



EC/EAC EPA NEGOTIATIONS || RULES OF ORIGIN PROTOCOL

By Peter J. B. Steele, Subject Specialist

Policy positions to be recommended to EAC negotiators by the EABC on behalf of EAC Private Sector bodies - Some suggestions from Expert Team for consideration by Second Regional Sensitisation Workshop

WHAT THIS PRESENTATION COVERS

- WHY the projected EC/EAC EPA needs a Rules of Origin Protocol
- WHAT should be the main features of the Rules of Origin Protocol in light of the above
- CRITIQUE of:
 - Likely EC proposals
 - Proposals currently suggested by EABC
- SUGGESTED PROPOSALS for submission by EABC to national trade negotiators

WHY THE EPA NEEDS A RULES OF ORIGIN REGIME

- Improved access to EU markets leading to growth in exports will enhance economic activity in EAC economies → increased investment; employment creation; poverty reduction
- To ensure these benefits are realised in partner countries there is a need to ensure that the trade generated by the EPA is in goods produced in EAC countries not in Third Countries – i.e. there must be Rules defining the goods that originate in an EPA partner country and should therefore be granted preferential market access to prevent trade deflection/tariff avoidance

EPA RULES OF ORIGIN REGIME SHOULD

- Ensure that goods traded under preferential market access provisions of EPA actually originate within member-states – i.e. the goods must **either** be:
 - **Wholly-produced** in the exporting country according to definitions set out in EPA; **or**
 - If materials or components imported from Third Countries are used in production of goods, these must be **sufficiently worked or processed**. (i.e. **substantially transformed**) in the exporting state – understanding of ‘substantial transformation’ to be discussed later
- Establish easily understood and administered definitions of origin for various categories of goods– especially where there has to be substantial transformation (i.e. because imported materials/components are used) – compliance with Rules should not add significantly to exporters’ costs

RULES REGIME SHOULD NOT

- Restrict trade in goods whose production has capability of generating **significant** economic activity in the EPA partner country – meaning of **significant** to be discussed later
- Restrict exports of goods produced in EAC locations in order to protect EU industries with which those goods compete – this particularly true of clothing and agricultural and fishery products
- Be framed with a view to promoting national/regional integration of industrial activity when this is not economically justified and resisting globalisation trends.

MAIN FEATURES OF EC PROPOSALS

Not aware of any definitive EC proposals for EAC EPA

BUT it seems likely that

- VA will be preferred Criterion of Origin for most products requiring Substantial Transformation (not for clothing and fish/fish products) where regime will be more rigorous – EC wants regime for EPA which harmonises with other ACP EPAs and with the other PTAs it has with non-ACP economies – provisions of EBA protocol best indication of where its preferences lie BUT
- EABC should resist this outcome because:
 - Calculation of value-added can be complicated and is fruitful ground for disputes ALSO
 - VA can be used for protectionist purposes - also it can be affected by currency fluctuations

ALSO

- EC may attempt to get agreement on self-certification for issue of EUR1 movement certificates
- This should also be resisted by EAC because it will make EU importers reluctant to do business especially with first-time suppliers

PRESENT EABC POSITION

From the Position Paper 'Market Access issues and Rules of Origin under the EPA'

- In the interests of simplicity the **Criteria of Origin** for:
 - **agricultural and mineral products** should be that they be 'Wholly-obtained' (because most of them are);
 - For **most other products** which contain imported materials/components and therefore need to be 'Substantially-transformed' should be 'Change of (4-digit) Tariff Classification' – some exceptions indicated for which 'Technical Requirements' or 'Value-added' should be the requirement –
probably good final position BUT should as far as possible avoid use of VA or TR
- **Cumulation** RSA should be included in the ACP cumulation area – i.e. materials/components from that source should be considered as originating –
Yes, yes, yes
- **Schedule 1 Product List** – Again in interests of simplicity list should be based on 4-digit tariff headings –
Probably not practical as 4-digit heading list categories of products not individual products for which 6/10-digit headings required

RECOMMENDED EAC OBJECTIVES IN NEGOTIATING RULES OF ORIGIN PROTOCOL OF EPA

1. Rules of Origin should promote not discourage production for export in EAC countries – criteria of origin should reflect this aim
2. Change of Tariff Classification (CTC) should be single criterion of origin for all products that require substantial transformation – especially in case of **clothing** and **processed fish** – try and make it a generic criterion with listed exceptions where appropriate
3. Should resist attempts to reinstate crew-composition and ownership definitions for determining wholly-obtained status of fish taken in international waters
4. Should support ACP proposal that EEZ waters be counted as territorial waters for purposes of defining wholly-obtained fish
5. Simplify cumulation process
6. Retain present system for issuing EUR1 Movement Certificates in which self-certification is purely voluntary and national Customs accept responsibility for validity of EUR1s

Examine these points *seriatim*

1. Rules of Origin should promote not discourage production for export in EAC countries

– i.e. regime should:

- Prevent Third Country suppliers taking all benefit of increased opportunities for trade arising from EPA duty-break which gives EAC suppliers relative comparative advantage in some areas **BUT**
- Not resist present globalisation trends – accept that countries like PR China will gain some benefit as these are the most economic source of materials/components finished in EAC countries
- Main concern of protocol should be to encourage economic activity in EPA member-states (and, as far as EABC is concerned, in EAC member-states)

