

Rules of origin in the agrifood trade



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Introduction

Rules of origin are essential to international trade. This is due to the fact that the importation of products generally requires that the origin of a product be explicitly established. Defining the origin of a product may prove to be a complex task in a highly interdependent, globalized world, where a significant number of countries apply preferences or restrictions to imports based on production patterns and value adding in the countries of origin. The complexity involved in defining origin is even greater when several companies are involved in different links along the global value chains, and when multiple factors weigh in to precisely determine the country of origin and its role in the production of a certain good. Despite this complexity, governments can establish customs rules and regulations that will help them determine a single territory or country of origin to which to apply tariffs, as well as sanitary and phytosanitary restrictions, taxes or other measures.

Within this context, it is vital for government institutions that support agricultural trade and agribusinesses from Member States of [the World Trade Organization \(WTO\)](#) and [the Inter-American Institute for Cooperation on Agriculture \(IICA\)](#)¹, to improve their knowledge and technical capacities regarding the different aspects of the rules of origin and their implications, challenges and opportunities for international agrifood trade. As a result IICA, together with the WTO and [the International Trade Center \(ITC\)](#), provide technical cooperation to their member States in order to strengthen the institutional and operative aspects of international trade.

As part of their activities, these three institutions pay special attention to training on issues such as non-tariff measures, which include rules of origin. The WTO participates as the organization that facilitates these rules; the ITC provides technical

assistance to the business sector on multilateral trade regulations; finally, IICA² supports institutional actions and policies regarding agricultural chains and economic development of its member States. These institutions share a series of features that allow them to complement each other when it comes to knowledge transfer, providing their member countries with better competitive opportunities in world trade.

In view of the above, on April 27th 2017, the three institutions developed the technical forum entitled *“Rules of origin in the trade of agricultural products”*. The purpose of this activity was to contribute to improving the capacities of governments and businesses to comply with the requirements of the WTO’s Agreement on Rules of Origin and increase their knowledge on the current and potential implications of rules of origin, as established in preferential agreements.

The event in question is the basis for this document, the purpose of which is to recapitulate the most salient aspects discussed during this Forum with regard to the use of rules of origin and their possible impact on agrifood trade.

The first part of the document addresses general aspects of the rules of origin (background, basic concepts, their importance and use in international trade); the second part focuses on the challenges and opportunities for the public and private sectors in the Americas with respect to the negotiation and management of rules of origin.

¹ All Member States of IICA are part of the WTO, with the exception of the Bahamas, in process of accession.

² Through its project entitled “Competitiveness and sustainability of agricultural chains for food security and economic development”, IICA supports the participation of the countries in forums that address trade and agriculture, as well as institutions

and agribusinesses in the process of internationalization and association with agricultural chains. For more information, visit the following link:

<http://www.iica.int/en/projects/competitiveness-and-sustainability-agricultural-chains-food-security-and-economic>

I. Rules of origin in international agricultural trade

This section addresses some general aspects relating to rules of origin and their importance for the international agricultural trade. These issues were discussed and mentioned repeatedly during the technical forum.

What is the most relevant background information regarding rules of origin?

Rules of origin are non-tariff measures used to determine where a product comes from; however, multilateral consideration of these rules is fairly recent.

The General Agreement on Tariffs and Trade (GATT 1947)³ did not stipulate the specific rules that would govern the determination of the country of origin for goods being traded internationally; as a result, each contracting party was free to establish its own rules and could apply several different standards depending on the purpose of the regulation in question (WTO n.d.a.). This situation prevailed until 1994, when countries finalized the negotiations in the Uruguay Round, including the [Agreement on Rules of Origin](#).

The provisions of the Agreement were the result of three important factors; an increase in preferential trade agreements, an increase in discrepancies with respect to origin, and a broader use of antidumping laws⁴. The proliferation of different preferential trade agreements in the last decades of the 20th

century highlighted the need to harmonize rules of origin; however, this process began in the eighties and is still ongoing. The ministers agreed to analyze the existing regulations, but it was not until the Uruguay Round⁵ that the topic was discussed in depth (WTO n.d.b.).

