Rules of Origin in Free Trade Agreements

Rules of Origin (RoO) represent a highly complex aspect of tariff law. Nevertheless, it is critically important that Barbadian exporters understand the basic rudiments of RoO. Beyond this basic step, however, exporters need to familiarise themselves with the specific RoO contained in the free trade agreements (FTA) to which Barbados is a party as they determine the rate of duty to be applied to Barbadian exports. RoO simply put are laws, rules and regulations which seek to determine the country of origin of a good.

Given that the primary benefit of a FTA is the exchange of tariff concessions among a limited number of countries, the successful operation of the FTA requires clear, neutral and transparent rules which distinguish between goods which originate from a FTA member and hence are entitled to preferential access and those which are non-originating and are, therefore, subject to the most favoured nation (MFN) rate, that is, the rate of duty paid by all other countries. Without such an instrument, goods from the non-FTA countries would be able to enter one FTA member and then be re-exported to another FTA member and qualify for preferential treatment.

Basic Rudiments of RoO

The main concept in origin determination is that the country of origin is the last country where a ***substantial transformation*** took place. For a product to be considered to be of a particular state, it must have been substantially transformed there into a new and different article having a distinctive name, character or use.

Three main methods (which may also be combined) are used to establish whether such substantial transformation occurred- percentage criteria method, technical test method and change of tariff heading method.

Under the percentage criterion method, the substantial transformation requirement is expressed in terms of either (i) a minimum percentage of value that must have been added in the exporting country (that is, the minimum domestic value), or (ii) a maximum percentage of value accounted for by imports (that is, the maximum value of foreign inputs). If the prescribed percentage does not reach or exceeds the specified threshold, then the process which the product has undergone in the exporting country is not deemed to represent a substantial transformation and the product is therefore not eligible for preferential treatment when entering the market of other FTA parties.

The technical test method is based on manufacturing or processing operations. It prescribes certain production or sourcing requirements that may or may not confer originating status. For example, simple assembly or packaging operations are not sufficient to confer originating status.

Under the change of tariff heading method, origin is granted if, after transformation of one or several imported inputs in the exporting (originating) country, the processed product exported falls under a different tariff heading than that under which the imported inputs were classified.

Another important concept in the administration of RoO is that of cumulation. Cumulation is an instrument by which producers are permitted to import materials from a specific country or regional countries without undermining the origin of the product. When cumulation of origin is possible, the degree of processing which is required to take place in the exporting RTA party for a product gaining originating status will vary according to whether imported materials have been supplied by countries benefitting from the cumulation or not.

RoO under the CARIFORUM-European Community (EC) Economic Partnership Agreement (EPA)

The EPA features more flexible RoO than those which obtained under the Lomé/ Cotonou regime. Of specific benefit to Barbados are the more relaxed rules for biscuits and garments. The basic RoO state that in order for CARIFORUM goods to be granted originating status and hence qualify for duty-free entry into the EC, products must be either wholly obtained or sufficiently worked or processed**.** Protocol I to the EPA sets forth the conditions under which originating status is determined.

Examples of products which would be considered wholly obtained in CARIFORUM include fruit and vegetable products harvested in CARIFORUM and products from live animals raised in CARIFORUM. The conditions which need to be satisfied in order for products to be considered to be sufficiently worked or processed are laid out in Annex II to Protocol I. More precisely, Annex II indicates the degree of working or processing which must be carried out on ***non-originating*** materials used in manufacturing in order for the product to be accorded originating status. For example, the RoO for insecticides for retail sale indicates that originating status will be conferred if in the manufacture of the insecticides the value of all the non-originating materials used does not exceed 50 % of the ex-works price of the insecticides. In instances where the rules state that non-originating materials may not be used, such materials may be used if their total value is less than 15% of value of ex-works price of the product and/or percentages in Annex II not exceeded**.**

In the EPA, CARIFORUM is permitted to cumulate with the other African Caribbean and Pacific (ACP) member states; the EC; the Overseas Countries and Territories (OCTs), which include the Dutch, French and English OCTs and Greenland; and certain neighbouring developing countries, namely Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and Venezuela. Materials originating in the EC, the OCTs or in other ACP States will qualify as materials originating in CARIFORUM States when incorporated into a product obtained here. In terms of cumulation with the neighbouring countries, the CARIFORUM state must expressly request that materials originating in these states be considered as originating in a CARIFORUM State when incorporated in a product obtained here. However, there are some limits to cumulation. For example, rules permitting cumulation do not apply to some products such as cane or beet sugar and cocoa powder with specified sugar content until 2015. In addition, products from South Africa are excluded.

Understanding FTA specific RoO such as those contained in the EPA can be a daunting feat. Recognising this, Barbados Private Sector Trade Team (PSTT) will be partnering with the CARICOM Secretariat in the coming months to host a workshop to demystify these rules for exporters.

RoO under the proposed CARICOM-Canada Trade and Development Agreement (TDA)

It has been argued in some quarters that the restrictive RoO in the CARIBCAN Agreement precluded Commonwealth Caribbean countries from taking maximum advantage of the preferential access granted by Canada. In the upcoming TDA negotiations, CARICOM will have the opportunity to craft a more flexible RoO regime which takes into account the production processes in CARICOM countries.

The negotiation of specific rules of origin will require consultation at national and regional level with producers/exporters. In order to best formulate RoO which reflect domestic interests, domestic exporters who have experience in exporting to the Canadian market are encouraged to provide feedback on the difficulties in satisfying CARIBCAN rules and highlight areas which could be improved. Even those exporters who do not have any experience in exporting to the Canadian market should ensure that they remain abreast of developments in the formulation of a national position on origin rules as they might at some point in the future seek to enter that market and would want to ensure that the regime in place permits their products to enter on a duty-free basis. In addition, Barbadian agricultural and goods exporters will need to determine what they desire in a RoO text in the TDA.

The PSTT has already held one focus group to discuss the RoO under the proposed TDA and will be organising another focus group shortly to get a more in depth perspective on how the domestic exporters think that the TDA's RoO should be crafted.