

EXTERNAL

REFERENCE GUIDE

**GUIDE TO UNDERSTANDING PREFERENTIAL
RULES OF ORIGIN**

1 PURPOSE

- It is generally accepted that preferential rules of origin have to a large extent replaced customs duty as a protective measure on imports. With the signing of more free trade agreements this will increasingly be the case.
- In this regard customs officers will increasingly be exposed to the application of preferential rules of origin in the performance of their daily tasks.
- This document **endeavours to** provide a guide to officers to understand the concept of preferential rules of origin as applied within preferential trade arrangements.

2 SCOPE

- This document must be viewed as being an integral part within the total concept of origin administration.
- Customs administer both non-preferential and preferential rules of origin. Non-preferential rules of origin refer to most favoured nation (MFN) trade. Preferential rules of origin refer to trade under free / **preferential trade arrangements** and GSPs.
- The scope of this** document will cover the basic principles applicable to preferential rules of origin in free / **preferential** trade agreements as well as those applicable to Generalised Systems of Preferences (GSPs). Reference will be made to the free / **preferential** trade agreements concluded **by the Republic** with the European Community (EC), between the members of the Southern African Development Community (SADC) **and between the Southern African Customs Union (SACU) and the European Free Trade Association (EFTA)**, the GSPs provided by the European Community, Norway, **Russia, Switzerland and Turkey**, as well as the African Growth and Opportunity Act (AGOA) arrangement with the United States of America (USA). Note must be taken that other agreements are still being negotiated and **some** GSPs have not been implemented as yet. Note should also be taken that the architecture of rules of origin are not the same for all preferential arrangements and that this guide should be read in the context of each arrangement where it may be applicable.
- Non-preferential rules of origin are covered under the WTO GATT agreement and have been enacted in Section 46 of the Customs and Excise Act **and the rules thereto**. These rules are used to determine origin for trade statistics, as well as for anti-dumping, **import restrictions from specific countries** and countervailing duty purposes. In general they also form the basis from which preferential rules are negotiated between countries in bi-lateral trade or multi-lateral trade negotiations.
- In addition to non-preferential and preferential rules of origin, **the Republic** has also been applying adapted bi-lateral rules of origin used for preferential trade in agreements with Zimbabwe and Malawi. Besides being included in the agreements, the origin requirements have also been inserted in the Rules to Section 46.

3 REFERENCES

3.1 LEGISLATION

TYPE OF REFERENCE	REFERENCE
Customs Legislation and Rules:	Customs and Excise Act, Act No. 91 of 1964: Sections 46, 46A, 48(1A) and 49 e.g. Customs and Excise Rules: Rules 46, 46A1, 46A2, 46A3, 46A4, 49A, 49B, 49C and 49D
Other Legislation:	None
Kyoto Convention:	Specific Annex K:- Origin

Other Trade Initiatives	<ul style="list-style-type: none"> • The Southern African Customs Union Agreement • Agreement on Trade, Development and Co-operation between the European Community and its Member States and South Africa • SADC Protocol on Trade • Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU) • Generalised System of Preferences with the European Commission, Switzerland and Norway, Turkey and Russia • African Growth and Opportunity Act
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3.2 CROSS REFERENCES

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
SC-RO-01-01-A1	Flowchart - How to apply preferential rules of origin	All

4 DEFINITIONS AND ACRONYMS

AGOA	African Growth and Opportunity Act
EC	European Commission
EU	European Union
EFTA	European Free Trade Association
GATT	General Agreement on Tariff and Trade
GSP	Generalised System of Preference
MERCOSUR	The Common Market of the South comprising Argentina, Brazil, Paraguay and Uruguay
MFN	Most favoured nation
SACU	Southern African Customs Union
SADC	Southern African Development Community
TDCA	Trade, Development and Cooperation Agreement with the European Commission
USA	United States of America
WTO	World Trade Organisation

5 BACKGROUND

- Since the first democratic elections in 1994, South Africa has been inundated with offers from other countries or groups of countries to enter into negotiations for free / preferential trade agreements to be concluded. The general reasons for concluding such agreements are to cement or expand on existing trade by liberalising customs duties and doing away with other non-tariff barriers to trade. First to be offered to South Africa were the GSPs from the EC, Norway and Switzerland, followed by the signing of free trade agreements with the EC and between the members of SADC. This was followed by the AGOA arrangement offered by the USA to sub-Saharan African countries. Still later the GSPs extended by Russia and Turkey and lately the signing and implementation of the Free Trade Agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU)
- One of the basic obligations parties commit to in preferential arrangements is to assist each other with the compliance with rules of origin by importers and exporters. Export countries would assist importing countries by certifying to the compliance of the origin requirements and assisting with verifications.
- All countries have industries which are considered to be sensitive in terms of developmental and other socio-economic aspects. A good example of such an industry is agriculture which is labour intensive. This is a contentious issue in the World Trade Organisation (WTO) between developed and developing countries. Other examples of such sensitive industries can be found in Schedule 3 to the Act where protection is provided in the form of rebates to customs duties.