Furthermore, it must be noted that the objective of this legal instrument is to establish clear and predictable guidelines that will facilitate international trade. Although the Agreement does not focus on harmonization rules, it does contain temporary criteria and obligations that countries must comply with while they agree on an agenda that will define a framework of precise rules to achieve harmonization.



³ Between 1948 and 1994, the GATT established applicable regulations for a large portion of world trade, and during this time there were periods that showed some of the highest growth rates in international trade. The 1947 GATT only considers "origin marking requirements" in article IX. These differ from the current concept of rules of origin. The GATT currently in place considers rules of origin in section c) of paragraph 1 of article VIII, regarding the rights and formalities for imports and exports, which encourages the reduction and simplification of documents and a minimization of the complexity of the requirements. It also offers

the possibility of invoking the Agreement on Rules of origin that can be found in Annex 1.A of the GATT.

⁴ When a product is exported at a lower price than the one applied in the market, the product is being *dumped*.

⁵ This was the most important negotiation that ever took place, and most likely, the most significant one in the history of humanity; during the meeting, the majority of ministers from 123 participating governments signed the Agreement at a meeting held in Marrakesh (Morocco). The Round led to the creation of the WTO.

What are rules of origin?

The origin of goods is not static and can vary, given that the world is currently trading in an environment that includes global value chains and fragmented production; therefore, it becomes necessary to define rules that will help identify said origin clearly, especially to define and apply commercial policies such as tariff measures (which include tariffs and tariff quotas⁶, among others) and non-tariff measures (labeling, sanitary and phytosanitary measures, and import licenses⁷).

Rules of origin are the laws, regulations and administrative procedures that determine a product's country of origin⁸ that is, its nationality. Therefore, a legal standard is needed to establish the conditions that a given product must meet in order to be considered as originating in a certain place.

At the technical forum entitled "*Rules of Origin in the Trade of Agricultural Products*" Darlan Martí, WTO expert, explained that these rules allow for the differentiation of goods based on their "economic" nationality or the application of different conditions, depending on the origin of the product.

These rules apply to trade in all types of merchandise, including agricultural products. Although the rules are relatively simple for certain primary goods, their application and standardization becomes more complex as the products undergo more transformations and become more industrialized, and when more commercial partners or countries intervene in the manufacture of the final product.

⁶ A tariff quota is a potential limitation to export or import of a product, which applies during a certain period of time and to a maximum volume of merchandise, after which exports or imports are exempt from paying customs tariffs or receive preferential tariffs.

⁷ The import license procedure can be defined as the administrative procedure that requires the submission of a request or other documentation (apart from the one required by customs)



What is the importance of rules of origin and when are they used?

Rules of origin are important in that they establish the "nationality" of the products, which in turn helps customs authorities to determine whether said products can receive preferential treatment when imported. Furthermore, the country of origin is important for economic statistics (such as the balance of trade), for the application of tariffs or special safeguards⁹, for the consumer (labeling), and even for marketing purposes, as is the case with products that bear the name of the place where they are produced (see geographical indications and designations of origin). Likewise, they help in the identification of potential sanitary and phytosanitary risks of certain goods, by helping to differentiate the requirements for products to be imported.

Therefore, 'rules of origin are used in international trade each time that the treatment of an imported product varies based on the place in which it was produced; that is, every

to the relevant administrative institution, as a precondition for importing a product.

⁸ The place of origin of a product can differ from the place where it was produced. The origin may be a country, a customs territory or a region, and may be subject to WTO rules of origin or other non-preferential trade agreements.

⁹ Temporary increase in an import duty to deal with an increase in imports or a fall in prices, based on the special provisions of the Agreement on Agriculture.

time it becomes necessary to make a distinction based on the country of origin' (WTO, 2014).

Likewise, the purpose of rules of origin is also to avoid triangulation, tariff evasion, product smuggling, commercial rackets and extraordinary profits from arbitration, as well as to ensure the application of commercial sanctions for certain countries (Sigala 2001).

