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ISSN 1020-1017



Issue No. 240 – August 2006

VERIFICATION OF CERTIFICATES OF ORIGIN IN ECONOMIC INTEGRATION AGREEMENTS SIGNED BY LATIN AMERICAN COUNTRIES

As explained in issue No. 236 of the FAL Bulletin in April 2006, the origin procedures in economic integration agreements (EIAs) signed by Latin American countries pertain to the issuance of certificates of origin and to the verification of origin when a product is imported.

While that issue focused exclusively on the issuance of certificates of origin, the present edition concludes the cycle by dealing with the verification of that origin. Both subjects are related to the document entitled "Emisión y verificación de origen en acuerdos de integración económica suscritos por países de América Latina: debilidades y fortalezas", *Comercio internacional series*, No. 64 (LC/L.2510-P), Santiago, Chile, March 2006, available at: www.cepal.org/publicaciones/Comercio/0/LCL2510P/S64C-L2510e-P.pdf

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I. INTRODUCTION

This issue examines the verification-of-origin procedures of the Latin American Integration Association (LAIA) and various economic complementarity agreements (ECAs) signed in the legal framework of LAIA, specifically MERCOSUR, Chile-MERCOSUR, Bolivia-MERCOSUR, and Chile-Peru, which are agreement numbers 18, 35, 36 and 38, respectively. Below are some observations regarding the verification of origin for imports, followed by conclusions.

II. VERIFICATION OF ORIGIN IN THE LATIN AMERICAN INTEGRATION ASSOCIATION (LAIA)

When verifying the origin of a product, if the importing authority (customs) considers that the certificate of origin issued by an official body or authorized agency of the exporting country does not comply with the rules, it reports the matter to the exporting country and requests that the government authorities provide the necessary information in order to solve the problem. This is so that the exporting country may adopt the measures it deems necessary to resolve the matter.

The rules stipulate that under no circumstances should the importing country halt the importation procedure for merchandise covered by the certificates of origin in question, although it may request additional information from the government authorities of the exporting country. However, the importing country has the right to adopt whatever measures it deems necessary to ensure compliance with tax laws.

Main observations regarding the system of the Latin American Integration Association (LAIA)

(a) The rules do not specify a time period for resolving problems. This provides little incentive for customs officials with doubts as to the origin of a product to request additional clarification from the exporting country. In practice, this process can easily last a year or more and there is no guarantee that an exporting country will adopt the necessary measures to solve the problem, even if it did commit an error in issuing the certificate of origin.

(b) Nor is it specified what type of information the importing country may request of the exporting country. Experience shows that in the absence of any LAIA specifications in this regard, the exporting country will refuse to provide the information, considering it confidential.

(c) While the merchandise in question may not be retained in customs, the importer must pay a bond to guarantee compliance with tax laws, although it is not specified how this is to be calculated. Also, since the process for resolving problems of origin is slow, with slim prospects of success for an importer, major importers sometimes prefer to pay customs duties.

(d) The bond payment is even more dissuasive for a micro- or small enterprise, since these generally have neither access to credit nor the necessary cash flow to pay the guarantee deposit. If these companies are not given particular consideration and special treatment, any uncertainty regarding the results of the investigation may seriously harm their business.

(e) Customs houses do not generally have up-to-date information as to who is authorized to sign certificates of origin and who is no longer authorized. This makes the verification of a product's origin a cumbersome and bureaucratic process for importers.

(f) There is no indication of how an exporting country should deal with a confirmed problem of origin. In other words, even in possible cases of fraud of origin, the rules do not stipulate sanctions for those involved.

III. VERIFICATION OF ORIGIN IN SOME LAIA ECONOMIC COMPLEMENTARITY AGREEMENTS (ECAs)^[1]

In MERCOSUR, the competent authority of the importing country (the customs authority in other agreements) may, with grounds, request additional information from the competent authority or official agency of the exporting country to establish the authenticity of the certificate of origin. The Chile-Peru agreement also includes verification of compliance with rules of origin per se. In all cases, the requested information must be provided no later than 30 days after the request is received, and is treated as confidential.

All the agreements establish, while not specifying the criteria for calculation, that authorities may demand guarantees to ensure compliance with tax laws, although they may not withhold the customs release for the merchandise with the questioned certificate of origin. If the requested information is not provided or turns out to be unsatisfactory, the customs authority has the right to initiate an investigation whenever necessary. MERCOSUR establishes a period of 40 days to initiate an investigation, while the Bolivia-MERCOSUR agreement allows 20 days. The initiation of an investigation must be reported to the competent authority of the importing country, the importer, and the competent authority of the exporting country.