- In order to protect such sensitive areas in the economy, countries would impose customs duties and other control measures like import control and anti-dumping duties in the case of low value imports of such goods.
- The greatest risk facing trade within the free trade area is that of non-compliance with the agreed rules of origin. In this regard, parties would agree on a set of rules of origin in order to protect such goods produced and manufactured in the territories of the parties, which are generally known as a free trade area. Parties would also agree to assist each other by placing the obligation on the exporting country to legislate the requirements for compliance with the rules and to certify to the compliance thereof, in the form of issuing certificates of origin **or providing for invoice declaration to be completed by exporters.**

6 GOVERNING LEGISLATION

6.1 CUSTOMS AND EXCISE ACT

6.1.1 Section 46 - Origin of goods

- Section 46 provides for the determination of the origin of goods except that traded under an agreement contemplated in sections 49 and 51. This origin reflects on goods subject to the general rate of customs duty and applies to origin for statistical, anti-dumping, countervailing and import restriction purposes.

6.1.2 Section 46A - Non-reciprocal preferential tariff treatment of goods exported from the Republic

- Section 46A provides for origin requirements which applies to goods exported from the Republic to countries which have extended non-reciprocal preferential treatment to goods of South African origin in the form of Generalised Systems of Preference or other trade arrangements.

6.1.3 Section 48(1A)

- Section 48(1A) provides for the incorporation of the origin provisions in trade agreements in the general notes to Schedule 1.

6.1.4 Section 49

- Section 49 provides for the enactment of international agreements as part of the Customs and Excise Act in respect of agreements in respect of rates of duty lower than general rates of duty and other agreements providing for matters requiring customs administration.

6.2 CUSTOMS AND EXCISE RULES

6.2.1 Rule 46

- The Rules for Section 46 provides for the origin criterion for goods imported in the normal course of trade other than goods imported under preferential trade arrangements

6.2.2 Rule 46A

- The Rules for Section 46A provides for non-reciprocal tariff treatment of goods exported from the Republic on compliance with the provisions of origin and other requirements specified in any enactment in Section 46A(1).

6.2.3 Rule 46A Part 1

- The provisions of Part 1 (Rule 46A1) provides for requirements in respect of textiles and apparel articles imported directly into the territory of the United States of America (USA) from the Republic of South Africa as contemplated in the African Growth and Opportunities Act (AGOA).

6.2.4 Rule 46A Part 2

- The provisions of Part 2 (Rule 46A2) provides for the requirements in respect of the non-reciprocal tariff treatment under the Generalised System of Preferences (GSP) granted to developing countries by the Community, Norway and Switzerland.

6.2.5 Rule 46A Part 3

- The provision of Part 3 (Rule 46A3) is reserved for the requirements in respect of the non-reciprocal tariff treatment under the Generalised System of Preferences (GSP) granted to developing countries by the Russia Federation. The arrangement is at present administered by the Department of Trade and Industry.

6.2.6 Rule 46A Part 4

- The provisions of Part 4 (Rule 46A4) provides for the requirements in respect of the non-reciprocal tariff treatment under the Generalised System of Preferences (GSP) granted to developing countries by the Republic of Turkey.

6.2.7 Rule 49

- The Rules to Section 49 provides for binding origin determinations.

6.2.8 Rule 49A

- The provisions of Rule 49A provides for the origin requirements in respect of Protocol 1 of the Agreement on Trade, Development and Co-operation between the European Community and the Republic of South Africa concerning the definition of the concept of originating products and methods of administrative co-operation.

6.2.9 Rule 49B

- The provisions of Rule 49B provides for the origin requirements in respect of Annex I of the Protocol on Trade to the Treaty of the Southern African Development Community concerning the rules of origin for products to be traded between the member states of the Southern African Development Community.

6.2.10 Rule 49C

- The provision of Rule 49C is reserved for rules pertaining to the Southern African Customs Union Agreement.

6.2.11 Rule 49D

- The provisions of Rule 49D provides for the origin requirements in respect of Annex V of the Free Trade Agreement between the European Free Trade Association and the Southern African Customs Union concerning the definition of the concept of originating products and methods of administrative co-operation.