What are preferential and non-preferential rules of origin?

When importing a product, it is necessary to identify the type of rule of origin that must be applied; in this regard, there are two types of rules of origin: preferential and non-preferential.

Preferential rules of origin stem from commercial agreements signed by governments, in which certain benefits and obligations are applied to a certain group of countries; for example, customs unions, free trade zones, free trade agreements, free economic zones and economic association agreements, among others. These agreements define specific requirements to determine that products originate in these groups of countries and can benefit from the established advantages. In other words, these rules allow the application of different tariffs or import customs duties for strategic products manufactured by the commercial partners, and which were already the subject of negotiation in the different commercial agreements.

On the other hand, *non-preferential rules of origin* are applied for trade between the Member Countries of the WTO, and operate under the principle of most-favored nation (MFN). This means that Members must apply the same measures for all commercial partners equally, as long as they are WTO Members. These types of rules allow for the application of MFN

tariffs¹⁰, tariff quotas, antidumping measures, statistics and labeling requirements, among others, which stem from the WTO agreements that regulate all 164 member States. These rules determine only one country of origin (WTO n.d.c.).

In sum, the goal of *preferential rules* is to verify whether an imported product complies with the conditions established in a commercial agreement; *non-preferential rules*, on the other hand, are meant to identify the final country of origin.

What are the methods used to determine the origin of products?

According to Martí (2017), different parameters are used to define different rules of origin; these parameters stipulate the requirements that products must meet in order to be considered as originating from a given country.

It must be noted that *preferential rules of origin* are applied in accordance with the provisions set forth in bilateral or regional agreements, while the WTO's *non-preferential rules of origin* seek to determine a single country of origin. During the technical forum, the WTO expert pointed out that, for this type of rule, the analysis should focus on where the last substantial transformation took place; if the requirement is not met, other residual or alternate rules must be considered until a single origin can be identified.

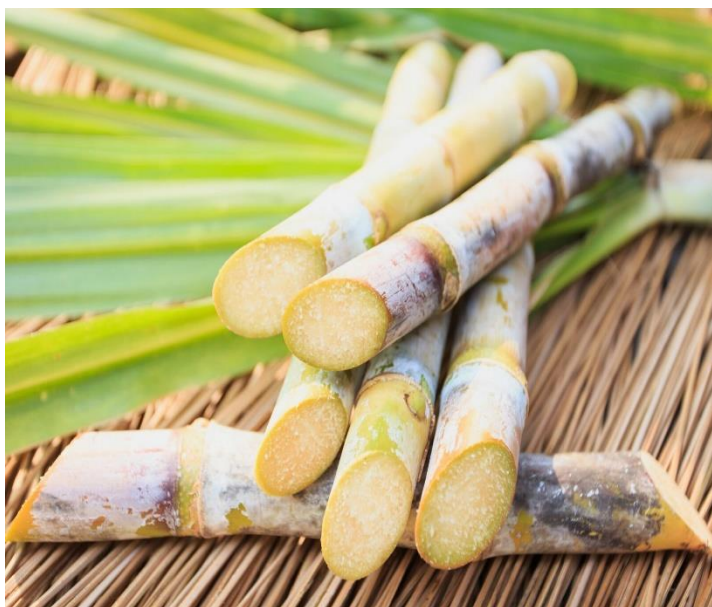
When applying these parameters, two categories of products are defined depending on how they were produced:

1. "Wholly obtained" products: Products in which the production (materials and manufacturing) involve the intervention of a single country. These include live animals born and raised in one country, plants

¹⁰ MFN tariffs apply equally to products for all WTO members, except when there are preferential trade agreements. This type of tariff was defined in the lists of access to markets, negotiated by WTO Member States during the Uruguay Round and excludes

preferential tariffs set forth in free trade agreements and other regimens or tariffs applied within the framework of tariff quotas (IICA n.d.a.).

harvested in that territory and mining extractions.



2. **Products subject to substantial transformation:** For this classification, sugarcane and its byproducts will be used as an example. Different parameters can be considered to classify them, and they may even be combined.

