

**CUSTOMS**

**EXTERNAL POLICY**

**ADMINISTRATION OF TRADE**  
**AGREEMENTS**

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## 1 SUMMARY OF MAIN POINTS

- a) Rules of origin are used to protect the local market by:
  - i) Enforcing non-preferential rules of origin;
  - ii) Facilitating trade between countries when entering into preferential trade agreements; and
  - iii) Imposing export and import quotas.
- b) The trade agreements have origin rules that must be complied with before a client can claim a preferential rate of duty. The rules of origin for each trade agreement differ, however the basic principles remains the same and must be used by any person determining the country of origin.
- c) Importers and exporters must register for a specific trade arrangement for which certification is required with Customs as described in SC-CF-19 before any of the origin benefits can be applied.
- d) Leveraged Legal Products (Tax, Customs & Excise): Rules of Origin and Trade Agreements, Head Office (ROO) may in writing determine the country of origin on exported goods. The export must apply on SC-RO-02-A01 for an origin determination.
- e) The client must produce proof of origin in the form of a certificate of origin to Customs for processing and/or verification, if requested. In the case of AGOA the proof of origin is a visa.
- f) The exporter must apply on SC-RO-02-A02 for blank export certificates of origin. The Rules to the specific trade agreement provide detailed information on the completion of the certificate of origin.
- g) Some trade agreements provides the exporter to submit an origin declaration instead of a certificate of origin. The exporter must apply to be an Approved Exporter as described in SC-CF-19. An origin declaration must be given by the exporter on an invoice which describes the products concerned in sufficient detail to enable them to be identified.
- h) On reasonable doubt Customs may allow goods to be released conditionally, pending the outcome of a verification.

## 2 POLICY

### 2.1 Non-preferential and preferential trade agreements

- a) South Africa applies a general duty rate to goods imported. To protect our local markets non-preferential rules of origin are enforced which is covered under the WTO GATT agreement and have been enacted in Section 46. The rules of origin is used to determine origin for:
  - i) Most-Favoured-Nation treatment;
  - ii) Anti-dumping duties;
  - iii) Safeguard measures;
  - iv) Origin marking requirements;
  - v) Trade statistics;
  - vi) Import and export restrictions from specific countries (quotas); and
  - vii) Countervailing duties.
- b) South Africa has identified certain countries with whom they want to trade in specific goods. To facilitate trade South Africa enters into trade agreements and GSPs with these countries.
- c) Every trade agreement lists the goods for which a preferential rate will apply. Determining the tariff classification of goods are explained in SC-CR-A-09.
- d) Each trade agreement has origin rules that must be complied with when determining the country of origin. The various preferential trade agreements to which South Africa is a party can be found in Schedule 10 of the Act. More detailed requirements for each trade agreement can be found in the Rules to Sections 46A and 49. These are further explained in paragraph 2.2 below.

- e) In order to qualify for preferential benefits the client must register with Customs under the specific trade agreement as stipulated in SC-CF-19.

## 2.2 Determination of country of origin

- a) The rules of origin for each trade agreement as documented in the Rules to Section 49 may differ but the origin basic principles remains the same and must be used by any person determining the country of origin.
- b) If a single country is involved in obtaining or producing a product the "wholly obtained or produced" principle must be applied.
- i) Products are regarded as originating in a specific country if:
- A) All the materials used in producing the product are from that country; or
- B) The product is obtained from that country.
- ii) When an exporter declares a product to be wholly obtained the words must be inserted on the certificate of origin. When processing the certificate of origin for certification the Customs Officer must consult the list, which is provided for in the agreement, of which products may be considered as wholly obtained.
- c) In the case of goods whose production involved materials from more than one (1) country origin is determined by where the goods are substantially (sufficient) transformed. The country where the manufacturing or processing has been carried out, which gave the goods its essential character, will be the country of origin. Any of the following basic principles may be used to determine where the essential character was obtained:
- i) Change of tariff classification principle:
- A) This principle determines the origin on the basis of a change in tariff classification. To determine the tariff classification of goods refer to SC-CR-A-09.
- B) By using this principle the origin of a product is determined in the country where all the non-originating materials used, as a result of processing, change its tariff classification.
- ii) The 'value added' (percentage rule) principle:
- A) The value of manufacturing or processing carried out in each country is calculated.
- B) Regardless of a change in its classification the goods are considered substantially transformed when the value added to goods increases up to a specified level.
- C) The value added is expressed by an ad valorem percentage. The percentage is calculated on the ex-works price as clarified in paragraph (d) below and can either be a:
- I) Maximum allowance for non-originating materials; or
- II) Minimum requirement of domestic content.
- D) Where the value added in different countries give the product equal percentages the last country in the production will be the country of origin.
- iii) Specific manufacturing or processing operations principle:
- A) This principle is used in the case of goods produced or manufactured using non-originating materials.
- B) Regardless of a change in its tariff classification goods are considered substantially transformed when they have undergone a specific manufacturing or processing operation.
- C) In order for the specific manufacturing or processing operation to be relevant in determining origin the facts, the nature of the goods and the complete manufacturing process must be considered in each case.
- D) This manufacturing or processing operation must be precisely specified and set out in the supporting documents.
- d) When determining the ex-works price for the 'value added' principle, the following must be:
- i) Included:
- A) The cost of materials produced and labour performed in the territory in question, if:
- I) The cost to the manufacturer of materials wholly produced or manufactured is used directly in the manufacturing of the goods; and
- II) The cost of labour is directly employed in the manufacturing of the goods.
- B) The following production cost of any goods expended in the manufacturing of the goods, irrespective of the territory:
- I) The cost to the manufacturer of all materials;