7 RULES OF ORIGIN

7.1 ORIGIN ADMINISTRATION

7.1.1 Application of rules of origin

- Rules of origin are the criteria used to define where a product was made **for trade purposes**. They are an essential part of international trade rules **and are in line with** policies that “discriminate” between countries **of origin**.
- The origin of a product is used to determine the import duty payable and whether it is subject to an **anti-dumping**, countervailing duty **or any other import restriction**. It is also used for the compilation of trade statistics and for “Made in ...” labels.
- The origin of a product is important because it will determine how it is treated at the border of **the** importing country **as** the origin may impact on the import duty payable and admissibility.
- In addition, rules of origin may also determine whether goods are entitled to the payment of less or no import duties. For this reason, there is a distinction between non-preferential and preferential rules of origin. **Non-preferential** rules are applied for MFN trade purposes (i.e. where goods are subject to the general rates of duty) and preferential rules of origin are applied in the case of free trade **arrangements** and other preferential duty schemes (e.g. agreements where countries have agreed to eliminate or reduce import duties on goods produced in each other’s territories).
- When free trade agreements are negotiated the parties would, inter alia, agree to liberalise trade in goods between each other **on the basis of the elimination of** tariff as well as non-tariff barriers where such measures are in place. From a customs perspective this would provide for the elimination of customs duties on those goods where they are applied **and to replace it with another** protective measure, **i.e.** rules of origin agreed to **between the parties**. This is known as preferential rules of origin.
- This tool is provided for within free trade **arrangements**, normally as an annex thereto, under the heading; “CONCERNING THE DEFINITION OF THE CONCEPT OF “ORIGINATING PRODUCTS” AND METHODS OF CUSTOMS COOPERATION”. Contracting parties are free in this regard to agree to what is in their interest and to put into this annex those measures that will best protect trade between them from outside interferences.
- **Preferential** rules of origin agreed to by the parties is the result of inputs provided by industries and traders through their representative bodies, other government departments or statutory bodies **as well as trade** offs in negotiations.
- The aim of rules of origin is to give recognition to those goods generally available in the territories of the parties, or a party, which are used in manufacturing and processing there, and to place limitations on **importation of these products** from **for third countries**.
- **Globalisation has to a large degree complicated the application of rules of origin due to production of products taking place in a number of countries**. Virtually all manufactured products available in the market today are produced in more than one country. For instance, in the case of clothing (such as shirts or blouses) it is possible that the cotton or fabric used in their manufacture was produced in one country; the textile woven, dyed and printed in another country; and the cloth then cut and stitched in yet another country, before it is exported.
- There are **four** basic **principles** of rules of origin:

- The first is wholly produced. In the case of these rules, products are regarded as originating in a specific territory if all the materials used in producing the product are from that territory **of if the product is wholly obtained**. For example, wheat flour made exclusively from wheat that was grown in a country and milled in that country would be regarded as wholly produced.
- The second is the principle of value added in the manufacturing of a product. If this principle is applied, the product is normally considered to have originated in a specific country if a specified percentage of the product value has been added there.
- The third type of rule determines origin on the basis of a change in tariff classification. By using this system, the origin of a product is determined in the country where, as a result of processing, its tariff classification changes.
- **The fourth is the specific process test / principle, e.g. manufacturing from yarn.**

7.1.2 Free trade arrangements

- In order to understand the concept of preferential rules of origin we need to understand the fundamental principles of free / **preferential trade arrangements**.
- Free / **preferential trade arrangements** provide for a variety of issues of which preferential rules of origin are but one of the elements relating to the trade in goods. Other issues normally covered by free / **preferential trade arrangements** are, inter alia, investment, trade in services, standards to be applied, elimination of non-tariff barriers, market access, customs cooperation, etc.
- Such agreements provide for an open market approach to our preferred trading partners, to the extent that is agreed upon, in particular to the trade in goods and services. It could be that one trading partner could open its market to a greater extent than the other. SACU would for instance provide greater benefits to non- SACU **SADC** countries under the SADC Free Trade Agreement than its exporters would get in those markets. Similarly South African exporters would receive greater benefit under the Free Trade Agreement with the EC than its exporters would receive when entering goods into the South African market.
- Free / **preferential trade arrangements** which are reciprocal in nature, such as the Trade, Development and Cooperation Agreement with the European Commission (TDCA) and the free trade agreement between the members of SADC are provided for in section 49 of the Customs and Excise Act, "Agreements in respect of rates of duty lower than general rates of duty". Corresponding rules are provided for in the Rules **for** the section.