- *Value added rule:* The determination of origin is based on a comparison between the value of the final product and the value of the parts that make up said product; local and foreign value is distinguished. An example of this is: sugar with 60% regional value.
- *Tariff classification rule:* The attribution of origin is based on a comparison between tariff classification (Harmonized System) of the final good and the classification of the parts that make up said product. Using the same example, a change in the tariff classification could be applied here, given

that the process of transformation of the sugar cane results in the application of Chapter 17 of the Harmonized System (Sugars) instead of Chapter 12 (assorted fruit). This may have an impact on the origin, depending on the number of countries or territories involved.

- *Specific processes rule – territorial approach:* Based on the identification of the territory where the specific manufacturing processes took place. The rule requires that said process must have taken place only in the territories of the signatory parties. Using the same example, this would apply to the country where the sugarcane juice underwent the clarification process.



During the technical forum, other provisions and concepts were mentioned as a complement for designation of origin (WTO n.d.e.) and which affect the level of **flexibility or rigidity**¹¹ of the rule:

¹¹ The number and complexity of the criteria used in a rule affect the difficulty or ease to demonstrate the origin of a good. If the norm is difficult to comply with, it is referred to as rigid; on the other hand, if proving its origin is a simple process, the rule is considered flexible. A complex rule may imply meeting many different criteria such as a Chapter change, a jump in tariff quota, an exception to the change in tariff classification and value of regional content, as can be seen in this example of preferential

rule in the Japan-Mexico EAA (Hermelink 2017): "A change in the subheading from 3810.10 to 3810.90 from any other chapter, except from chapter 28 to 38; or a change in the subheading 3810.10 to 3810.90 from any other subheading within chapters 28 to 38, including or not a change from any other chapter, provided there is a regional content value of not less than 50 per cent".

a) *Accumulation*: A system that allows the contracting parties to use materials originating from other parties as their own. In other words, the inputs/processes from third party countries are considered as national (“originating”), non-imported (“non-originating”). Each agreement has different categories and requirements. This provision gives flexibility to developing countries with limited productive capacities, because it allows them to import materials without losing access to commercial preferences.

b) *Direct transport*: The purpose of this requirement is to ensure that imported products arriving into the country are the same ones that left the exporting country. Products must be transported directly from the territory of origin to the importing country. In those cases where transfer occurs, non-manipulation of the final good must be ensured.

c) *Minimum operations*: This is a closed list of operations, of minor importance to the production of the final good, which are considered insufficient to attribute origin, regardless of whether they are conducted individually or collectively. These operations include washing, drying or packing.

How does one prove the origin of the goods?



The origin of the goods is proven by means of the certificate of origin. Each preferential agreement stipulates its own formal requirements to prove the “nationality” of the good being marketed. Both experts from the WTO and those from the ITC explained during the technical forum that in order for an exporter to receive a tariff benefit on his products under a specific agreement, he must use a government certification, based on criteria for origin that are issued by the customs authorities.

The certificate of origin (or test of origin) is a document that the government gives to an exporter or importer in order to demonstrate the country or region from which the good is considered to originate, either because it originated there in its entirety (vegetables, animals, minerals) or because it underwent substantial transformation in the production process in order to be considered as a good from that origin (AJR External Trade 2017).

The documented proof of origin has a limited validity period that is established in each agreement. During the technical forum, Ursula Hermelink, expert in nontariff measures at the ITC, underscored some favorable as well as unfavorable aspects of these transactions. Some of the advantages of obtaining a certificate of origin for export of goods are: a) it facilitates the exemption of tariff payment in the external market in question; b) it meets the requirement in the countries in question; c) it proves the origin of the goods acquired in the

local market and d) meets a requirement for an international mode of payment (letter of credit or documentary collection).

Among the major disadvantages of the certification process are higher production costs, the potential for promoting a monopoly, delays due to the time required for certification, a lack of training in the processes for requesting certification, staff training for carrying out certifications and an increase in the price of the product.

