

International Chamber of Commerce (ICC)
World Chamber Federation (WCF)
WCF Certificate of Origin Council Recommendation:

Multi Systems for Proof of Origin in Preferential Free Trade Agreements

Free Trade Agreements (FTA) should allow traders to choose which methods they use to make compliance statements when satisfying the data provisions for meeting the preferential origin conferring criteria of any FTA. These methods should include:

- **Self-declared statements of origin supported by a high quality ‘trust’ ecosystem; and**
- **electronic or documentary Certificate of Origin certified by an authorized third-party in the nation of export.**

The enabling of such dual systems will help to ensure legal security for business, safeguard data quality, and promote harmonisation which reduces costs for traders and Governments alike.

Key issue 1

Following the suspension of the Doha Round of multilateral trade talks in 2006, FTAs became the alternative mechanism for progressing global economic integration. The proliferation of FTA and the different requirements for evidencing origin is over-complicating the system for traders.

1. By the close of 2019, the World Trade Organization (WTO) Regional Trade Agreement (RTA) Database listed over 420 FTAs in force, both bilateral and regional, covering nearly every economy in the world.
2. In order for an importer to utilise a FTA to access a lower preferential tariff for goods imports into the nation applying the tariff, a party to the transaction (usually the importer) must make a claim about the origin of the goods that complies with the Rules of Origin Chapter within the given FTA. In order to make such a claim the importer relies upon accurate evidence about origin provided by the exporting supply chain partners.
3. In addition to chapters on market access, customs and trade facilitation among others, almost all FTAs contain their own Rules of Origin chapter, and many have unique requirements as to the data layout and mechanism for making the tariff preference claim. Many of these FTA include template documents and data sets that vary from the standard Certificate of Origin data set and layout used in ordinary multilateral Most-Favoured-Nation (MFN) trade¹.
4. Each FTA Rules of Origin chapter also contains calculations and thresholds required to be met by all inputs into the goods, expressed in the form of origin conferring criteria, such as

¹ Most-favoured-nation (MFN): providing equally beneficial treatment to other countries. Under the WTO agreements, countries cannot normally discriminate between their trading partners (source: www.wto.org)

Regional Value Content (RVC), Change in Tariff Classification (CTC), and Produced Entirely in the FTA area (PE), among other such codes. The resulting preferential tariff claim to importing Customs often represents substantial financial value in tax relief to the traders involved in the transaction and is presented to importing Customs authorities via a digital or documentary instrument known as a proof of origin. Correspondingly the Customs authorities are forgoing national tax revenue and so seek to ensure that all claims made are accurate and not fraudulent.

5. The WCO lists a range of definitions relating to proof of origin types used in FTAs²
 - a. 'self-certification of origin' means a type of certification of origin which utilises a declaration of origin or a self-issued certificate of origin as a means to declare or affirm the originating status of goods;
 - b. 'certificate of origin' means a specific form, whether on paper or electronic, in which the government authority or body empowered to issue it expressly certifies that the goods to which the certificate relates are considered originating according to the applicable rules of origin;
 - c. 'self-issued certificate of origin' means a specific form in which the producer, manufacturer, exporter or importer expressly certifies that the goods to which the certificate relates are considered originating according to the applicable rules of origin;
 - d. 'declaration of origin' means a statement as to the originating status of goods made by the producer, manufacturer, exporter or importer on the commercial invoice or any other document relating to the goods;
6. Failure to make accurate statements on the origin conferring criteria related to the FTA, may attract serious penalties from local authorities for both importers and exporters, so it is important for the commercial users to understand the liability attached to making any statements related to the above four means of origin statements.

Key issue 2

Standardisation of documents and procedures is trade facilitating

7. Importers seeking to take advantage of reduced tariffs through a free trade agreement need to do so by making accurate statements to the relevant authorities. These are always self-declared on local regulator import compliance documents. Some of this information relates to the origin conferring criteria for the applicable FTA (noting that more than one FTA may be available between any given bilateral trading nations).
8. With over 400 FTAs around the world, different and divergent documentary and data requirements around proofs of origin in proliferating FTA create complexity and inefficiencies for importers and exporters, leading to increased regulatory burden and incompatibilities in FTA compliance.
9. The Certificate of Origin (CO) is a standard data set outlined in ICC's International Certificate of Origin Guidelines, which has been endorsed by the WTO and used by traders for over a century. This, along with the United Nations Layout Key, assists traders and customs official alike to instantly recognise the document, data, and the location of important information within, regardless of language differences. Third-party certification in the country of export may also provide strong elements of trust in the veracity of the statements being made.