- II) Manufacturing wages and salaries;
      - III) Direct manufacturing expenses;
      - IV) Overhead factory expenses; and
      - V) Cost of inside containers.
    - C) Any other cost or expense specifically mentioned in the trade agreement as an addition to the ex-works price.
  - ii) Excluded: charges incurred subsequent to the completion of the manufactured goods, namely:
    - A) Outside package (including zinc linings, tarred paper, etc., in which the goods are ordinarily exported from the territory) and expenses in connection with the packing of goods therein;
    - B) Manufacturer's or exporter's profit or the profit or remuneration of any trader, broker or other person dealing with the article in its finished condition;
    - C) Royalties;
    - D) Carriage, insurance, etc., from the place of production or manufacture in the territory to the port of shipment or other place of final despatch; and
    - E) Any other charges incurred subsequent to the completion of the manufacture of the goods.
- e) Both Customs and the exporter, manufacturer or producer have a responsibility to initiate an origin determination when necessary in order to ensure correct payment of duties:
- i) Exporters, manufacturers or producer may apply for an origin determination (determination) when they need assistance with determining the country of origin. The determination can be requested on intended exportations or where Customs has stopped or detained the goods. This determination will be valid for three (3) years from the date of issue according to Section 49(8)(f).
  - ii) Whether initiated by the client or Customs, the client must submit:
    - A) A writing request [Section 49(8)(b)] on an "Application for Determination or Verification of Country of Origin" (SC-RO-02-A01) to [rulesoforigin@sars.gov.za](mailto:rulesoforigin@sars.gov.za) via email with the subject title "For the determination of the country of origin".
    - B) The supporting documents as listed on SC-RO-02-A01, paragraph 3.
- f) The SC-RO-02-A01 must be completed in detail. The following information must be inserted or attached:
- i) In paragraph 2.1 of SC-RO-02-A01 the exporter's information must be inserted. This includes the:
    - A) Name of the exporter's business and must correspond with the name reflected on the SARS Customs Registration and Licensing Database;
    - B) Customs client number allocated to the applicant;
    - C) Ten-digit (10) VAT Registration Number allocated by SARS to the exporter, if registered;
    - D) Postal address, for example Private Bag X112, Pretoria, 0001;
    - E) Physical street address of the exporter, for example 561 Ella Street, Pretoria; and
    - F) Name of a person (contact person) with whom Customs can liaise to obtain information regarding the transaction under review. The contact person's:
      - I) Designation within the exporter's business;
      - II) E-mail address; and
      - III) Contact numbers, the cell phone and/or land line, if applicable.
  - ii) In paragraphs 2.2 and 2.3 of SC-RO-02-A01 the same information as listed in paragraph (i) for the exporter must be added for the manufacturer and the clearing agent, if applicable.
  - iii) If the goods exported were manufactured using goods imported the following information must be supplied in paragraph 2.4 of SC-RO-02-A01:
    - A) Identification or description stating exactly what was imported in this field, for example Serial number/Product identification number, 1,25m x 1m Wooden Dog House, Stained.
    - B) The tariff heading used at the time of clearance. If the tariff classification is in dispute a note must be made to this effect in the "other" field.
    - C) Literature or a catalogue which illustrates where this will assist in determining the country of origin.
      - I) If literature is not available, a sketch or drawing may be submitted, if there is any doubt as to the exact nature of the article for which an origin determination is required.
      - II) Literature could be retained in ROO for record purposes.
    - D) Any other information to help with the identification of the product must be noted as well as elaborated on in this field.