These factors should be taken into account when a company decides to initiate a process of international trade and join the agricultural chains in given markets. For those agribusinesses devoted to raw materials, the origin can be relatively simpler to determine. Nevertheless, the governmental requirements relating to the certificate of origin are not the only things that should be taken into account, since both the public and the private sectors in certain countries establish standards related to other aspects, such as traceability.

How do rules of origin affect international trade?



Rules of origin may have some impact on international agricultural trade and related sectors, for example, within the area of policies and institutional frameworks, infrastructure, the economy and finance, production and organizational culture, among others (IICA 2017).

In turn, these standards are a determining factor in the access of goods to markets, since they establish the conditions for entry of a product into a specific market. Depending on how strict and how costly they are for the companies, they can impact the competitiveness and existing commercial opportunities. According to the WTO, and some of its experts such as Huberth Escaith, rules of origin can:

- Promote the creation of regional value chains (Escaith 2017).
- Promote foreign and local investment when the rules facilitate international trade.
- Affect the capacity of companies to benefit from regional or preferential trade agreements.
- Influence the capacity of the companies to be integrated into value chains.



- Promote or discourage ties among the export sectors and areas of national production (WTO 2017).

Therefore, the objective of rules of origin should be to facilitate trade. If these are too complex and impose changes in the supply chain, exporters and importers may experience difficulty in complying with some provisions, such as sanitary measures, export or import permits and product labels, among others. Furthermore, if the cost of demonstrating origin is very high, the interested party will decide to pay the MFN tariff, which is usually higher than the preferential one. This would mean that the rules of origin, if they are very expensive to apply, may impede or limit the benefits derived from the preferential relationships with other countries.

What relationship is there between rules of origin and sanitary and phytosanitary measures?

During the technical forum it was pointed out that on certain occasions, a country imports the same product from different territories, but that this does not mean that the requirements are the same for all the countries, since they do not have the same environmental, climatic or pest conditions (Martí 2017).

The rules of origin and the Agreement on Sanitary and Phytosanitary Measures of the WTO¹², in article 6 section 1, stipulates that *“Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined (...)”* (WTO 1994).

¹² It is the WTO **Agreement** that establishes the basic rules on how governments can apply the measures related to food safety, the health of animals and people and the preservation of vegetables (sanitary and phytosanitary measures or **SPS**) (WTO 1994).

That is to say, rules of origin help the governments to determine the sanitary and phytosanitary requirements that the products they import should fulfill, based on the country or territory that claims their origin. For example, if a country wishing to import bananas knows of a pest that is attacking bananas from country A, and that this pest is not present in country B, it will probably demand less laboratory testing from importers from country B, provided that they are able to certify that the origin is indeed country B.



What is the difference between rules of origin and designations of origin?

The concepts of rules of origin and designations of origin can be confused, since the term “origin” is related to a physical space or territory. However, for purposes of trade policy these concepts differ with respect to their application. On the one hand, the designations of origin¹³ are derived from geographical indications and

¹³ A designation of origin is the name or indication of a geographical location, which may be a given country or region, that designates a product which, by virtue of being native to that region, and due to the production or transformation traditions of the dwellers, has some characteristics or reputation that make it

are used to determine intellectual property rights, while the rules of origin define the rights of access to markets (tariffs, safeguards) and other types of nontariff measures and countervailing duties. They are also useful for statistical purposes.

In agribusiness, white corn from Cusco, Guatemalan rum, Malbec Luján from Cuyo and roquefort cheese, among others, do not determine origin as far as the customs authorities are concerned, but the possibility exists that the designation of origin helps to demonstrate the origin of these products.



different from similar products from other geographical locations (Industry and Trade Authority of Colombia 2013).

II. Challenges related to rules of origin for the public and private sectors

This section presents some of the challenges facing the public sector in the negotiation and administration of rules of origin, as well as those which the business sector faces in applying and complying with the standards for international business, especially with respect to agricultural food products.

What are some challenges for the public sector with regard to rules of origin?