² World Customs Organization, *WCO Origin Compendium*, May 2017 <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/origin/instruments-and-tools/guidelines/origin_compendium.pdf?db=web> accessed at 6 Nov 2019, page 63.

10. However, as FTAs have arisen in recent decades, different data requirements and means of making the statements including self-declaration has given rise to myriad divergent data sets and presentation formats. This divergence increases the administrative burden for traders and is not conducive to the application of electronic document exchange (through either electronic documents, or for future innovations, particularly around distributed ledger technology). A lack of trust in data transactions in self-declared statements at the data-entry end of the transaction increases risk of legal liability at the border-crossing in the importing economy, particularly where substantial financial losses can occur for rejected preferential tariff reductions. It is important that however the statements are made – be it self-declared or third party certified – the trust elements and data requirements are equivalent.
11. In a number of countries, self-declaration systems have developed and in order to address the issues of data integrity, a supporting ecosystem has developed that involved registration and local penalties for false and misleading statements which provide integrity to these systems. Without this support infrastructure, self-declared origin fails to support importers when making preferential claims. Therefore, all self-declared systems should – in addition to the possibility for pure self-declaration by the trader itself and on the traders' full own responsibility – offer a globally standardised system of “trusted” traders in order to provide an equivalent integrity to third party certified statements.
12. Standardised CO under ICC's International Certificate of Origin Guidelines contain a key common data set used by traders to ensure tracking of shipments across borders remains accurate and free of false or misleading information. Tracking accuracy is increased since electronic CO (or manual where necessary) are certified by an authorised third-party body at arm's length to the transaction. In some self-declaration or other such novel systems available in some FTA, the accuracy of the data is called into question, revealing a lack of trust in the quality and accuracy of electronic data and the tracking information.
13. Gaps in tracking data may encourage counterfeiting and piracy activity in the margins of the movement of goods across borders. CO form a multilateral data set that lowers the risk profile of doing trade by reducing the opportunity for counterfeiting and piracy activity during shipment, thereby lowering the costs for business to engage in trade.
14. Different proofs of origin required by some FTAs also ignore the international standards set out by ICC in the International Certificate of Origin Guidelines. These risks affected World Trade Organization (WTO) Members going against the provisions of the WTO Trade Facilitation Agreement (TFA) that entered into force in 2017. The WTO TFA sets out at Article 10.3 the following requirements:

Trade Facilitation Agreement—Article 10: Formalities Connected with Importation, Exportation and Transit

Section 3. Use of International Standards

- 3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.
- 3.2 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organisations.

Response to key issues

15. ICC World Chambers Federation International CO Council urges all economies presently negotiating FTA to ensure that Rules of Origin Chapter provisions include an equivalent dual system that grants traders/exporters a choice to input their origin data into an electronically

or on paper either as Certificate of Origin certified by an authorised third-party in the nation of export, or as a ‘trusted’ self-declaration of origin information within a standardised data format such as the United Nations Layout Key.

16. The inclusion of such dual provisions will ensure that traders always have access to harmonised data-sharing across multilateral trade and diverse economies and FTAs. Dual provisions will also prevent the creation of trade barriers via ‘walled gardens’ of data exclusive to the free trade area that is incompatible with multilateral CO standards and practice.
17. The use of standardised dual systems to prove origin in FTA will also safeguard data openness and harmonisation needed for future multilateral trade progressions to take place, respecting also the Most-Favoured-Nation principles contained in the WTO Agreement.
18. Furthermore, such a dual system will contribute to greater use of preferential tariff rates, especially by small- and medium-sized enterprises (SMEs). SMEs may indeed benefit from this dual system. Trade agreements are often complicated. A competent, trusted third party lowers the threshold to use such an agreement, explains the requirements in a less technical language and makes sure the provisions are fulfilled. Self-declared systems must offer a level of trust and must be in line with third party certified systems. Traders also need to retain the recourse to a proof of origin certified by an authorised third party (e.g. Customs, chambers) that can contribute to a stronger protection of confidential business data, especially in an environment of political uncertainty. In addition, a formal, consignment-specific proof of origin should be retained as a fall-back option in the event of a withdrawal of the respective authorisation/registration often needed to perform self-certification. The choice of which of the instruments is used to prove preferential origin of goods should first and foremost be left to the companies themselves.