The investigation process may include, where deemed necessary by the competent importing authority, sending written questionnaires to exporters or producers, visiting the producer's facilities or other procedures agreed upon between the parties involved. The MERCOSUR agreement also includes the right to request new information (by means of the competent authority of the exporting country) from the body issuing the certificate of origin. It permits the use of experts, but does not specify a time period within which the investigation must be carried out.

Only the Bolivia-MERCOSUR agreement establishes a length for the investigation, which is a maximum of 150 days. The other agreements, however, do not set any type of limit on the duration of an investigation, although MERCOSUR does stipulate that, once the investigation has been concluded, a decision based on the results must be made within 45 days. All the agreements indicate that once a decision on the investigation has been reached, the results must be reported to the authorities involved. The guarantee deposit may then be returned or withheld, except in MERCOSUR, which establishes that the bond must be returned within 90 days of the initiation of the investigation, even if the investigation is to continue.

Under the MERCOSUR agreement, if merchandise is determined not to comply with rules of origin, the producer may modify the production process and inform the importing country of these changes (by means of the competent exporting authority). Once notified of the production changes, the importing country has 30 days to make a decision and 60 days to request a visit to the producer's facilities. If no agreement is reached on these changes, or the result of the investigation is considered unsatisfactory, the parties may use the agreement's dispute-settlement system, appeal to the Trade Commission, or request a technical report.

Under the other agreements, if the result of the investigation is unsatisfactory, the parties may engage in bilateral talks. If a consensus is not reached, they may turn to the agreement's dispute-settlement system.

The MERCOSUR agreement specifies that the certifying body shall not be held responsible if it has been presented with false background data by the applicant. In all agreements, any cases of fraud are subject to domestic laws. MERCOSUR rules also stipulate explicit sanctions such as suspensions for the producer, exporter and/or certifying body where appropriate.

MERCOSUR has a special protocol for customs houses that check certificates of origin. The protocol clarifies the procedures to be followed and provides a simple framework to prevent the use of arbitrary criteria by customs officials.

Main observations regarding the system of economic complementarity agreements (ECAs)

- (a) The agreements studied do not specify what type of information the exporting country must provide. Only the MERCOSUR agreement requires that records and documents of government agencies or authorized bodies be made available, although this requirement could be made more comprehensive in the interests of effective investigation.
- (b) In all the cases analysed, a period of 30 days is established for obtaining the requested information in order to confirm the authenticity of the certificate of origin. This speeds up the verification process. All information is treated as confidential, which makes producers and exporters more inclined to trust the procedure and less likely to object to the verification.
- (c) Under LAIA, the bonding requirements for the release of merchandise create a series of problems for importers. The MERCOSUR rule on returning guarantee deposits 90 days after the initiation of the investigation, regardless of whether the investigation is prolonged, therefore reduces costs for the importer.
- (d) The agreements do not define a method for calculating guarantee deposits.
- (e) All the agreements provide for visits to the facilities of the producer. MERCOSUR rules even allow the participation of verification experts, which makes it easier to arrive at a suitable solution to the problem.
- (f) With the exception of the Bolivia-MERCOSUR agreement, the duration of the investigations is not specified. This causes unnecessary delays and uncertainties that inconvenience the trading parties.
- (g) If the investigation does not lead to an agreement regarding a problem of origin, there are other means of resolving the matter: the dispute-settlement mechanism of the ECA in question.
- (h) Customs houses do not always have an up-to-date list of officials authorized to sign certificates of origin.
- (i) The relevant sanctions are determined by the laws of each country. None of the agreements establishes a system to monitor which sanctions are actually applied, thereby diminishing the effectiveness of the penalties.
- (j) The MERCOSUR agreement establishes that the certifying body shall not be held responsible if the exporter provides false information for the declaration or certificate of origin. This is a questionable policy, as these bodies should exercise control over the background data they receive and not act solely on the principle of good faith.
- (k) All the agreements make reference to customs violations and the need to penalize them in accordance with domestic laws. The MERCOSUR agreement itself also establishes complementary penalties for offenders.

IV. OBSERVATIONS REGARDING VERIFICATION OF ORIGIN FOR IMPORTS

When checking the certificate of origin of an import, the customs houses of the region are only able to observe the formal aspects of the document: whether all the boxes are correctly filled out, whether the signatures correspond to the authorized personnel, whether the nomenclature corresponds to the product's designation, etc.

Many customs houses, not having an up-to-date list of signatures authorized to certify origin, will operate on the basis of good faith during the formal verification process or fill in missing background information on the certificate of origin in order to avoid slowing down import operations. In short, customs houses do not yet have the capacity to carry out a thorough check into a certificate of origin. To be able to do so, they would need to be provided with human and financial resources they currently lack.