- iv) The name of the specific trade agreement for which the determination of origin is applied for must be inserted in in paragraph 2.5 of SC-RO-02-A01. Only one (1) trade agreement is allowed per determination request.
- v) Each question listed in paragraph 2.6 of SC-RO-02-A01 must be answered by the exporter or clearing agent in detail. Separate sheets may be used if more space is required. Annex numbers must be inserted in the space provided for cross-reference purposes.
  - A) All the raw material used in the manufacturing of the final export product, local and imported, must be listed;
  - B) The country where the raw material were obtained or imported from must be indicated next to each listed raw material; and
  - C) The percentage (%) value of manufacturing or processing carried out in each country of the final product exported must be calculated and indicated next to each raw material.
- vi) The supporting documents mentioned in paragraph 3 of SC-RO-02-A01 must be clearly marked and forwarded with SC-RO-02-A01 to ROO. If the listed documentation is omitted or cannot be obtained an explanation must be supplied.
- vii) The declaration in paragraph 4 of SC-RO-02-A01 must be completed. Under no circumstances will the application be accepted or entertained if the declaration is not signed.
  - A) The declaration must be signed by the exporter or any person representing the exporter. The person representing the exporter must:
    - I) Reside or have a place of business in South Africa;
    - II) Be knowledgeable about the business; and
    - III) Have access to the information needed to answer the questions on the form.
  - B) Where the form is completed for a company, the person signing can be a responsible representative of the company or business, for example a director, owner, manager, secretary or clearing agent.
  - C) One (1) of the above-named persons may authorise an employee, in writing, to sign on behalf of the company or business. A copy of this authorisation must be forwarded with SC-RO-02-A01.
  - D) The person signing the declaration is responsible for the accuracy and completeness of the facts given on the form.
  - E) The following information of the person completing and signing the application must be provided:
    - I) The full name and not only initials; and
    - II) The designation, in relation to the company or business he/she represents.
  - F) The date on which SC-RO-02-A01 is completed and the declaration is made by the applicant must be inserted.
  - G) The person completing this declaration must submit proof that he/she is working for the exporter's business with the following:
    - I) An identity document; and
    - II) A letter from the exporter either confirming employment or authorisation of a clearing agent, with the information as mentioned in the Rules.
- g) During the inspection the client may be requested to submit additional information to assist in the determination of the country of origin, for example the client may be:
  - i) Requested to complete the Origin Audit Questionnaire (SC-RO-01-A03) and to return the completed document to ROO within seven (7) working days.
    - A) The questions on the Origin Audit Questionnaire (SC-RO-01-A03) will differ from case to case as only the questions relevant to the product or manufacturing process under review will be asked.
    - B) The answers supplied on the Origin Audit Questionnaire (SC-RO-01-A03) must be supported with documentary evidence.
    - C) The supporting documents must be marked for ease of reference.
  - ii) Requested to submit more information or sample(s). If a sample is requested reference can be made to SC-CF-49 for the process on drawing and submitting the samples to Customs.
  - iii) Informed that a physical inspection is to be conducted for verification purposes.
- h) The outcome of the determination will be communicated in writing to the client. The letter will be forwarded to the contact person's email address provided in SC-RO-02-A01.

- i) A determination of origin:
  - i) Will be binding in terms of Section 49(8)(e) only in respect of:
    - A) The determination of the origin of goods for the purpose of the agreement concerned; and
    - B) Goods which are entered as required in terms of Section 38(1) after the date on which such a determination was issued by Customs.
  - ii) Will be annulled by Customs if after due enquiry it is found that the determination was issued based on incorrect or incomplete information [Section 49(8)(c)]. The annulment will be communicated in writing.
  - iii) May be amended or withdrawn by Customs and a new determination made in terms of Section 49(8)(g). The new determination is effective from one (1) of the following:
    - A) The date of first entry of the goods in question;
    - B) The date of the judgement;
    - C) The date of the notice in the Government Gazette;
    - D) The date of the first determination;
    - E) The date of the new determination; or
    - F) The date of the amendment from the old to the new determination.
  - iv) Is deemed to be correct but subject to appeal to the High Court. Therefore, any amount due as a result of such a determination remains payable for as long as such a determination remains in force [Section 49(7)(b)].
- j) After establishing that the goods qualify for a preferential duty rate the client must obtain either:
  - i) A certificate of origin as elaborated in paragraph 2.3; or
  - ii) Apply for Approved Exporter status. For further information on the registration of an Approved Exporter refer to SC-CF-19.

## 2.3 Certificate of origin

- a) Proof of origin in the form of a certificate of origin:
  - i) Is available from Customs on request as provided for in Rule 200.03.
  - ii) Is generally prepared and completed by the exporter or the manufacturer; and
  - iii) Contains information regarding the product(s), its destination, and the country of export.
- b) Some trade agreements allow goods to be admitted as originating products without requiring the submission of proof of origin and the client must consult the Rules to confirm whether the trade agreement allows for exemptions. These exemptions may be with regards to:
  - i) Small packages that is occasionally send not for purposes of trade, from a private person to a private person or where goods form part of a traveller's personal baggage for example, traveller baggage or gifts; and
  - ii) Where the value of the goods adhere to specific requirements.
  - iii) The following additional requirements apply to private postal imports:
    - A) The goods must have been sent directly by one (1) private individual to another from the country qualifying for preferential treatment; and
    - B) That the sender declares in writing that the origin requirements have been satisfied.
- c) If the goods are not exempted the exporter or his/her authorised clearing agent applies for blank certificates by completing the "Application for Blank Export Certificates of Origin" (SC-RO-02-A02). The fields on SC-RO-02-A02 must be completed as follows:
  - i) The alphabetical Branch Office code allocated to the Customs Branch Office at which SC-RO-02-A02 is presented for processing must be inserted in paragraph 1.1 of SC-RO-02-A02.
    - A) The exporter must present SC-RO-02-A02 at the following Customs Branch Office, for the application of:
      - I) **New** certificates, the Customs Branch Office nearest to the exporter's, manufacturer's or producer's area of business;
      - II) A **retrospective** certificate, the Customs Branch Office where the goods for which a certificate is applied for were exported; or
      - III) A **duplicate or replacement** certificate the Customs Branch Office where the original certificate was issued.



