



**ETHIOPIAN REVENUES AND
CUSTOMS AUTHORITY
(ERCA)**

**GUID TO UNDERSTAND
PREFERENTIAL RULES OF ORIGIN**

REFERENCE TO LEGISLATION & OTHER REFERNCES

This procedure must be read with the following

Customs Legislation	Customs Legislation No. 622/2001 Article 47-50
Rules of origin guidelines	Rules of Origin Guidelines No. 32/2002
Revised Kyoto Convention	Specific Annex K- Origin
Regional Free Trade Agreements Bilateral Free Trade Agreements Unilateral Preferential Trade Arrangements	<ul style="list-style-type: none"> • Common Market for Eastern and Southern Africa (COMESA) • Ethio-Sudan Free Trade Agreement • General Systems of Preferences (GSP) with EU, Switzerland, Norway, Belarus, Canada, USA, Japan, Australia, New Zealand, Turkey and Russian Federation • African Growth Opportunity Act (AGOA) • Special Preferential Tariff Treatment (SPTT), China • Duty Free Tariff Preference (DFTP), India • South Korean Duty Free Preference (Annex III) • Morocco Duty Free Tariff Preference



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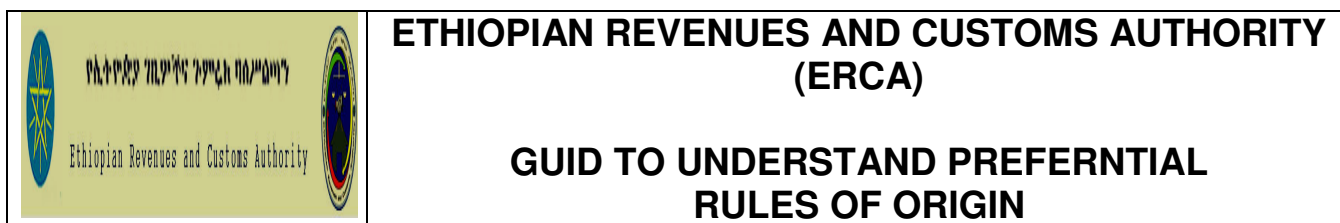
1. PURPOSE

- Origin is one of the key element on customs declaration among classification and valuation.
- 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.
- Ethiopia's export products are benefiting from different preferential trade arrangements, thus, implementation of rules of origin is one of the requirement of the trade arrangements.
- 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 will provide a guide to traders and customs 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 favored nation (MFN) trade and also used to apply trade policy measures such as, anti dumping or countervailing duties, safeguarding measures, tariff quotas and quantitative measures, origin marking or made in labeling, trade statistics and government procurements. Preferential rules of origin refer to trade under free trade agreements and unilateral preferential trade arrangements. Such as COMESA, AGOA, GSP etc....
- This document will cover the basic principles applicable to preferential rules of origin in free trade agreements as well as those applicable on different unilateral preferential trade arrangements.
- Reference will be made to the Regional Free Trade Agreements concluded between Eastern and Southern Africa countries, called as Common Market for Eastern and Southern Africa (COMESA) and the bilateral free trade agreement

between Ethiopia and Sudan and different unilateral preferential trade arrangements provided by the European Community, Norway and Switzerland,



- USA, Canada, Belarus, Japan, Turkey and Russian Federation under GSP, African Growth and Opportunity Act (AGOA) duty free arrangement with the United States of America , Special Preferential Tariff Treatment (SPTT) provided by P.R.China to LDC African countries , Duty Free Tariff Preference (DFTP) arrangement granted by India, South Korean Duty Free arrangement for LDC and preferential trade arrangement for certain African countries by Morocco.
- 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. So far there is no uniform rule for the implementation of non – preferential rules of origin by WTO member states. Rules of origin have been enacted in Article 47-50 of Custom’s Legislation Of 622/2001 Act & rules of origin guideline is ratified under guide line no 32/2009. These rules are used to determine origin for MFN duty application, anti-dumping and countervailing duties measures, safeguarding measures, quantitative restrictions measures and other trade related measures.

3. ACRONYMS AND DEFINITIONS

AGOA	African Growth Opportunity Act
COMESA	Common Market for Eastern and Southern Africa
DFTP	Duty Free Tariff Preference (India)
EBA	Every thing But Arms (EU)
EU	European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariff and Trade
GSP	General Systems of Preference
RTA	Regional Trade Agreement
SPTT	Special Preferential Tariff Treatment (China)
WTO	World Trade Organization



4. ORIGIN ADMINISTRATION

4.1 GENERAL

- Ethiopia has concluded regional and bilateral free trade agreements with neighboring countries. The general reasons for concluding such agreements are to cement or expand on existing trade by liberalizing customs duties and doing away with other non-tariff barriers to trade. Ethiopia is a member of COMESA regional free trade agreement and the Ethio-Sudan bilateral free trade agreement. It is an opportunity to expand trade between the regional countries and the two countries.
- There are also other unilateral preferential trade arrangements which benefit Ethiopian export products to enter different global markets under duty and quota free preferential arrangements.
- One of the basic obligations countries commit to in most cases in preferential arrangements is to assist each other with the compliance thereof by importers and exporters. Export countries would assist import countries by certifying to the compliance of the origin requirements and assisting with verification.
- 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 apply the requirements for compliance with the rules and to certify to the compliance thereof, in the form of issuing certificates of origin.