Benefits of the methods proposed in this response

FOR TRADERS:

- Standardised formats for origin statements decrease risk of misstatements and misinterpretation in making the requisite statements.
- Reduction of risk to traders, as they are able to take an informed approach to the level of risk they think is appropriate in choosing an equivalent ‘self-declared’ or ‘third party certified’ method, via the inclusion of dual systems in FTA.
- Standardised forms and data requirements increase the opportunities for digitisation and modern electronic data sharing systems including distributed ledger systems.
- Documents and data that are consistent enable and facilitate other origin purposes such as trade finance.
- Improved utilisation of free trade agreements.

FOR CUSTOMS AUTHORITIES:

- Standardised documents increase the speed of administrative processing of preferential claims as officials can easily recognise the documents, the data elements and claims being made.
- Consistent documents and data enable the adoption of electronic document receipt, reducing processing time and enabling increased document handling as trade flows increase.
- The use of export country attestation through certified statements, and or equivalent ‘trust’ based systems for self-declaration, reduce the time and costs of claim verification in the nation of import.
- Standardised and trusted statements enable distributed ledger and artificial intelligence systems to become integrated into trade and regulatory compliance systems globally.

Conclusion

Over recent decades with the advent of now more than 400 free or preferential trade agreements around the world, containing a wide variety of systems for origin compliance, it is now time to harmonise and standardise the available systems to reduce costs and improve efficiency for both traders and regulators. Third party certified origin and self-declared origin statements have developed and been tested in many of these agreements. However, they should not be seen as competing processes, rather they should be seen as viable options which the commercial parties can choose according to their needs and risk profile.

All regulators require traders to provide accurate statements when claiming the tax relief available from compliance with a free trade agreement. The burden of proof rests on the claimant in the nation offering the reduced taxes. In turn, the claimant relies on accurate statements from their supply chain. However, in the event of accusations by officials that the claim is not accurate, the claimant requires statements that can be relied upon as evidence in any subsequent proceedings.

For this reason, third party certified origin statements obtained from the authorised bodies in nation of export can be relied upon as evidence in legal proceedings. Similarly, self-declared systems should have an equivalent reliability, which is possible, if an appropriate system of 'trust' supports the ecosystem for such statements.

Nations negotiating and offering preferential tariffs need to adhere to globally recognised standardised systems that reduce costs for both traders and regulators, but also ensure that traders can defend themselves when claims for preference are challenged by regulators in the nation of import.

APPENDIX: legal support for the response

The Agreement Establishing the WTO incorporates the General Agreement on Tariffs and Trade 1994 (GATT 1994). Article I of the GATT 1994 binds economies of the WTO to the MFN rule, which holds that WTO members shall not discriminate between their trading partners, relevant elements relating to rules and formalities in bold font:

a. GATT 1994 Article I:

1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, **and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation**, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

The exception/exemption to the MFN rule that allows WTO Members to negotiate Free Trade Agreements with each other (which has been subject to some WTO litigation)³, is set out in Article XXIV of the GATT 1994, at paragraphs 4 to 10. Paragraphs 4, 5, and 8 are included below, and with relevant conditional elements in bold font:

b. GATT 1994 Article XXIV – paragraphs 4, 5 to 10:

4. The contracting parties recognise the desirability of increasing freedom of trade by the development, through voluntary agreements, of closer integration between the economies of the countries parties to such agreements. They also recognise that the **purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories**.
5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; Provided that:
 - (a) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;
 - (b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or **more restrictive than the corresponding duties and other regulations of commerce** existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be; and
 - (c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

³ See, in particular, the cases Turkey – Textiles and Peru – Agricultural Products.

8. For the purposes of this Agreement:

- (a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that
 - (i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,
 - (ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;
- (b) A free-trade area shall be understood to mean a group of two or more customs territories **in which the duties and other restrictive regulations of commerce** (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) **are eliminated on substantially** all the trade between the constituent territories in products originating in such territories.