- B) For a list of the allocated alphabetical district office codes refer to SC-CF-04-A01.
  - C) The Customs Branch Offices that are allocated to process export certificates of origin are listed in the Schedule to the Rules 200.03(g).
- ii) The type of blank export certificates must be identified in paragraph 1.2 of SC-RO-02-A02 namely new, retrospective or the re-issuing of a duplicate or replacement certificate. Only one (1) type of certificate per application is allowed.
- A) Paragraph 1.2.1 of SC-RO-02-A02 - New blank export certificates of origin:
    - I) The number of **new** blank export certificates of origin required for the indicated time period must be inserted. A maximum of fifty (50) blank export certificates of origin or the Operations Manager: Client Interface may use his/her discretion and increase this number where the client has proven that they require more.
    - II) The number of certificates requested must be justified.
    - III) The time period for which the estimated number of certificates is issued must be inserted.
  - B) Paragraph 1.2.2 of SC-RO-02-A02 – Duplicate or replacement export certificates of origin:
    - I) In the event of theft, loss or destruction of a certificate of origin, the exporter may apply for a duplicate or replacement.
    - II) The duplicate or replacement will be made out on the information of the export documentation in possession of Customs at the place where the goods were entered for export out of South Africa.
    - III) Only one (1) duplicate certificate will be issued per SC-RO-02-A02.
    - IV) The reason for the duplication or replacement request must be supplied.
    - V) The original certificate number and date must be inserted on SC-RO-02-A02 to enable Customs to cancel the original certificate on the SARS system before the duplicate or replacement certificate is issued.
  - C) Paragraph 1.2.2 of SC-RO-02-A02 - Retrospective export certificates of origin:
    - I) If the certificate of origin was not issued at the time of exportation due to exceptional circumstances the client can apply a retrospective certificate.
    - II) A retrospective certificate will only be issued after the goods have been exported.
    - III) Only one (1) retrospective certificate will be issued per SC-RO-02-A02.
- iii) The name of the specific trade agreement for which the export certificate of origin is requested must be inserted in paragraph 1.3 of SC-RO-02-A02. Only one (1) trade agreement is allowed per application.
- iv) All the goods/product descriptions and tariff headings for which a certificate is to be issued must be listed in paragraph 1.4 of SC-RO-02-A02. Separate sheets may be used if more space is required. Annex numbers must then be inserted in the space provided for cross-reference purposes.
- A) Only the first four (4) digits of the tariff heading of the goods exported must be inserted.
  - B) One (1) certificate of origin is required for each **tariff chapter** (first two (2) digits of the tariff heading) for example goods classified under TH8502, TH8510, TH8515 will be grouped on one (1) certificate to minimise certificate volumes and facilitate trade.
  - C) The tariff description of the goods exported must be inserted as stated in the Harmonised System.
  - D) The goods listed in paragraph 1.5 of SC-RO-02-A02 must be manufactured or produced in South Africa and must be listed on the trade agreement. If in doubt an origin determination must be applied for as mentioned in paragraph 2.2 of this document.
- v) The SC-RO-02-A02 must be supported by the following minimum supporting documents (paragraph 1.5 of SC-RO-02-A02), but are not limited to:
- A) New or retrospective export certificate of origin:
    - I) Proof of origin - Proof that the goods comply with the provisions of origin of the relevant trade agreement. The exporter needs to declare how the product is in compliance with the origin criteria of the arrangement and include documentary evidence to substantiate the declaration with SC-RO-02-A02.
    - II) Copies of the export CCD, export invoices, transport documents; and proof of the identity of the goods ordered and received in the country of destination, for example literature.
    - III) Accounting records kept for providing evidence of the originating status of the goods.
    - IV) A reason of the circumstances in which a retrospectively certificate of origin is required, if applicable.
  - B) Duplicate or replacement export certificate of origin:
    - I) A written statement giving reasons why a duplicate or replacement is required and the number and date of the original certificate of origin. The statement must include



- a declaration that the goods are the same goods or formed part of the consignment of the goods for which the original certificate of origin or the origin declaration was issued.
- II) Original affidavit from the exporter or from the appointed clearing agent, whichever party was accountable for the certificate of origin when it was lost, misplaced or stolen.
  - III) A SC-RO-02-A02 indicating the word 'Duplicate' or 'Replacement' and the number and date of the original certificate of origin.
  - IV) Copies of the same documents as listed in paragraph A)II) together with any other supporting evidence produced when the original certificate was issued.
- vi) The exporter information supplied in paragraph 1.6 of SC-RO-02-A02 must correspond with the information on the SARS system and consists of the following:
- A) The name of the exporter's business;
  - B) The Customs client number allocated to the exporter's business;
  - C) The 10-digit VAT Registration Number allocated by SARS to the exporter's business if the exporter is registered for VAT;
  - D) The postal address of the exporter's business, for example Private Bag X112 Pretoria, 0001;
  - E) The physical street address of the exporter's business, for example 561 Ella Street, Pretoria;
  - F) Person in the exporter's business with who contact can be made to obtain information regarding the transaction if the ROO team needs additional information or clarity:
    - I) Name;
    - II) The designation;
    - III) The e-mail address; and
    - IV) The contact numbers;
  - G) Whether or not the exporter is registered with Customs to export goods under the trade agreement specified in paragraph 1.3 must be marked with an "X". If the exporter is not registered the application will be rejected.
- vii) Contact information for the clearing agent must be supplied in paragraph 1.7 of SC-RO-02-A02 comprising of the same fields as described in paragraph vi) above for the exporter and must correspond with the information on the SARS system, if applicable.
- viii) The declaration in paragraph 1.8 of SC-RO-02-A02 must be completed by inserting the same information as listed in paragraph 2.2f)vii)A) to f)vii)G). The person who completes and signs the declaration:
- A) Is responsible for the accuracy and completeness of the facts given on SC-RO-02-A02.
  - B) Must reside or have a place of business in South Africa.
  - C) Must be knowledgeable about the exporter's business to answer the questions on SC-RO-02-A02 and have the information needed to substantiate the answers supplied.
  - D) Must be a responsible representative of the business and must be authorised in writing, to sign on behalf of the business. This authorisation must be attached to SC-RO-02-A02. Refer to paragraph 2.2f)vii)G) for the acceptable proof.
- ix) If the exporter is applying for and collecting the origin certificates, then paragraph 1.9 of SC-RO-02-A02 must be left blank.
- A) If the exporter is using a clearing agent the clearing agent's particulars must be supplied. The exporter will be held accountable for any action that the agent has conducted on the exporter's behalf. Proof that the person is authorised to represent the exporter will be requested. Refer to paragraph 2.2f)vii)G) for the acceptable proof.
  - B) The person who completes and signs the "Permission to act on behalf of the exporter" declaration on SC-RO-02-A02 must insert the following information on SC-RO-02-A02 namely:
    - I) His/her full name not just initials.
    - II) His/her full signature.
    - III) His/her designation in relation to the exporter's business.
    - IV) The date on which this field is completed.
- d) SC-RO-02-A02 will be returned to the exporter or clearing agent if any of the requirements are not met.
- e) When Customs issues the blank export certificates the client must sign paragraph 1.10 of SC-RO-02-A02 as acknowledgement of receipt of the blank origin certificates.