7.1.3 Generalised systems of preference

- It is a **requirement** of the parties in most of the arrangements that they have a governmental authority who would administer the requirements **of the preferential trade arrangement**. The idea behind this is to ensure the government department would legislate on this and that perpetrators of the arrangements are dealt with by law. Most countries are in agreement that their customs administrations are well placed to deal with this, although in some instances the local Chambers of Business are used for this purpose.
- Generalised Systems of Preferences are unilateral concessions granted by developed countries, normally, to developing countries with a view to develop sustainable export orientated industries in those countries. These arrangements are not negotiated between the parties and are non-reciprocal in nature, i.e. the developing country accepts the arrangement as it is and is not required to give any concession for goods originating in the developed country entering its territory.
- Preferential tariff arrangements, such as the GSPs provided by the European Union, Norway, Switzerland, **Russia, Turkey** and the AGOA with the USA. **They** are non-reciprocal in nature **and** are provided for in section 46A of the Customs and Excise Act, "Non-reciprocal preferential tariff treatment of goods exported from the Republic." Corresponding rules are provided for in the Rules to the section.

7.2 STRUCTURE OF RULES OF ORIGIN IN PREFERENTIAL TRADE ARRANGEMENTS

7.2.1 Architecture

- Holistically seen, although it may vary from one free / preferential trade arrangement to the other, the architecture of rules of origin is generally structured under the following headings:
 - General provisions, which comprise of definitions and interpretations;
 - Definition of the concept of origin, which covers the concepts of compliance. Also provided for in this heading could, or will be, annexes giving introductory notes, product specific list rules, certificates of origin and instructions for the completion thereof, invoice declarations and suppliers declarations.
 - Territorial requirements, which deal with the movement of goods between the party countries;
 - Proof of origin, which regulates the issue of certificates of origin and the validity thereof. Also provided for in this heading could, or will be, annexes providing for certificates of origin and instructions for the completion thereof, invoice declarations and suppliers declarations.
 - Arrangements for administrative cooperation, which provide for customs assistance with the verification of origin; and
 - Final arrangements, which provide for the implementation of free / preferential trade arrangements between the parties.
- Each of these provisions (headings) consists of a number of elements that need to be adhered to in order to comply with the requirements for eligibility of preferential rates of customs duty.

7.2.2 General Provisions

- Definitions and interpretations
 - The purpose of these elements is to provide clarity on specific terms or phrases that are used dealing with the concept of rules of origin.

7.2.3 Definition of the concept of origin

- Under this provision elements of the concept of origin may include:
 - Origin criteria which, inter alia, can be broken down into:
 - General requirements, which would prescribe either a general rule or a product specific rule of compliance, e.g. an ad valorem rule of say 35% or manufacturing process on non-originating materials that need to be complied with.
 - Wholly obtained products; which would indicate a list of products which may qualify as being wholly obtained, e.g. products which are generally available in the territories of the parties.
 - Cumulation, which provide for sharing of resources and giving recognition to substantial manufacturing processes conducted in each others territories, e.g. wholly obtained or manufactured products obtained in the territories of the other party are considered as originating when used in the manufacturing process in another party.
 - Value tolerance, would provide for a limit to deviations from local inputs that may be allowed from the agreed usage, e.g. should a rule prohibit the use of a specific raw material obtained from a third country, derogation is made to the rule to the extent indicated.
 - Sufficiently worked or processed, provides for what is considered to be substantial manufacturing or processing, i.e. manufacturing or processing ensuring that substantive value is added to a product in order to qualify as originating; and
 - Not sufficiently worked or processed, provide for what is considered not to be sufficiently worked or processed to qualify for preferential treatment, e.g. minimal processes such as screwdriver jobs, diluting, mixing, etc.

- Unit of qualification, which refers to the quantification of inputs and final products;
- Separation of materials, which would regulate where for purposes of determining origin, products can not be separated, that an accounting system be used;
- Treatment of mixtures, relates to the mixture of non-originating products with originating products;
- Accessories, spare parts and tools, provides for the inclusion of these goods with the goods with which they are imported and invoiced together, and exceptions;
- Packing and packing materials for retail sale, clarify where such products are considered as originating together with the packed product;
- Containers and packing materials for shipment, clarify where such products are considered as originating together with the packed product;
- Sets, provide for instances where sets comprising originating and non-originating goods may be considered as originating;
- Neutral elements, refers to those products with are consumed in the manufacturing process like fuel, water, glue, etc., which are normally considered to be originating and
- Derogations, which would provide for deviations from the agreed rules of origin in the case of specific countries by agreement between the parties.

