

WCO Origin Conference

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Session 5: Administration of Rules of Origin

- ▶ There are still a few “true believers” who dream of harmonized non-preferential rules of origin (like myself)
- ▶ However, given the simple fact of different resource allocations between preferential trading partners, it is not even clear the objective of completely harmonized preferential rules of origin is even desirable
- ▶ If anything, the trend is towards giving traders more preferential origin options in the form of alternate rules and co-equal rules of origin
- ▶ But - if origin multiplicity and complexity might make sense for origin content does it makes sense for origin administration?.....NO!!

Origin Administration: My Approach & Perspective

- ▶ Private sector origin practitioner who recognizes the necessity and efficiencies of working closely with customs authorities locally, nationally and internationally
- ▶ Given their longstanding trade facilitation efforts in this area, including the Certification and Verification Guidelines, the way forward for standardized origin procedures lies in continued collaboration between the WCO and the trade or private sector
- ▶ This requires the private sector to explain their own origin compliance costs and origin process to the WCO and then work with the WCO to work toward standardized data requirements and origin procedures (RKC)

Origin Compliance Costs & Risks

- ▶ Costly: origin determination, certification, supplier management, records retention, legal fees, related administrative and employee costs
- ▶ Another cost could be duties!! = preferential paranoia
- ▶ Why? Loss of preference = duties and/or penalties years after importation
- ▶ Origin liability cannot be “outsourced”

Origin Risks: What Can Be Done?

- ▶ **Origin Visibility at the Executive Level:** duty free market penetration is important but must be balanced with awareness of duty and reputational risks. Executive level support also prevents cost cutting initiatives that might lead to increased origin risk
- ▶ **Create Cross-Functional FTA/Origin Team:** properly managed origin is a multi-departmental issue that includes sourcing, production, logistics, finance, customs compliance, legal/tax
- ▶ **Education + Training + Origin Manual:** support all the above with educational investments and eventual origin management manual

Origin Compliance: General Tasks

- ▶ **Proper classification** under the HS of all inputs and finished goods
- ▶ Create standardized **Bills of Materials**
- ▶ **Advance Rulings & Pre-Audits (TFA)**
- ▶ Consider **e-origin & software solutions**
- ▶ Evaluate the origin literacy and accuracy of suppliers

Origin Compliance: The Role of Sourcing

- ▶ **Sourcing** is the bedrock of global value chains: what is purchased from where and from who
- ▶ Sourcing must have potential origin and FTA duty savings considerations as part of their sourcing decision matrix (quality, delivery, cost, supplier qualification) with the ability to turn to trade compliance teams as required
- ▶ Total landed cost analysis and reduction - not only for imported inputs but also for preferential finished goods exports - that requires total end-to-end management

Origin Compliance: The Role of Sourcing

- ▶ Attempting to avoid having minor cost reductions on inputs that negate duty free status of finished goods in destination market
- ▶ Savings on inputs + effective and competitive market access on exports
- ▶ Introduce related contract clauses on procurement agreements
- ▶ Simulate FTA/origin status before committing to purchase + include FTA/origin in continuous improvement regimes

Operational Activities + Job Description

- ▶ In partnership with Global Trade Compliance, Legal, and Business, implement the Country of Origin operations program across manufacturing sites and supply chain.
- ▶ Train and coach Country of Origin Analysts to ensure appropriate knowledge is built and maintained within the team. Establish and execute audit programs to monitor Country of Origin determination performance and service provider performance in declaring Origin to Customs and other agencies.
- ▶ Establish program work streams and methods that improve efficiency and support compliance priorities. Determine program gaps and opportunities that deliver compliance and efficiency.
- ▶ Implement recordkeeping systems that meet regulatory requirements and mitigate risk of non-compliance.
- ▶ Determine product COO by applying product specific rules of origin for the purposes of import and export documentation and transactions, filing with Customs agencies, product labeling, and for the purposes of declarations to governments in purchasing contracts by analyzing products according local, international, and World Trade Organization (WTO) rules and regulations.
- ▶ Analyze Bills of Material, manufacturing plans, and other relevant documents to determine origin based on facts and patterns of manufacturing, and apply the rules according to Customs and legal guidance required to fully determine product origin.
- ▶ Solicit, review and approve Certificates of Origin from suppliers.
- ▶ Develop and document processes and procedures required to manage COO determination and various operational import programs, and implement the tools needed to ensure ongoing compliance with those programs.