4.2 COUNTRY OF ORIGIN

- Country of origin of goods means the country in which the goods have been produced or manufactured, according to the criteria laid down for the purposes of application of the Customs tariff, tariff preference or of any other measure related to trade.
- In other words, the origin of a product is important because it will determine how it is treated at the border of an importing country and the origin may impact on the import duty payable and admissibility.
- The sufficient level of processing of a product that must take place in a given exporting country in order for the product to be counted as an originated product export from that country.



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4.3 RULES OF ORIGIN

- Rules of origin are the criteria that are used to define where a product was made. They are an essential part of international trade rules because of policies that “discriminate” between exporting countries. Rules of origin define the economic as opposed to the geographical nationality of products.
- Rules of origin means the specific provisions, developed from principles established by national legislation or international agreements (“origin criteria”) applied by a country to determine the origin of goods.
- The application of rules of origin has been complicated by globalization. Production does not take place in one country and sales in another. 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 even exported to the market.
- There are two types of rules of origin: These are Preferential and Non-preferential

4.3.1 PREFERENTIAL RULES OF ORIGIN

- Preferential rules of origin determine the economic nationality of a product subject to preferential tariff rate within a FTA/RTA or under unilateral preferential trade arrangements. preferences only obtained if the preferential rules of origin are satisfied.
- Preferential Rules of origin are determined whether goods are entitled to the payment of less or no import duties. For this reason, preferential rules of origin will be applicable. Preferential rules of origin are applied in the case of Free Trade Agreements 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).
- Preferential rules of origin applied when free trade agreements are negotiated parties would, *inter alias*, agree to liberalize trade in goods between each other from 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. In order to replace this protective measure rules of origin are agreed to.



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- The 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 and 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 such goods from other sources.

4.3.2 NON- PREFERENTIAL RULES OF ORIGIN

- Non- preferential rules of origin are used to determining economic nationality of products subject to commercial policy measures, such as MFN application (i.e. where goods are subject to the general rates of duty or where all countries faces the same tariff, they are also used when applying basic trade policy measures (antidumping & countervailing duties, safe guarding , discriminatory quantitative restrictions or tariff quotas, origin marking or made in ...labeling requirements, compilation of trade statistics and for public procurement purposes.
- Since non- preferential rules of origin apply to MFN- trade, where all countries face the same tariff, there is normally no incentive to misrepresent origin. These rules are therefore in general less trade distorting than the preferential rules of origin.

5. FREE TRADE AGREEMENTS

- In order to understand the concept of preferential rules of origin we need to understand the fundamental principles of free trade agreements.
- Free trade agreements 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 trade agreements are, *inter alias*, 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 the 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.



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- Free Trade Agreements which are reciprocal in nature, such as the bilateral free trade eg. Ethio – Sudan Free Trade Agreement and the Common Market for Eastern and Southern African Countries (COMESA). “Agreements in respect of rates of duty lower than general rates of (MFN) duty.”
- For COMESA regional agreement and Ethio-Sudan bilateral free trade agreement COMESA Rules of origin protocol use as the main part of the Free Trade Agreements to confirm the originating status of the product.

6. UNILATERAL PREFERENTIAL TRADE ARRANGEMENTS

- Unilateral preferential trade arrangements are the 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 into the beneficiary countries territory.
- Ethiopia’s export products are benefiting from these unilateral trade arrangements such as General Systems of Preferences (GSP), provided by the European Union, Norway, Switzerland, Belarus, Japan, Turkey, Russian Federation, USA and the AGOA with the USA, Special Preferential Tariff Treatment (SPTT) with the China, Duty Free Tariff Preference (DFTP) with India, South Korean Duty Free Preference for LDC and Morocco Duty Free Preferences for certain African.
- Each unilateral preferential trade arrangements are non-reciprocal in nature and have its own rules of origin.

7. STRUCTURE OF RULES OF ORIGIN IN PREFERENTIAL ARRANGEMENTS

- Holistically seen, although it may vary from one free trade agreement to the other, the architecture of rules of origin is generally structured under the following headings:
- Each of these provisions 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.
- **Origin Criterion**, which used determine the origin of goods, which also covers the concepts of compliance.



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General Rules of origin, which deals with allowances such as **cummulation** and **tolerance** rules, and may be including **insufficient working or processing**.

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.

Arrangements for administrative cooperation, which provide for customs assistance with the verification of origin; and final arrangements, which provide for the implementation of preferential trade arrangements between the parties.