- f) The issued export certificates must be used in sequential order. All blank export certificates of origin received must be:
- i) Used for exports within the time period indicated on SC-RO-02-A02 by the exporter.
    - A) If a certificate is not used within the specified period as indicated on SC-RO-02-A02 the Branch Office must be notified of the delay.
    - B) Customs will recall all the unused certificates if the exporter has not applied for an extension of the time period mentioned above.
    - C) The exporter must return the unused certificates to the Branch Office for reallocation to another client.
  - ii) Accounted for.
    - A) Mutilated, spoilt or cancelled certificates must be returned to the Branch Office where they were issued.
    - B) An affidavit must be furnished in respect of any certificates lost, explaining the circumstances of the loss.
    - C) Refer to the Rules of the specific trade agreement for the information on "Accounting for Certificates" or "Issuance of Certificate of Origin".
- g) The certificates issued by Customs are not transferable and can only be utilised by the parties listed on the certificate.
- h) The Rules to the specific trade agreements provide detailed information for the completion of the export certificate of origin.
- i) After completing the certificate of origin the exporter completes the CCD in line with the requirements as documented in the completion of declaration manual (SC-CF-04). The client must ensure that the certificate presented to Customs is linked to the export CCD by inserting the certificate number in the additional information field (block 44). If this is not done the client will be requested to process an amended CCD.
- j) The client may submit the CCD through:
- i) A Customs Office (via EDI or manually) refer to SC-CF-55; or
  - ii) The Post Office on a post office slip or on a CCD refer to SC-MT-02.
- k) When the CCDs is submitted to Customs the proof of origin in respect of:
- i) Imported goods must be:
    - A) Delivered to the Controller/Branch Manager if stopped for an inspection, at the time the goods are enter for home consumption.
    - B) Retained by the client if the CCD is not stopped and made available at the request of a Customs Officer.
    - C) Delivered to the postmaster if commercial goods are imported by post.
  - ii) Exported goods must be:
    - A) Delivered for processing and certification at the Branch Office nearest to the exporter's place of business.
    - B) Supported by the following documents:
      - I) The original uncertified certificate of origin.
      - II) A copy of the export CCD.
      - III) Literature of the exported goods.
      - IV) A declaration by the supplier (DA 49A.01) of raw material.
      - V) Invoice(s).
      - VI) Process of manufacture, if the product has been processed (DA 46A.04).
      - VII) If a clearing agent completed and signed the export certificate of origin a clearing agent's instruction specifying that the exporter can prove the country of origin and an authorisation letter from the client with the information as mentioned in the Rules.
- l) Origin declaration
- i) In order to facilitate trade some agreements allow an exporter to make an origin declaration using the prescribed format on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified. This reduces

the use of paper and is less time consuming. The agreement stipulates the conditions for this benefit.

- ii) Origin declarations may be made by:
  - A) Exporters granted Approved Exporter status as set out in SC-CF-19, on all their exports; or
  - B) Any exporter registered with Customs if the commercial value per consignment does not exceed the agreed threshold.
- iii) The format of the origin declaration on the invoice must read as follow: "The exporter of the products covered by this document (Customs authorisation No <insert authorisation number>) declares that, except where otherwise clearly indicated, these products are of <insert country> preferential origin." When the invoice declaration is made out:
  - A) By an Approved Exporter the Customs client number of the Approved Exporter must be entered in the space provided in the text for the Customs authorisation number; or
  - B) By a registered exporter where the commercial value per consignment does not exceed the agreed threshold the Customs authorisation number must be omitted and the space left blank.
- m) Upon the submission of the CCD, the presentation of the certificate of origin or the origin declaration Customs reserves the right to call for further proof of origin in the event of any doubt.