Operational Activities + Job Description

- ▶ Consult and collaborate with various teams, including Supply Chain Operations Excellence and Global Trade Compliance, to assist in the development of technology projects to automate COO processes.
- ▶ Perform tactical and strategic functions through various technology platforms, including third party cloud-based databases.
- ▶ Maintain records and documentation necessary to support COO determinations and claims according to the rules governing international trade and internally developed policy and procedures.
- ▶ Support duty minimization/recovery opportunities such as tariff engineering, Nairobi Protocol, Free Trade Agreements, International Technology Agreement and others by supporting classification and Post-Entry Amendment and Appeal Programs.

The WCO Revised Kyoto Convention : A Work Plan for Origin Administration

- ▶ Issues - Suggestions - Design Recommendations
- ▶ Standardized data and documentation requirements: a (virtual) gathering of national certifying entities and statistical units to determine minimum and common origin elements to be retained and summarized annually
- ▶ Exporter and/or producer - classification of export - imported inputs - applied rule (regional value content, tariff shift, specialized process...) - declared regional value content
- ▶ Collected by FTA (and beyond) - equivalent retention under self-certification?

Work Plan Elements and Ideas

- ▶ A standardized outline of information/documentation and data required to determine and establish origin complete with explanatory notes as what they are and why they are required
- ▶ A brief overview of the process of supplier management work flow process to supplement the explanatory notes mentioned above:
- ▶ Move from general requirements to sectoral specifications over time
- ▶ Naturally, in most cases this will be the same data and documentation for verification

Work Plan Elements and Ideas: Standards & Flexibilities

- ▶ Consider the possibility of eventually hardwiring origin data management principles and guidelines into an **ISO origin standard** - standards help SMEs in developing and developing countries alike (i.e. not just what has to be done but also how)
- ▶ Consider **mechanism to encourage compliance**: limited liability, retroactivity and/or penalties when the origin verification issue has been the subject of an Advance Ruling - or consistent treatment in the country of export (TFA)
- ▶ Similar treatment for **importer initiated audits** - in the absence of reason to believe

Work Plans Elements & Issues: Flexibilities & Liabilities

- ▶ **Inability to Supply Sufficient Information:** if a producer/exporter has their origin determination and supporting documentation professionally reviewed and then the supporting documentation becomes unavailable customs is instructed to take into consideration the professional determination
- ▶ **Importer versus Producer/Exporter Liability:** a central issue in origin - a critical imbalance of rights and obligations (unlike the HS) - SMEs might be the big losers unless they can demonstrate adequate origin literacy to clients
- ▶ **Solutions?:** Given the structure of this problem what can be done (especially as the use of self-certification increases)? Importer certification at least puts the origin declarant and the origin beneficiary together but not always feasible

Work plan Elements & Issues: Origin Liability & Quality Considerations

- ▶ What is needed is some form of review, analysis and/or verification of the producer or exporter's origin declaration and supporting documentation
- ▶ Someone or some process that metaphorically stands between the producer/exporter and the importer to act as a form of preferential **origin quality control**
- ▶ Of course, **we already** have this type of activity taking place - notably by customs authorities, chambers of commerce and other competent authorities
- ▶ Add to these actors others including but not limited to: review by agents for the importer, accountants (as required by NAFTA), lawyers, customs brokers, advisors, trade associations located in the country of import or export, origin software solutions used by producers, exporters and/or importers **with some additional requirements**

Additional Origin & Liability & Quality Considerations

- ▶ All of the these reviews must be done to agreed upon standards
- ▶ The standards have to be accepted in the country of import + **encourage importer responsibility to articulate origin requirements (RKC?) - unilateral**
- ▶ Parties or solutions that perform these origin quality operations to agreed upon standards will likely have to be certified to do so....and audited themselves from time to time
- ▶ The structure of the origin quality standard, which by its very nature is characterized by supplier data and management issues, should reflect and be adaptable to and with existing and emerging traceability standards/guidelines
- ▶ It would be interesting to determine if it was feasible to support origin quality claims with some form of “origin insurance” (possibly along the ATA Carnet model) or that they at least with supported with some for of customs surety bonds

Areas of Future Research & Initiatives

- ▶ Academic research into reliable **models for estimating the true cost of origin certification** of any variety (i.e. customs, chambers, certifying entities, self-certification, importer certification) + **“presumption of origin”** (Ciuriak)
- ▶ Research into the feasibility of using **“Blockchain”** technology to support preferential origin claims given known user-friendly attributes (Interoperability without monopoly, data transparency, no mandated third party data platform, ERP friendly)
- ▶ Hardwiring origin issues into **Trade Facilitation Agreement** implementation issues (Advance Rulings, Appeals...)
- ▶ Ensure the implementation of complementary polices as found in the **FTA-Pass Regime**
- ▶ **Origin content complexity resembles a “Wild West” dimension of international trade** - it does not have to be this way with origin administration

Thank you for listening!!



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