin.**

- the **customs duties will not be due** when it is released for free circulation in the EU, but **anti-dumping duties** will remain payable.

Method of determining a preferential origin (PO)

I. Prior preparation

Prior to determining the PO of a product, one must know:

- the existence of **one or more agreements that could give advantages linked to the preferential origin** of the goods concerned between the EU and the territory of production or destination
  - See the list of agreements on the European Commission website

- the **product's tariff classification**, by determining at least its tariff heading (composed of the first four digits of its customs nomenclature) and, for some products the tariff subheading (first six digits of the customs nomenclature). In fact, not all products are systematically entitled to reduction or removal of customs duties
  - See our guide "Determination of Tariff Classification"

- the **commercial process for obtaining the product**, including the **supply chain** (from the supply of the raw materials up to the last intervener enabling the production of the finished product and the countries involved) and the **price and tariff classification elements** applicable at each stage in the supply chain (prices of various components and their tariff classifications, and ex-factory price to the finished product)

II. Sources of rules of preferential origin

Rules governing EU preferential origin may be found:

- for autonomous preferential regimes
  - for the **Generalised Scheme of Preferences (GSP) and autonomous commercial measures**: in the Union Customs Code and the rules of application (Delegated Regulation/Implementing Regulation)
  - for some African, Pacific and Caribbean countries: in Regulation (EC) no. 2016/1076
  - for the Overseas Countries and Territories: in Decision no. 2013/755/EU of the Council
  - for Kosovo: in EU Regulation 2015/2423.
- for **free-trade agreements**
  - in a protocol, and appendix or a chapter on the rules of origin.

III. Composition of rules of preferential origin

Laws and regulations governing preferential origin rules usually have three parts:

- **general provisions**: these are general rules that specify the method of determining the origin of a product
- **product specific rules**: this is a list of specific rules of origin ("list rules") of all products covered by the harmonised nomenclature system, mainly at the chapter level (two first digits) and a part at the heading level (four first digits)
- **procedures for granting origin**: these govern, at the same time
  - the manner of proving the originating character of a product when preference is requested, by declarations made by exporters or by official certificates, and
  - the procedures allowing the parties to verify the originating character of a product, for example by physical inspections of exporter or producer facilities carried out by the customs administration.

IV. 1st assumption: the supply chain involves one single country

Each agreement specifies a comprehensive list of the products considered "entirely obtained" in the EU or the partner country. Goods entirely obtained in a country acquire the PO of that country.

For example, the Delegated Regulation defines, as part of the GSP, entirely obtained goods as follows:

- plant products or plants harvested in a territory of a party
- minerals extracted in that territory
- live animals or products from slaughtered animals born and raised there
- products derived from animals raised in that territory
- fishes caught in the territorial waters of a party
- products from sea fishing and other products taken from the sea by its ships outside any territorial waters
- products manufactured on factory ships, exclusively from products mentioned in the previous point
- goods manufactured there exclusively from the products mentioned in the previous points
- etc.

It should be noted that fishes caught outside of the territorial waters of a party are only considered entirely obtained when the "nationality" of the ship can be demonstrated, that is, when the ship navigates under the flag of one of the parties, is registered with one of the parties and meets the appropriate criteria of ownership.

V. 2nd assumption: the supply chain involves several countries

If a product incorporates materials imported from a third country, it must be substantially worked and processed in compliance with the specific rules defined in detail in the applicable agreement.

There are three types of rules used in the free trade agreements of the EU to determine the origin of a product in this case:

- the production process involves a **change of tariff classification** between the non-originating materials and the finished product.
  - for example, paper production (harmonised system, chapter 48), from non-originating pulp (chapter 47 of the harmonized system)
- **percentage**: a maximum authorised portion of non-originating materials used to manufacture a product that are imported from a party that is not party to the free trade agreement, expressed
  - as a percentage of the factory price of the product (in general 50% maximum), or
  - the weight in the finished product (for some agricultural products and processed agricultural products), or
- a **specific step or production process** that takes place in the territory of a party. These rules are mainly used in the textile, clothing and chemistry sectors.
  - for example, a chemical reaction for chemical products or fibre spinning for yarns

The general provisions provide additional specifications on the way to determine the origin of a product, for example:

- any working or processing on non-originating materials must go beyond **non-substantial working or processing**. The following is non-substantial processing: packaging, warning labels, logos or operations aiming at keeping a product in good condition or mere assembly. The list of non-substantial processing may vary from one agreement to another
- when a product obtains originating status, it **may be considered as entirely originating** when it is used as a matter or material in any other working
- **non-originating materials may be tolerated representing a specific portion of the value of the finished product**, without causing the finished product to lose its originating character
  - essentially 10% of the ex-factory price of the finished product, 15% for the Generalized Scheme of Preferences and certain economic partnership agreements with the African, Caribbean and Pacific countries.
  - Special tolerances apply to the textile and clothing sector. For agriculture and processed agricultural products, the tolerances can be expressed as a percentage of weight

Free trade agreements with the EU authorise **the accounting segregation of fungible materials with no obligation to maintain a distinct physical stock** of such originating and non-originating materials (for example sugar), on condition that the quantities recognised as being originating products do not exceed those that would be originating if the originating and non-originating materials had been physically segregated.

Direct transport rule

The free exchange agreements previously entered into by the EU require the **direct transport of goods from the originating country** in order to maintain their originating status (for example the EU free-trade agreement with Korea and Central America).

In the most recent free-trade agreements (for example with Canada, Japan and Vietnam, and in the agreement-in-principle with Mexico), **exporters can divide the in-bond lot** while keeping the originating character of a product, on condition that the product is not modified (non-modification rule).