7.2.4 Territorial requirements

- Principle of territory, would define the customs territory of the parties where the free / preferential trade arrangement would be in force;
- Direct transport, would provide for direct trade between the party countries;
- Transit, provides for the transit of goods through the territory of a third party and the requirements attached to such movements;
- Transshipment provides for the transshipment of goods through the territory of a third party and the requirements attached to such movements; and
- Exhibitions, provides for goods displayed at trade fairs in third countries and sold to an importer in a party country, to qualify for preferential treatment.

7.2.5 Proof of origin

- General requirements, indicate the documentary requirement for the eligibility for preferential treatment, such as a certificate of origin or an invoice declaration, as well as exemptions from such requirements;
- Procedure for the issue of a certificate of origin, indicates how the exporter must apply for the certificate of origin and how the issuing authority should go about to validate and issue a certificate of origin;
- Issue of a certificate retrospectively, describes the circumstances under which a certificate of origin may be issued after the goods have been exported;
- Issue of a duplicate certificate of origin, describes the circumstances under which a duplicate certificate of origin may be issued in the case of the original being lost or destroyed;
- Issue of a certificate of origin on the basis of a proof of origin issued or made out previously, describes the procedure for the issue of a new certificate for goods which have been certified previously;
- Conditions for making out an invoice declaration, describe the circumstances under which invoice declarations may be made by the exporter in stead of applying for a certificate of origin;

- Approved exporters, are exporters to whom permission is granted to make out invoice declarations instead of applying for certificates of origin;
- Operations carried out by third operators, refers to goods originating in the territory of one party being sold by an operator in a third country to an operator in the territory of another party;
- Validity of proof of origin refers to the time period within which a certificate of origin would be valid;
- Submission of proof of origin, indicates that the proof of origin must be submitted to the customs authority in the country of import;
- Documentary evidence refers to the documents that are submitted to the issuing authority in the country of export to substantiate the origin of a product;
- Importation by instalments is provided for in the event of goods being imported over a period of time in more than one consignment **to make use of a single proof of origin**;
- Exemptions from proof of origin, refers to the importation of small **consignments**, goods being imported as passengers luggage and importations by post;
- Suppliers declaration, is a supporting document provided for from the supplier of a product to the exporter that the goods supplied fulfil the requirements of origin and which is submitted with the application for certification as proof of origin;
- Supporting documents would indicate **the necessary** documentary evidence **to** be submitted with applications for certificates of origin;
- Preservation of proof of origin and supporting documents, indicate **the time period** that importers, exporters and the customs authority must keep proper records;
- Discrepancy and formal errors provide for the method changes **needs** to be made to information on certificates of origin; and
- Expressions of currencies provide for the valuation limits placed on exemptions, expressed in a specific currency.

7.2.6 Arrangements for administrative co-operation

- Mutual assistance pertains to cooperation between customs administrations in ensuring compliance with the rules of origin, the issue of certificates of origin and assistance with requests for verification;
- Notifications, refers to customs administrations advising each other of the implementation of the concept of origin and exchanging **of** stamp impressions and signatures of officers **responsible for certification**;
- Verification of proof of origin, covers subsequent requests for verification by the customs administration of the importing country and the customs administration in the exporting country to confirm compliance with origin **requirements**;
- Dispute settlement, provides for the mechanism to employ in the event of the parties disagreeing whether a product is in compliance with the agreed rules of origin;
- Penalties, provides for the implementation of penalty clauses in national legislation to address non-compliance with the agreed rules of origin; and
- Free zones, would subscribe how goods transiting free zones must be handled and in the event of further working or processing being done in a free zone that a new certificate of origin be issued.

7.2.7 Final provisions

- Sub-committee on Customs and Origin Matters. - Most of the agreements will have a provision for either a committee or a sub-committee to attend to customs and origin matters. It will also be the function of such a committee to review the administrative arrangements between the customs administrations and to address problematic areas in the implementation thereof. This committee will normally report to the joint committee on trade and will receive its mandate from them.
- Amendments to the Annex. - Amendments to an annex or protocol are approved by the Committee of Ministers on Trade.
- Implementation of the Annex. - This provision places the obligation on each of the parties to take the necessary steps for the implementation of the administrative arrangements.
- Appendices. - References to the appendices or annexes to the rules of origin will be referred to in the different headings and will normally include the product specific list rules, the introductory notes thereto, a certificate of origin and the application therefore, a suppliers declaration, the format of an invoice declaration and the like. The following appendices would for example be found in the EFTA rules:
 - Appendix I - Introduction notes to the list in Appendix II.
 - Appendix II - List of working or processing required to be carried out on non-originating materials in order that the product manufactured can obtain originating status.
 - Appendix III - Specimen of certificate of origin and the application for a certificate of origin.
- Transitional provisions for goods in transit or storage would provide for those goods which have at the time of implementation of the arrangement not been entered for home consumption in the country of import. Certificates of origin may be issued with retrospective effect provided that the agreed rules of origin have been complied with.
- Regulations. - The SADC Protocol on Trade provides for the promulgation of regulations to give effect to the implementation thereof.