## 2.4 Visas for AGOA

- a) The African Growth and Opportunity Act (AGOA) as provided for in Section 46A(4)(b) and the Rules thereto, allows for certain goods to be exported from South Africa directly into the USA.
- b) Qualifying products are provided by Customs with:
  - i) A visa stamp on the invoice which indicates a visa number;
  - ii) The grouping of the specific product; and
  - iii) The quantity thereof and the signature of the officer confirming the origin of the goods.
- c) Upon presentation of the visa in the USA at the time of import such products will qualify for preferential treatment of Customs tariffs. The Customs authority in the USA however reserves the right to call for further proof of origin in the event of any doubt by verifying the country of origin with the South African Customs Administration.

## 2.5 Verification of proof of origin

- a) Parties to preferential trade arrangements maintain contact points with the other Customs Administrations (SC-RO-01-A01). This enables the exporting country(s) to certify the compliance of the origin requirements. Due to the revenue and admissibility issues involved, Customs is vigilant about verifying accurate country of origin.
- b) On reasonable doubt Customs may allow goods to be released conditionally, pending a report on the outcome of the verification request. The verification request can be in respect of the:
  - i) Certificate of origin;
  - ii) Origin declaration; or
  - iii) Fulfilment of any of the other requirements of the trade agreement in question.
- c) The origin of imported goods can be verified upon request to the Customs authorities of the exporting country.
- d) If no report is received from the Customs Administration in the member state within the agreed periods. ROO must determine whether or not to refuse entitlement to a preferential rate.
- e) If ROO receives a verification request, the exporter, manufacturer or producer must produce all documentation.
- f) ROO will determine, as described in paragraph 2.2, whether or not the South African product complies with the requirements of the trade agreement.

## 2.6 Quotas

- a) Quotas imposed on trade of a particular commodity restrict the value or volume of goods that may be exported or imported.
- b) Export quotas are imposed to protect local producers from temporary shortages of certain materials or as means to moderate world prices of specified commodities.
- c) Import quotas provide benefits to local producers or protect local industries and vulnerable producers. Import quotas prevents the market from getting flooded with imported goods which is cheaper than the same or similar goods produced by local suppliers due to low production cost in the overseas market. South Arica has also imposed import quotas.
- d) Exports to the European Union (EU) of goods subject to tariff rate quotas is listed in Section B of Part I of Annex I to the agreement. Export quotas are allowed by permits issued by the Department of Environment, Forestry and Fisheries (DEFF) and are provided for in Rule 49A.48.03.
  - i) The valid permit issued by DEFF must be delivered to the Customs Branch Office stipulated in Rule 200.03(g) when the exporter:
    - A) Applies for the movement certificate EUR.1 used as a certificate of origin on a SC-RO-02-A02 as described in paragraph 2.3(c); and
    - B) Submits the completed EUR.1 for certification by Customs together with a copy of the export CCD on which the number of the EUR.1 is endorsed.
      - I) If the required quantity reflected on the EUR.1 and CCD is available on the exporter's quota the EUR.1 will be accepted.
      - II) If a lesser quantity is available the lesser quantity must be endorsed on the EUR.1 supplemented by the words "only <quantity> available, quota exhausted". The permit will be retained by Customs if the quantity is exhausted.
  - ii) Exporters granted Approved Exporter status as set out in paragraph 2.3(l), may issue an origin declaration instead of applying for a certificate of origin for their approved quotas received from DEFF.
- e) As part of the concessions provided for under the SADC EPA, the EU has agreed to grant tariff preferences on limited quantities of selected products as tariff quotas.
  - i) Import quotas specified in note IJ of the General Notes to Schedule 1 are allocated on a first come first serve basis.
  - ii) Balances of import quotas used are written off on LCM and must be communicated to DEFF on a monthly basis.
  - iii) Imported goods that exceed the allocated quota will be subjected to the payment of the general rate of duty.
  - iv) Un-used quotas are reallocated once a year.
- f) Import quotas may be imposed under the SADC Protocol on Trade: Annex I as well as Appendix II thereto and Annex VII together with the Addendum.
  - i) Quota allocations must be communicated to the importers prior to imposition.
  - ii) Quotas will be allocated to registered exporters by the allocating authority in the country of export and will be valid for the period 1 April to 31 March of the quota year. Any quota which remains after the allocated time will not be carried over to the next year. The allocation of quotas will be made in metric tons *tel quell* (as it comes).
  - iii) Sugar of TH 17.01 declared under the provisions of Rebate Item 460.04 and included in the quota allocation will be admitted under full rebate of Customs duty. However, the import is subject to the payment of value-added tax (VAT).
  - iv) A certificate of origin is issued where the sugar has been:
    - A) Wholly produced in the country of origin;
    - B) Consigned by a registered exporter to a consignee in a SACU Member State; and
    - C) Exported not later than twenty (20) days after the date of certification.
  - v) The importer may be requested to submit the following proof that sugar has been consigned directly to South Africa:
    - A) The SADC certificate of origin indicating the consignor and the consignee; and
    - B) The transport document for the consignment.

- vi) When quotas are exhausted the sugar must be declared at the general rate of duty provided in Schedule 1 Part 1.

## 2.7 Refund applications

- a) Complex origin refund applications will be forwarded to ROO for verification of the country of origin. Origin Officers will have two (2) days from receipt of such submission to reply thereon. A refund application is not an origin determination.
- b) Refer to SC-DT-C-13 – Refunds and Drawbacks – External Policy for assistance with refund applications.