7.1 CRITERIONS USED TO DETERMIN ORIGIN OF GOODS

There are three basic criterions used to determine origin of goods

7.1.1 Wholly obtained or 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. 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.
- Goods produced wholly in a given country shall be taken as originating in that country. The following only shall be taken to be produced wholly in a given country.
 - (a) mineral produced extracted from its soil, from its territorial waters or from its sea bed;
 - (b) vegetable products harvested or gathered in that country;
 - (c) live animals born and raised in that country;
 - (d) products obtained from live animals in that country;
 - (e) products obtained from hunting or fishing conducted in that country
 - (f) products obtained by maritime fishing and other products taken from the sea by a vessel of that country;
 - (g) products obtained aboard a factory ship of that country solely from products of the kind covered by paragraph (f) above;
 - (h) products extracted from marine soil or subsoil outside that country's territorial waters, provided that the country has sole rights to work that soil subsoil;



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- (i) scrap extracted from marine soil or subsoil outside that country's territorial waters, provided that the country has sole rights to work that soil or subsoil;
- (j) goods produced in that country solely from the products referred to in paragraphs (a) to (i) above.

7.1.2 Substantial transformation (sufficiently working or processing)

- Where two or more countries have taken part in the production of the goods, the origin of the goods should be determined according to the substantial transformation criterion.
- Sufficiently working or processing criterion is considerably more complicated. It involves three main criterion that can be used on their own or in combination with each other:

7.1.2.1 Change of Tariff Heading (CTH)

- This criterion implies that origin is granted if the exported product is classified under a different number in the tariff classification (of the Harmonized system for classification of goods) to any of the imported inputs that are used in the production of the product. Normally it is specified that the change should take place at the heading level, which is four-digit level of HS.

7.1.2.2 Value added rule (VA)

- When the value that is added to the product in a particular country exceeds a specified percentage, the product is defined as originating. This criterion can be defined in two main ways:
 - The minimum percentage of the value of the product that must be added in the exporting country (domestic or regional value content, VC)
 - a maximum percentage of imported inputs of the value of the product (import content, MC)

The calculation of this rule can be based on different basis for valuation of the product such as the ex-works price (EXW), Free on Board (FOB), Cost Insurance and Freight (CIF)



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7.1.2.3 Special Technical requirement (SPT)

- This criterion prescribed for each product or products group certain manufacturing or processing operations that define origin (positive test) or that do not confer origin (negative test)

7.2 General Rules of Origin

7.2.1 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.

7.2.2 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.

7.2.3 List of insufficient working or processing /minimal operations

- Provide for what is considered to be not substantial manufacturing or processing and would thus not qualify for preferential treatment.
- Operations which are considered too minimal and insufficient to confer origin (either individually or in combination). Such a list is enshrined in most origin protocols and stipulates that operations such as: preservation during transport and storage as well as operations such as cleaning, sorting, painting, packing, assembling, marking, and labeling, etc. are of such a minor importance that they never can confer origin.

7.2.4 Territorial requirements

- Principle of territory, would define the customs territory of the parties where the free trade agreement would be in force; It ensures that originating status is fulfilled without interruption in the PTA areas unless it can be demonstrated to customs authorities that the goods returned are the same as those exported or that they have not undergone any operation beyond what is necessary to preserve goods condition.



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7.2.5. Proof of origin

- General requirements would 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, would 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;
- 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;
- Exemptions from proof of origin, refers to the importation of small packages, goods being imported as passengers luggage and importations by post;



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- Suppliers declaration, is a supporting document provided for from the supplier of a product to the exporter that the goods supplied fulfill the requirements of origin and which is submitted with the application for certification as proof of origin;
- Supporting documents would indicate what documentary evidence must be submitted with applications for certificates of origin;
- Preservation of proof of origin and supporting documents, indicate that the importers, exporters and the customs authority must keep proper records for specific periods of time;
- Discrepancy and formal errors provide for the method of changes to be made to information on certificates of origin.

8. 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 stamp impressions and signatures of certification officers;
- 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 the rules of origin;
- 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

9. IMPLEMENTATION OF PREFERENTIAL RULES OF ORIGIN

9.1 Strategy

- The strategy applied for the implementation of preferential rules of origin is to provide for enabling provisions in customs legislation no 622/2009 Article no 47-50,



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in each RTA, FTA and unilateral trade arrangements respectively. These provisions again 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 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 in line with the provisions of the Customs legislation and guidelines 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 decide on the information provided whether further documents should be called for, or whether 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 legislation 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 great 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 commitment to assist each other with origin verification and to keep each other informed of any information that effects the granting of preferences.



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10. WHAT A CUSTOMS OFFICER SHOULD KNOW

- In order to apply rules of origin effectively it would be required of the customs officer to have a fair knowledge of customs in the following areas;
- It would also be incumbent upon the certification officer to avail him/herself of the content of the preferential arrangement and of any legislation published pertaining to any specific arrangement.
- 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.

11. HOW TO APPLY RULES OF ORIGIN

- An exporter would 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.
- In this regard 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 declaring the origin and the compliance with the rules of origin for the product.
- In the case of the exporter declaring the product to be wholly obtained the certification officer must consult a list, which is provided for in the arrangement, of which products may be considered as wholly obtained.



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- 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 certification officer must now apply all elements of the concept of originating products, value tolerance, cumulation and to check 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 therefore. Before considering the product specific list rule, the certification officer must avail himself/herself 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 certification officer 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.