Those responsible for adequate compliance with the rules of origin face the challenge of applying many standards, as well as administering the various certifications of origin and verification systems. This is due to the fact that countries have many trade agreements and because rules of origin are also related to other commitments with respect to sanitary measures, intellectual property, duties and fees, and trade facilitation, among others.

In the area of agriculture, the challenge of governments is to ensure that the rules of origin facilitate, rather than halt, the international development of agribusinesses, as well as provide the structural conditions (institutions for certification and documentation, verification technology) and rural capabilities (of authorities and companies) to ensure the efficient administration of rules of origin. Based on a survey administered by the ITC to exporting companies from 30 European¹⁴ countries, producers or traders are often far away from the government agencies to which they need to present documents, do analysis and other procedures. This reality is also evident in

¹⁴ The survey on nontariff measures was conducted between 2010 and 2016. The data from the survey can be consulted in NTM Surveys of the ITC, available at <http://ntmsurvey.intracen.org/home>.

countries in Latin America and the Caribbean, where there is a large number of businesses that are spread out across the rural territories that are faced with a lack of physical infrastructure and communication.

Additionally, when governments negotiate rules of origin they are faced with other important challenges such as how to ensure that the objectives of the rules are legitimate; for example, promoting general economic development or health protection, as well as knowing the productive sector and taking the conditions of the country into account — infrastructure, capabilities — and the investment that the State should make in order to take advantage of trade benefits. This challenge not only applies to negotiations on origin, but also to other tariff measures such as sanitary and phytosanitary measures, border measures, technical barriers to trade, etc. (IICA 2017; OMC n.d.d.) .

At the institutional level, governments need to not only strengthen the capacities and knowledge of staff supporting the agricultural sector in this area, but also improve national legislation, conditions for application and coordination between the institutions involved.

Within this context, it is important to understand that the rules of origin depend on the political interests of the countries; as a result, the work of the WTO is important because it provides a global legal framework for facilitating trade and analyzing the non-preferential rules of origin, since all preferential rules are the result of exclusively agreed-upon agreements that go beyond the provisions in the Agreement on Rules of Origin of the WTO (Arias 2017).

Do the rules of origin create challenges for companies?



During negotiations and application of the rules of origin, the needs of the private sector should be taken into account. Although the governments negotiate and administer the rules of the agreements, it is the companies that implement them and better understand their limitations and benefits.

As mentioned earlier, when the requirements for demonstrating the origin of a product are highly restrictive, difficult to apply and onerous, the possibilities of reaping the benefits of a potentially beneficial market are reduced.

At the end of the technical forum, the experts concluded that greater flexibility in the rules of origin can promote the competitiveness of local or regional products, by making companies select inputs from different locations around the world. Additionally, they can promote local industries, encourage the creation of regional supply chains and value-added, and promote regional integration.

Roughly speaking, the flexibility or rigidity of a rule of origin can represent for the companies a saving or a higher cost in order to trade in a product, which affects its competitiveness (Hermelink 2017).

According to the ITC, it is important to recognize the existence of drawbacks so that both

exporters and importers can comply with or take advantage of the rules of origin. The main difficulties reported¹⁵ by exporters are the three highlighted below:

1. The cost of obtaining a certificate of origin that allows them to access a preferential market, particularly the bureaucratic difficulties that are time consuming.
2. The conflict between theory and practice in defining what is really applicable based on what is established in the rule, since various technical barriers and language problems impede comprehension of the requirements, many of which, according to the entrepreneurs, are unnecessary and make the process inefficient.
3. The existence of multiple and strict requirements to determine the origin of a product, which may even turn out to be mutually exclusive between trade agreements.

According to Hermelink (2017), those three difficulties help to determine the specific needs for technical training of the micro, small and medium entrepreneurs within the countries of the Americas in the topic of rules of origin. Therefore, they must be provided with information and instruction in this regard so that they can fully understand these rules and thus benefit from the trade agreements signed by their respective countries, and so that development of agribusiness and trade can benefit from the application of these standards.

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¹⁵ The survey on nontariff measures was conducted between 2010 and 2016. The data from the survey can be consulted in NTM Surveys of the

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