Special attention must be given to compliance with the conditions specified in the applicable agreement.

Provision on prohibition of customs duty drawback

Some free trade agreements entered into by the EU include a **no-drawback provision, or the prohibition of customs duty drawback**. When this provision is applied, non-originating materials that are imported and used in manufacturing of products originating of the EU or partner countries **cannot claim duty drawback or exemption from custom duties** in any form whatsoever.

- parts originating from the United States used in a machine within the EU territory cannot be exempted from customs duties as part of an inward processing arrangement applicable in the EU, when the machine will be delivered in a third territory with which there is a free trade agreement that includes a no-drawback provision.
    - for the machine to benefit from preferential origin on destination, the non-originating parts are required pay customs duties in the EU.

Proof and verification of preferential origin

Proof of origin

When an importer claims preferential tariff treatment for goods, the customs authorities of the country of import need a "proof of origin".

There are two types of proof of EU preferential origin:

- **official certificates issued by the authorities of the exporting country** or by an approved agency (the EUR1 for a certain number of EU free trade agreements), or
- **self-certification by the exporter**:
  - any exporter can create the certificate of origin on an invoice or any other commercial document **for a shipment valued at less than 6,000 euros**
  - For **greater values, the exporter must be "approved" or "registered"** by a Member State of the European Union
  - In some EU free-trade agreements, this self-certification is called a "declaration of origin" or "invoice declaration".

This system applies, for example, in the Pan-Euro-Mediterranean region, in the economic partnership agreements entered into with the African, Caribbean and Pacific countries, and in the current free trade agreements with Chile, Mexico, Central America and Columbia and Ecuador.

Generalisation of self-certification

In recent years, the EU has moved toward a **system based entirely on the principle of self-certification by the exporter**. The agreement with South Korea thus only requires proof of origin by self-certification.

The agreement between the EU and Japan also now allows **importers to self certify the origin of a good**, by recognizing the "importer's knowledge". Likewise, an exporter can establish a declaration of origin for multiple shipments of identical products, which eliminates the need to make a declaration for each shipment.

Verification of origin

The traditional EU verification system relies on administrative cooperation between the customs authorities of the importing and exporting countries as well as visits of exporter/producer's facilities by customs authorities of the exporting country.

Verification of origin is initiated by the customs authority of the importing party, to verify whether an imported product indeed originates in the country of which the PO is claimed.

The system in place assumes that the authorities of the exporting country ultimately determine the PO of a product. The Commission modified this principle in its recent free trade agreements (in particular with Canada), such that the EU customs authorities have the burden of proof to demonstrate that a product is not originating, even when the customs authorities of the exporting party have confirmed the origin of the product. It is thus the authorities of the importing country that make the final decision regarding the determination of origin and any related procedures.

Cumulation of preferential origins

Depending on the specific context and respective interests, some EU trade agreements and autonomous preferential regimes authorise the cumulation of preferential origins, subject to mandatory conditions.

Consequently, the materials originating from another partner country may be considered as originating materials in order to meet the requirements of the rules of origin.

The main forms of cumulation are the following:

- "**bilateral cumulation**", which applies to originating materials between partners of a preferential agreement
  - the originating materials of one party may be used as originating materials by the other party.

- "**full cumulation"**, which applies to non-originating materials that are even more worked or processed in the partner countries
  - for example, if a product is not substantially transformed to obtain originating status in the territory of one of the parties, it may be cumulated with any other processing of the product in the territory of the other party to obtain originating status

In some cases, cumulation may take place in a broader geographical area than that of the two parties:

- "**diagonal cumulation" or "extended cumulation**", which applies to products originating between more than two parties linked by free trade agreements with generally identical rules of origin and a provision on cumulation. Depending on the framework, it requires at least an administrative cooperation agreement between the customs authorities of all concerned partners.
  - it is applied, for example, as part of the Pan-Euro-Mediterranean system (between the European Union, a certain number of Mediterranean countries, the countries of the European Free Trade Association (EFTA), the Faeroe islands, the countries of the Eastern Partnership, Turkey, and the Occidental Balkans). This system is currently being modernised and simplified with respect to the specific rules on the products and the procedures of origin
  - as part of the pan-European framework, diagonal cumulation can only be applied when all the countries participating in the cumulation apply "free trade agreements" (FTA) between themselves and when these free trade agreements set identical rules of origin. These common rules are set out in the **Pan-Euro-Mediterranean Convention on rules of origin**
  - A **possibility for enlarged cumulation** is recognised, for example, in the Generalized Scheme of Preferences (except for agricultural products and processed agricultural products)

- "**regional cumulation"** is a specific type of **diagonal cumulation applicable as part of the Generalized Scheme of Preferences** and is applied to specifically defined groups of beneficiaries.

- It requires at least an **administrative cooperation agreement** between the customs authorities of the concerned partners.
- In order to prevent any distortion in the trade between countries that have different levels of tariff preferences, **some sensitive products are excluded** from regional cumulation.
- The **field of application of regional cumulation is more and more limited** due to the growing number of countries obtaining preferences and thereby losing their right to benefit from the Generalized Scheme of Preferences.

Consulting the preferential origin rules

The rules of origin applicable in the EU free trade agreements are published on the Europa websites. The information provided includes the legal texts, the general explanations of the provisions, and the terminology used, as well as the orienting documents containing detailed specifications on the manner in which the legal provisions should be applied, with some practical examples.

EU economic operators may also consult the database on market access using the ROSA tool to check a rule of origin for a specific product in the EU free trade agreements.

Economic operators who wish to export to the EU can also consult similar information on the EU "Trade Helpdesk" website.