7.3 IMPLEMENTATION OF PREFERENTIAL RULES OF ORIGIN

7.3.1 Implementation strategy

- The strategy applied for the implementation of preferential rules of origin is to provide for enabling provisions in either sections 46A or 49 of the Customs and Excise Act for GSPs and free / preferential trade arrangements respectively. These provisions provide the basis for making Rules which in turn provide the working instructions and requirements to importers, exporters, agents and customs officers.
- Rules are promulgated in respect of each preferential arrangement, catering for the specific requirements of each such arrangement. As stated, the architecture of the rules of origin may differ for each such arrangement. Some arrangements may exclude certain elements while others have stricter elements to comply with, depending on the level of protection agreed to. Documents prescribed may also differ from one arrangement to the other.
- By providing the detailed requirements for each of the arrangements in legislation, a high level of certainty is provided to traders. This is similar to the provisions of the Customs and Excise Act relating to clearance of goods, which is self regulatory by nature, i.e. a clearance document is presented to Customs and a declaration is made declaring the correctness thereof. When checking the declarations made, be that on importation or a request for certification at the time of export, the customs officer may

determine based on the information provided whether further documents should be called for, or to have the goods and or process of manufacture verified at the manufacturer's premises, or to request further verification from the export country.

- This strategy places the legal obligation on the importer and the exporter to comply with the requirements of preferential arrangements and exposes them to the penal provisions of the Customs and Excise Act in case of non-compliance.
- With the administration of preferential rules of origin the customs authority in the country of export accepts the responsibility on behalf of the importing country to vouch for the correctness of the origin of a product that is being traded. It is thus of importance that the customs administration take great care with the issuing of certificates of origin and that trade covered by the arrangement be monitored on a continuous basis.
- Customs administrations also have the **responsibility** to assist each other with origin verification and to keep each other informed of any information that effects the granting of preferences.

7.3.2 What a Customs Officer should know

- In order to apply rules of origin effectively it would be required of **a** customs officer to have a fair knowledge of customs in the following areas;
 - Tariff classification - to apply change in a tariff heading (CTH) rule and general classification rules;
 - Valuation - to determine the import or export value when applying the value added rule;
 - Basic calculation skills - to calculate whether a product is in compliance with the value added criteria; and
 - A good knowledge of customs procedures, especially pertaining to the movement of goods.
- It would also be incumbent upon the **customs officer / official** to avail him / her of the content of preferential arrangements and of any legislation published pertaining to any specific arrangements.

7.3.3 How to apply rules of origin

- **Please refer to the flowchart provided in Annexure SC-RO-01-01-A1.**
- An exporter **needs to** make application to the customs administration and declare the origin of a product. In the application the exporter would declare how the product is in compliance with the origin criteria of the arrangement and include documentary evidence to substantiate the declaration.
- The exporter can either declare that the product is wholly obtained, or is in compliance with a general value added rule, or complies with a product specific list rule.
- Should the exporter not be the manufacturer or producer of a product, such documentary evidence will include a declaration from the supplier, **suppliers' declaration**, declaring the origin and the compliance with the rules of origin for the product.
- **When an** exporter **declares a** product to be wholly obtained the **customs officer / official** must consult the list, which is provided for in the arrangement, of which products may be considered as wholly obtained.
- When considering a product according to a value added rule it is important to identify the method of calculation which may be provided for. It may be that a constructive method be prescribed in which case the local inputs will be expressed as a percentage of either the cost or the ex-factory price of the product, or it could be a deductive method in which case the customs value of the imported content will be subtracted and the balance would thus be considered as local inputs.