2. CTC should be single criterion of origin for all products not wholly-obtained

Because

- Technical compliance with rules would be easier. CTC criterion would facilitate exploitation of areas of relative comparative advantage in EAC economies
- Easier to monitor compliance than in case of VA or TR procedures – means administrative costs are reduced Should certainly insist on CTC for clothing – AGOA has demonstrated benefits of this as means of generating employment and combating poverty
- Should insist on CTC as criteria for processed fish products as proposed by ACP

Exceptions to use of CTC as single criterion of origin for products which are not wholly obtained

When processing operations do not create significant economic activity/employment in the exporting country

- Such products are already identified in the Cotonou+ Rules governing the present EU/EAC FEPA (Annex II Art. 5 – *Insufficient Working or Processing Operations*) – Art. 5 could be simply adopted in final EPA

BUT

- Should be mechanism for agreeing when a particular activity which appears to fall under Art. 5 exclusions in fact does generate significant economic activity/employment - e.g. operations under item (n) (*Simple assembly of parts of articles to constitute a complete article or disassembly of products into parts*) might fall into this category;

4. Resist reimposition of restrictive criteria for wholly-obtained sea-fish

5. EEZ to be deemed as territorial waters

These measures would go some way towards facilitating the development of national fishing industries and conservation of coastal waters

6. Simplify cumulation process

- Adoption of CTC as single criterion of origin would render cumulation largely superfluous - not economically advantageous to try to integrate manufacturing process on ACP regional basis BUT
- A duty-break for ACP-sourced materials/components might encourage investment in the region – see no reason why RSA should be excluded – exclusion based on legal quibble not development needs
- Where it is advantageous to source materials/components from EU/ACP partners the CTC criterion would facilitate process of administrative compliance – i.e. it would be easier to prove CTC process occurred in ACP member-states than if there was a VA or TR criterion

6. Retain present system for issuing EUR1 Movement Certificates in which self-certification is purely voluntary

- EC proposals to move towards system of self-certification would discourage export activity by SMEs
- Would make EU importers reluctant to import from EAC because would expose them to financial risk in case of false declarations of origin

FALL-BACK POSITION FOR EAC NEGOTIATORS

No retreat from Cotonou+

Would secure most of points suggested above as advantageous to EAC exporters – much more liberal Rules of Origin regime

Seems reasonable chance of success because:

- EC has already conceded Cotonou+ rules to persuade EAC to sign up to Interim EPA (i.e. FEPA) – would they risk failure to get full EPA by insisting on own way now – EPAs are important to EC's self-image as promoter of LDC development
- In fact, EC has shown willingness to flinch from the hard line – i.e. by suggesting that they would not insist on VA for broad categories of products (including clothing)
- EAC would enjoy support of EU importer interests in resisting proposals for self-certification

Definition of wholly-obtained goods in Cotonou Convention

Based on definitions in WCO Kyoto Convention

- (a) Mineral products extracted from national soil or seabed;
- (b) Vegetable products harvested there;
- (c) Live animals born and raised there;
- (d) Products from live animals raised there;
- (e) Products obtained by hunting or fishing conducted there;
- (f) Products of sea fishing and other products taken from the sea outside their territorial waters by national vessels;
- (g) Products made aboard national factory ships exclusively from products referred to in subparagraph (f);
- (h) Used articles collected there fit only for the recovery of raw materials, including used tyres fit only for retreading or for use as waste;
- (i) Waste and scrap resulting from manufacturing operations conducted there;
- (j) Products extracted from marine soil or subsoil outside national territorial waters provided that the producers have sole rights to work that soil or subsoil;
- (k) Goods produced there exclusively from the products specified in subparagraphs (a) to (j).

BUT Cotonou convention added some additional nasty twists as regards fish not caught in national waters

FISHY ADDITIONS TO KYOTO IN COTONOU

- In the Cotonou Convention the Kyoto items (f) and (g) were further defined in order that the terms "their vessels" and "their factory ships" in (f) and (g) shall apply only to vessels and factory ships:
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- Which are registered or recorded in a member-state;
- Which sail under the flag of a member-state;
- Which are owned to an extent of at least 50 per cent by nationals of a member-state, or by a company with its head office in a member-state, of which the manager or managers, Chairman of the Board of Directors or the Supervisory Board, and the majority of the members of such boards are nationals of a member-state and of which, in addition, in the case of partnerships or limited companies, at least half the capital belongs to those States or to public bodies or nationals of a member state;
- Of which the master and officers are nationals of a member-state; and
- Of which at least 75 per cent of the crew are nationals of a member-state.

Effect of these additions:

- Prevent development of export-oriented fish-product manufacture in EAC countries
- Give EU fishing interests privileged access to EAC coastal waters and EEZs

INSUFFICIENTLY WORKED OR PROCESSED PRODUCTS

The Cotonou Convention Rules of Origin regime listed criteria of origin for all 97 chapters of the BTN classification. However, the following processes were specifically identified as not conferring originating status because they did not create significant economic activity in the exporting country:

- (a) Preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) Breaking-up and assembly of packages;
- (c) Washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) Ironing or pressing of textiles;
- (e) Simple painting and polishing operations;
- (f) Husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) Operations to colour sugar or form sugar lumps;
- (h) Peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) Sharpening, simple grinding or simple cutting;
- (j) Sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);
- (k) Simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) Affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) Simple mixing of products, whether or not of different kinds;
- (n) Simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) A combination of two or more operations specified in (a) to (n);
- (p) Slaughter of animals.

All operations carried out in the producing country shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient to confer origin there.