Some countries have taken measures to improve this situation. Chilean customs authorities, for instance, have incorporated a preferential access variable in its risk assessment for imports. This has resulted in some achievements, such as a higher proportion of certificates of origin undergoing checks. Although this tends to be an

essentially formal check, it could well evolve into a more thorough monitoring system.

The formal verification performed by customs houses is insufficient as it does not always detect origin fraud, which is known to occur with some frequency in the region. It is not uncommon for customs to find out about such fraud when an importer, having paid customs duties for a product, files a complaint after learning that the same product has entered the country with preferential treatment. The same occurs when an exporter has a certificate of origin for a non-originating good. In this case, an exporter shipping the same product to the same destination without the same preferential customs treatment generally sounds the alarm and requests that a government body conduct an investigation. Detecting origin fraud is the responsibility of a country's public sector rather than the private sector.

Nevertheless, as explained previously, the process for resolving doubts on substantive compliance with rules of origin entails extensive and unwieldy procedures that create uncertainty and unnecessary costs for the importer. This is especially true when the importer is faced with the financial cost of the guarantee deposit, a problem that is even greater for those who do not have access to credit. The slowness and complexity of this process hamper trade for importers and make customs houses less inclined to initiate an investigation. Without a doubt, it is necessary to simplify the procedures involved in the public-sector verification of substantive compliance with rules of origin.

As a complementary measure, capacity-building would greatly help customs houses in the region to check certificates of origin for both form and substance. This would be very costly for the countries, however, as it would involve a duplication of efforts and financial resources. It seems that the most feasible alternative for the region would be to emphasize government control over the systems for issuing certificates of origin. This would establish greater confidence both within and outside the region.

V. CONCLUSIONS

LAIA rules governing the procedure for issuing and certifying origin are rather unclear. This is understandable given that the Montevideo Treaty (1980) establishing LAIA states that it is only intended to provide general guidelines so that countries can use partial instruments for economic integration according to their own interests. There are currently 37 ECAs in effect that were signed within the organization's legal framework. Each of these agreements has resolved the shortcomings of the LAIA rules in its own way.

In short, this amounts to a "spaghetti bowl" of different origin procedures, which affects the administration of agreements both for public sectors and private sectors of Latin American countries. The solution to this problem is to move forward with the goal of achieving greater convergence between the EIAs signed by countries in the region.

With respect to the agreements examined, the inadequacy of LAIA rules in terms of origin procedures lies in the fact that LAIA is the only regional integration body that does not specify a fixed time period for which documents used to issue certificates of origin may be held in case of the need for future inspection; it merely describes a process that is rather lacking in terms of verification. Nor does it define sanctions for when a certificate of origin is falsified or inaccurate, a method for dealing with customs violations, or a system for resolving disputes. Again, almost all of these factors have been improved upon in the ECAs examined.

The preceding illustrates the need for LAIA, which has considerable scope in terms of the number of member countries and the common policies between them, to revise its rules in this area in order to adapt them to the new challenges posed by the international globalization process. One advantage of this process is that it would favour the accumulation of value at the regional level and facilitate the convergence of ECAs signed under the LAIA legal framework.

The EIAs examined also have significant weaknesses that stand in the way of commerce. One restriction is that, in all the agreements studied, certificates of origin expire after 180 days and can only be used for one trade transaction. In the Chile-United States Agreement, in contrast, this document is valid for four years and covers an unlimited number of transactions for a single product.

In the same vein, there is a lack of clarity in the region on whether a certificate of origin should be issued by a government body or a private body. This article proposes that the best system would be to delegate this function to a private trade organization, with selective public oversight on a selective basis to strike a balance between the proper functioning of the process and the need to facilitate trade for importers and exporters in the region. Experience in the region has demonstrated that the good-faith criterion of the public sector is insufficient as a means of evaluating the data contained in a declaration or certificate of origin.

The verification of origin carried out by customs houses in the region focuses more on form than on content, as

they do not have the economic or human resources necessary to enforce rules of origin. In the light of these limitations, this article proposes greater and more efficient public m over the issuance of certificates of origin, in order to save efforts and resources and make the process more reliable.

Needless to say, defining an optimal system for issuing certificates of origin in an EIA is linked to the need for standardized procedures for all the member countries of an integration system. The time has definitely come for LAIA to exercise a more dynamic and innovative form of leadership in the region by building on its current efforts to introduce electronic certificates of origin, while also modifying its origin procedures and rules to incorporate developments included by the most advanced ECAs signed under its legal framework. Improving LAIA rules in this area would contribute to achieving greater convergence between the plethora of ECAs in the region, a process that could be extended to other aspects of regional integration.

[\[1\]](#) As stated previously, the ECAs examined are MERCOSUR, Chile -MERCOSUR, Bolivia-MERCOSUR, and Chile-Peru.