As referred to above (in paragraph 20), the WTO TFA entered into force for all WTO Members in 2017 and is incorporated into the WTO Agreement. It gives clear guidance to WTO Member practice around international standards on trade documentation and data at Article 10, section 3, as follows with relevant parts in bold:

c. Trade Facilitation Agreement—Article 10: Formalities Connected with Importation, Exportation and Transit

Section 3. Use of International Standards

- 3.1** Members are encouraged to use **relevant international standards** or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.
- 3.2** Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review **of relevant international standards by appropriate international organisations.**

In allowing novel and divergent mechanisms for origin claim data to proliferate in the provisions of Rules of Origin Chapters within FTAs, some WTO Members are creating ‘walled gardens’ of trade data that will be incompatible with multilateral practice in the larger trade picture. In doing so, some WTO Members risk contravention of the principles of the MFN principles outlined by GATT 1994 Article I (above), and contravention of the exceptions to the MFN principles at GATT 1994 Article XXIV (above) which set out that no WTO Member outside the Free Trade Agreement shall be disadvantaged by the creation of administrative barriers to trade, such as those arising from divergent and non-compatible origin data systems within the Rules of Origin Chapters of such agreements.

In addition, the WTO has endorsed the trade facilitating role played by ICC’s International Certificate of Origin Guidelines (ICC International Certificate of Origin Guidelines, Forward). The WTO has also acknowledged that Certificates of Origin are a component of the harmonised and globally recognised system for proving origin of goods across the breadth of international trade. For this reason, WTO Members risk going against the guidance of the WTO Trade Facilitation Agreement (TFA) now in force and as incorporated into the WTO Agreement, given that the TFA expressly encourages all WTO Members to consult with international organisations (such as ICC) on relevant international standards for trade data disciplines in the domain of customs formalities (such as the ICC International Certificate of Origin Guidelines).

Background

1. As global supply chains increase and more nations contribute to 'global value chains', accurate and legally recognised origin of goods has never been more important. Chambers of commerce have been at the forefront of supporting the global trading community from the initial establishment of origin certification to create trust in global trade in the 1800s, through to the development of the concept of 'last substantial transformation' in the 1950s. With the advent of free trade agreements, the World Customs Organization (WCO) and some countries have adopted an alternate 'self-declared' statements to certify origin compliance in the context of preferential FTAs, which means of making statements about origin compliance within a given free trade area.
2. ICC and its World Chambers Federation (WCF) continue to provide thought leadership in all aspects of trade regulation and works closely with both the WCO and the WTO to look for new and improved ways to facilitate trade to satisfy the needs of producers and consumers around the world.
3. Certificates of Origin (CO) are a widely used component of international trade, simplified and standardised globally by ICC's International Certificate of Origin Guidelines⁴. For over a century, under ICC's global set of rules, CO have been successfully utilised by millions of traders worldwide in order to make valid origin claims, verified by an authorised body at arm's length from the transaction. These cover a range of trade facilitating purposes in relation to multilateral goods trade between economies.
4. The CO Council is a specialised Council managed by ICC. It is the forum that brings together chambers of commerce with an interest in the CO issuance, a role that has been delegated by governments to chambers of commerce since the signing of the 1923 Geneva Convention, and origin of goods matters. The mission of the CO Council is to enhance and promote the unique position of chambers of commerce as the natural agent in CO issuance and origin of goods related matters, and to ensure the integrity and sustainability of the International Certificates of Origin Accreditation Chain. The responsibilities of the CO Council include: engaging with international, regional and national governments and agencies, through ICC structures, to explain and support the role of chambers of commerce in issuing CO; supervising the CO Accreditation Chain, based on the ICC International CO Guidelines; supervising international training programmes to enhance and raise the level of chambers of commerce professionalism and competency in CO issuance; supporting chambers of commerce in the identification and use of advanced technologies in the delivery of CO and trade documents, and promotes recognition and acceptance of digital CO by governments; and supporting chambers of commerce in creating and delivering projects related to CO and origin of goods.
5. With the International Certificate of Origin Guidelines and through its CO Council, ICC WCF hopes to contribute towards the harmonisation of rules of origin and the issuing process of COs. The promotion of international standards and best practice among chambers of commerce aims to not only increase their credibility as trusted partners but also to facilitate the movement of traded goods.
6. Historically, COs have been used for a variety of purposes, including, but not limited to:
 - the calculation of cross-border tariff treatment of goods trade,
 - obtaining trade finance,
 - collecting trade statistics,
 - the administration of anti-dumping and sanctions measures, and
 - other administrative purposes by authorities in the importing and exporting economies.
 - This is explained in more detail in ICC's International Certificate of Origin Guidelines.
7. ICC Global Customs and Trade Facilitation Commission has reviewed and noted the paper.

⁴ <https://iccwbo.org/resources-for-business/certificates-of-origin/certificates-origin-guidelines/>

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33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 E icc@iccwbo.org
www.iccwbo.org [@iccwbo](https://twitter.com/iccwbo)