## 2.8 Record keeping and notifications

- a) Every declarant must keep for record purposes for a period of five (5) years:
  - i) Books, accounts and documents in respect of all transactions relating to the Rules for the purpose of any acquittal procedure; and
  - ii) Any data related to such documents created by means of a computer.
- b) The five (5) year period is calculated from the end of the calendar year in which the document was created, lodged or required. (Sections 101 and 101A).
- c) Every declarant must produce such books, accounts and documents on demand.

## 2.9 Penalties

- a) Failure to adhere to the provisions of the Act is considered an offence.
- b) Offences may render the declarant liable to, as provided for in the Act:
  - i) Monetary penalties (SC-CO-01-02);
  - ii) Criminal prosecution; and/or
  - iii) Suspension or cancelation of registration, license or accreditation.

## 2.10 Promotion of Administrative Justice Act

- a) The Promotion of Administrative Justice Act (PAJA) No. 3 of 2000 gives effect to everyone's right to administrative action that is lawful, reasonable and procedurally fair. Any person whose rights have been adversely affected by administrative action has the right to be given written reasons, as contemplated in Section 33 of the Constitution of the Republic of South Africa, 1996. PAJA:
  - i) Provides for the review of administrative action by a court or where appropriate, an independent and impartial tribunal;
  - ii) Imposes a duty on the State to give effect to those rights;
  - iii) Promotes an efficient administration as well as good governance; and
  - iv) Creates a culture of accountability, openness and transparency in the Public Administration or in the exercise of a public power or the performance of a public function, by giving effect to the right to just administrative action.
- b) Administrative action which significantly and unfavourably affects the rights or valid expectations of any person must be procedurally fair. A fair administrative procedure depends on the circumstances of each case.
- c) A person must be given:
  - i) Written reasons of the nature and purpose of the proposed administrative action;
  - ii) A reasonable opportunity to make representations;
  - iii) A clear statement of the administrative action; and
  - iv) Adequate notice of any right of review or internal appeal, where applicable.

- d) Just administrative action requires the Customs Officer to consider all the facts presented and obtained in addition to affording the client the opportunity to be heard, prior to instituting any administrative action.
- e) Before administrative action can be taken by Customs the declarant must be allowed the opportunity to:
  - i) Obtain assistance and, in serious or complex cases, legal representation;
  - ii) Present and dispute information and arguments; and
  - iii) Appear in person.
- f) Declarants whose rights have been significantly and unfavourably affected by administrative action and who have not been given reasons for the action may, within thirty (30) days after the date on which the declarant became aware of the action, request Customs to furnish written reasons for the action.
- g) Customs must within forty five (45) days after receiving the request, give the declarant adequate reasons in writing for the administrative action. If Customs fails to furnish adequate reasons for the administrative action, it is presumed in any proceedings for judicial review that the administrative action was taken without good reason.

## 2.11 Appeals against decisions

- a) In cases where clients are not satisfied with any decision taken in terms of the Customs and Excise Act they have a right of appeal to the relevant appeal committee. The policy in this regard, as well as the process to be followed, is contained in document SC-CA-02.
- b) The provisions of Rule 49A.30(32) shall *mutatis mutandis* apply in respect of any internal appeal to the Commissioner in regards to trade agreements legislated in Section 49A.
- c) Should clients be unhappy with a decision of any appeal committee their recourse will be to lodge an application for ADR (Alternative Dispute Resolution) with the relevant appeal committee. The committee will add its comments thereto and forward the application to the ADR Unit for attention. The policy in this regard, as well as the process to be followed is contained in document SC-CC-26.

## 3 REFERENCES

### 3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	<p>Customs and Excise Act No. 91 of 1964: Sections 4(12A)(a) and (b),13(1), 13(3), 46, 46A, 48, 48(1A), 49(1)(a), 49(1)(b), 49(2), 49(3), 49(4), 49(5), 49(5A), 49(5B), 49(6), 49(7), 49(8), 49(9), 49(10), 51(1), 51(2), 51(3), 51(4), 59A, 101,101A</p> <p>Customs and Excise Rules: Rules 13.03, 13.04, 13.05, 13.06, 6.01; 46.01, 46.02; 46.03; 46.04; 46.06; 46A, 46A1, 46A1.03, 46A1.04(a), 46A3, 46A3.03(a), 46A4, 46A5, 46A5A, 48.03, 49.01; 49.02; 49.03; 49.04; 49A, 49B, 49D, 49E</p> <p>Schedule to the Rules: 200(g)</p> <p>Schedule 1: Notes This Schedule provides for the Rules of Origin applicable to preferential Customs duty rates</p> <p>Schedule 10: Parts - This Schedule provides for the publication of agreements as a part of Customs legislation in order to give effect there to:</p> <p>a) <b>Free Trade Agreements</b></p> <ul style="list-style-type: none"> <li>i) Treaty of the Southern African Development Community and the Protocol on Trade: Annex I and Appendix II thereto and Annex VII and the Addendum thereto (SADC)</li> <li>ii) Free trade agreement between the European Free Trade Association (EFTA) and the Southern African Customs Union (SACU): Annex V: Articles 14(1)(b), 19 and 22 (SACU-EFTA)</li> <li>iii) Economic Partnership Agreement between the SADC EPA states, of the one (1) part, and the European Union (EU) and its member states, of the other part (SADC EPA): Part A of the Schedule to general notes to Part 1 of Schedule 1: Protocol 1, Annex V,; Articles 22 and 24 thereof</li> </ul>