- Having determined the above, the **customs officer / official** must **then** apply all elements of the concept of originating products, such as value tolerance, cumulation, whether the product is sufficiently worked or processed, etc.
- The next step will be to determine whether the product needs to comply alternatively with a product specific list rule, which would regulate the manufacturing or processing that non-originating materials need to undergo in order to confer originating status. Before considering the product specific list rule, the certification officer must avail him / her of the introductory notes accompanying such list rules which may exclude or limit the use of certain materials.
- The officer will now consider the direct transport rule which would require that trade take place directly between the parties to the arrangement without third country interferences. A normal exception to this rule would be where goods would have to transit the territory of another party.
- Should the **customs officer / official** still be uncertain whether the goods are of originating status, verification may be called for at the manufacturer's premises or additional documentary evidence may be called for.
- Having considered the aforementioned, the certification officer would be in a position to determine whether the application for certification may be approved.
- One should always keep a holistic approach in mind when applying rules of origin, i.e. it needs to be applied in total and not selectively, e.g. a product may comply with the list rule prescribed, but may be disqualified on the strength of the direct transport rule not being adhered to.

7.4 TRADE ARRANGEMENTS ADMINISTRED BY SARS CUSTOMS

7.4.1 Southern African Customs Union (SACU)

- The Republic of South Africa is part of the Southern African Customs Union together with the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Kingdom of Swaziland.
- The SACU Agreement 2002 was implemented in July 2004 and replaced the SACU Agreement that was signed in 1969.
- Central to the Customs Union is a common external customs tariff and the sharing of a customs revenue pool, which allow for the free movement of goods within the common customs area.

7.4.2 Bi-lateral Agreements

- Trade Agreement between the Governments of the Republic of South Africa and Southern Rhodesia (Zimbabwe) –
 - Goods specified in Annexure A produced in the country of one party shall only be imported under a declaration of origin (DA59) (import license) and be admitted at the specified rate of customs duty.
 - Goods specified in Annexure B produced in Zimbabwe, shall be admitted into the Republic at the rate of customs duty specified for such goods.
- Trade Agreement between the Government of the Republic of South Africa and the Government of the Republic of Malawi –
 - Goods of Malawian origin enumerated in Part 1 of Annexure A to the Agreement, shall be imported into the RSA under the authority of an import permit issued by the Director-General: Agriculture, of which the quantities are controlled.
 - Goods of Malawian origin enumerated in Part 2 of Annexure A to the Agreement, shall be imported into the RSA under the authority of an import permit issued by the Director-General: Trade and Industry.

7.4.3 Preferential dispensations for goods entering South Africa

- Goods produced or manufactured in the Peoples Republic of Mozambique (Rebate item 412.25)
- This provision allow for the import of originating goods from Mozambique to be imported at either 3% or free of customs duty, subject to the presentation of a certificate of origin issued by the Mozambique Department of Trade and Industry

7.4.4 Free trade agreements

- TDCA - Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part. Implemented date: 1 January 2000.
 - The EU Member States consist of the following countries;
 - The Republic of Austria
 - The Kingdom of Belgium
 - The Czech Republic (New)
 - The Republic of Estonia (New)
 - The Republic of Cyprus (New)
 - The Kingdom of Denmark
 - The Federal Republic of Germany
 - The Hellenic Republic (Greece)
 - The Republic of Hungary (New)
 - The French Republic
 - Ireland
 - The Italian Republic
 - The Republic of Latvia (New)
 - The Republic of Lithuania (New)
 - The Grand Duchy of Luxembourg
 - The Republic of Malta (New)
 - The Kingdom of the Netherlands
 - The Republic of Poland (New)
 - The Portuguese Republic
 - The Republic of Finland
 - The Slovak Republic (New)
 - The Republic of Slovenia (New)
 - The Kingdom of Spain
 - The Republic of Sweden
 - The United Kingdom of Great Britain and Northern Ireland
 - As the title of the agreement indicates, the TDCA is a comprehensive agreement which covers, inter alia, preferential trade in both directions. The agreement is asymmetrical in favour of South Africa and covers, with the exception of a small number of products, the spectrum of the harmonized tariff.
 - South African exporters thus gain access to the EU market at preferential rates, making their product cheaper comparative to countries that do not have such an arrangement with this trading bloc. In terms of the arrangement exporters have to apply for certificate of origin which are verified and if in compliance are certified by Customs. In addition both parties allow each other preferential quotas on certain specific products.
 - Note must be taken that the inclusion of the 10 new Member States became effective as from 1 May 2004. Bulgaria and Romania became members of the EU on 1 January 2008 and will become part of the TDCA as soon as the Additional Protocol for their inclusion have been ratified, published and implemented.
- Treaty of the Southern African Development Community

SADC Protocol on Trade
Implemented 1 September 2000

- Member Countries

- The Peoples Republic of Angola
- The Republic of Botswana
- The Democratic Republic of the Congo
- The Kingdom of Lesotho
- The Republic of Madagascar
- The Republic of Malawi
- The Republic of Mauritius
- The Republic of Mozambique
- The Republic of Namibia
- The Kingdom of Swaziland
- The Republic of South Africa
- The United Republic of Tanzania
- The Republic of Zambia
- The Republic of Zimbabwe

- The SADC Protocol on Trade which forms the basis for trade liberalisation in the region include annexes on the concept of origin, customs cooperation, transit and trade facilitation. The SACU member countries form one party to the agreement which is asymmetrical in favour of the non-SACU SADC member countries and covers, with the exception of a small number of products, the spectrum of the harmonized tariff. In addition SACU extends duty free quotas on clothing, textiles and sugar to specific non-SACU member countries.
- The Republic of the Seychelles has applied for readmission to the SADC Protocol on Trade which will be considered at the 2008 Summit.

- Free Trade Agreement between the Southern African Customs Union (SACU) and the European Free Trade Association (EFTA)
Implemented 1 May 2008

- EFTA Member countries

- The Republic of Iceland
- The Principality of Lichtenstein
- The Kingdom of Norway
- The Swiss Confederation

- As the title of the agreement indicates, the arrangement is a comprehensive agreement which covers, inter alia, preferential trade in both directions. The agreement is asymmetrical in favour of SACU and covers, with the exception of a small number of products, the spectrum of the harmonized tariff.
- SACU exporters thus gain access to the EFTA market at preferential rates, making their product cheaper comparative to countries that do not have such an arrangement with this trading bloc. In terms of the arrangement exporters have to apply for certificate of origin which are verified and if in compliance are certified by Customs. In addition both parties allow each other preferential quotas on certain specific products.

7.4.5 Preferential Trade Agreements

- The Southern African Customs Union is at present negotiating preferential trade agreements with the Peoples Republic of China, the Republic of India and Mercosur, Such agreements will only provide for preferences on a number of lines to be agreed between the parties.

7.4.6 Generalized System of Preferences (GSPs)

- South Africa has at present a number of GSPs operational in terms of which exporters and manufacturers stand to benefit. The GSPs can be divided into two categories, those administered by Chamber of Commerce, e.g. Japan, Canada, etc. and those administered by SARS Customs which are the following;
- African Growth and Opportunity Act (AGOA)
 - This allows for no-reciprocal preferential tariff treatment of textile and apparel articles imported directly into the territory of the United States of America from the Republic
 - Under AGOA, both exporters and manufacturers have to register with SARS Customs under this arrangement. In addition export shipments must be accompanied by a certificate of origin and a visa. Both the visa and the certificate can be obtained on application at the nearest SARS Customs office. Whereas the certificate of origin verifies the originating status of the goods, the visa will authorise the export under AGOA.
- Generalised System of Preference of the European Community
 - This allows for no-reciprocal preferential tariff treatment on a number of products granted to developing countries by the European Community. This dispensation is applied parallel to the TDCA and exporters may make use of whichever of the two is more beneficial.
- Generalised System of Preference of Norway
 - This allows for no-reciprocal preferential tariff treatment on a number of products granted to developing countries by the Kingdom of Norway.
 - Although Norway have indicated that once they have entered into a free trade agreement with SACU that they will maintain the GSP, it will be renewed on a yearly basis.
- Generalised System of the Swiss Federation
 - This arrangement allows for no-reciprocal preferential tariff treatment on a number of products granted to developing countries by the Swiss Confederation. Switzerland has indicated that the GSP will be phased out once a free trade agreement between EFTA and SACU is implemented.
- Generalised Systems of Preference of the Republic of Turkey
 - This arrangement allows for no-reciprocal preferential tariff treatment on a number of products granted to developing countries by the Republic of Turkey
- Generalised Systems of Preference of the Russia Federation
 - SARS is in the process of making arrangements for the take over the administration of the Generalised Systems of Preference granted by the Russian Federation to South African. This dispensation is currently administered by the Department of Trade and Industry in South Africa.
 - This arrangement allows for no-reciprocal preferential tariff treatment on a number of products granted to developing countries by the Russian Federation

8 QUALITY RECORDS

- The following Quality Records shall be generated and managed in accordance with QMS-15 – Record Control Procedures.

Number	Title
EUR1	Application for a Movement certificate EUR1 and Movement certificate EUR1
FORM A	Generalised System of Preferences Certificate of origin
No number	Invoice declarations
No number	SADC Certificate of Origin

9 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Head: Customs Operations Unit
Policy Owner:	Head: Policy and Procedures
Author:	C.C. van Rensburg
Detail of change from previous revision:	Total review of content of reference guide, change in format for updated template, inserting references to legislation and inserting list of trade arrangements administered by SARS Customs.
Template number and revision	POL-TM-07 - Rev 3