TYPE OF REFERENCE	REFERENCE
	b) <b>Preferential Trade Agreements</b> - Preferential trade agreement between the Common Market of the South (MERCOSUR) and the Southern African Customs Union (SACU) Part D of the Schedule to General Notes to Part 1 of Schedule 1: Annex III c) <b>Generalised Systems of Preferences</b> i) Preferential tariff treatment of textile and apparel articles imported directly into the territory of the USA from South Africa as contemplated in the AGOA ii) Non-reciprocal preferential tariff under the GSP granted to developing countries by the Norway iii) Non-reciprocal tariff treatment under the GSP granted to developing countries by the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan iv) Non-reciprocal tariff treatment under the GSP granted to developing countries by the Republic of Turkey
Other Legislation:	None
International Instruments:	<b>Kyoto Convention: Specific Annex K: Origin:</b> Chapter 1 Rules of Origin: Standard 1; 2; 11 and 13; Recommended Practice 3 to 10 and 12 as well as Chapter 2 Documentary evidence of origin: Definitions: E3/F4; Standard 9; Recommended Practice 2 to 8; 10 to 12 <b>Framework of Standards:</b> Not applicable

### 3.2 Cross References

DOCUMENT #	DOCUMENT TITLE
SC-CA-02	Internal Administrative Appeal – External Policy
SC-CC-26	Alternative Dispute Resolution – Internal Policy
SC-CF-04	Completion of Declarations – External Manual
SC-CF-19	Licensing, Registration and Designation – External Policy
SC-CF-49	Samples – External Policy
SC-CF-55	Clearance Declaration – External Policy
SC-CO-01-02	Penalties and Offences – External Policy
SC-CR-A-09	Tariff Classification – External Policy
SC-DT-C-13	Refunds and Drawbacks – External Policy
SC-MT-02	International Mail – External Policy
SC-PA-01-11	Traveller Processing – External Policy

### 3.3 Quality Records

NUMBER	TITLE
DA 46A.01	Exporter's application for Registration for the purposes of GSP
DA 46A.03	Application for Certificate of Origin Form A
DA 46A.04	Declaration by Producer
DA 46A1.01	AGOA Textile Certificate of Origin
DA 46A1.01a	AGOA Application for a Visa
DA 46A1.02	Exporter's application for Registration for the purposes of AGOA
DA 46A1.03	Manufacturers application for registration for the purposes of AGOA
DA 49A.01	Suppliers declaration
DA 49A.02	Application for approved exporter status
DA 49A.03	Originating Product Declaration between the European community and the Republic of South Africa
EUR.1	Movement Certificate EUR.1
SC-RO-02-A01	Application for an Origin Determination or Verification – External Annex
SC-RO-02-A02	Application for Issuing of Blank Origin Certificates – External Annex

## 4 DEFINITIONS AND ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>AGOA</b>	African Growth and Opportunity Act



<b>CCD</b>	Customs Clearance Declaration
<b>DEFF</b>	Department of Environment, Forestry and Fisheries
<b>EFTA</b>	European Free Trade Association
<b>GSP</b>	Generalised System of Preferences
<b>MERCOSUR</b>	Preferential trade agreement between the common market of the south (MERCOSUR) and SACU
<b>Origin determination</b>	An origin determination binding on the Commissioner when it is issued to the applicant after compliance with the provisions of the Act and the Rules
<b>PAJA</b>	The Promotion of Administrative Justice Act
<b>Preferential treatment</b>	<b>tariff</b> The non-reciprocal preferential tariff treatment of goods exported from South Africa allowed on importation into any country in terms of and on compliance with the requirements of any enactment of the government of such country
<b>SACU</b>	The Southern African Customs Union, consisting of: The Republic of South Africa The Republic of Botswana; The Kingdom of eSwatini; The Kingdom of Lesotho; and The Republic of Namibia.
<b>SACU-EFTA</b>	The Free trade agreement between the EFTA States and the SACU States
<b>SADC</b>	Southern African Development Community
<b>SADC EPA</b>	Economic Partnership between the SADC EPA States and the European Union and its Member States
<b>Tel quel</b>	As it comes. It is the weight of sugar regardless of polarisation, for example a hundred (100) tonnes actual or <i>tel quel</i> of raw sugar will commonly equal about 106 tonnes raw value or basis 96 degrees polarisation.
<b>USA</b>	United States of America
<b>Wholly obtained</b>	Commodities such as vegetables products must have been grown and harvested within the said country of export. Waste and scrap resulting from any manufacturing operations conducted within the country of export is considered as "wholly obtained".

## 5 DOCUMENT MANAGEMENT

<b>Business Owner</b>	Senior Manager: Leveraged Legal Products (Tax, Customs and Excise)
<b>Document Owner</b>	Senior Manager: Policy and Procedure (Customs)
<b>Author</b>	Y Els
<b>Detail of change from previous revision</b>	Initial Release
<b>Template number and revision</b>	ECS-TM-02 - Rev 15