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ISSN 1020-1017



Issue No. 243 – Noviembre 2006

VERIFICATION OF CERTIFICATES OF ORIGIN IN CHILE

Origin procedures concern both the issuance and verification of certificates of origin. Certification of origin consists of demonstrating that a product complies with standards of origin that qualify a good for access to the corresponding tariff preferences in a destination market, and that no triangulation has occurred in this process. Verification of origin means not only formally checking the validity of the certificate of origin, but also ensuring that the merchandise covered by the certificate genuinely qualifies as originating. All trade agreements carry rules on origin procedures, which continue to apply after the corresponding tariff reduction programmes have concluded.

This edition of the bulletin examines the case of Chile, because of the large number of trade agreements the country has signed. For further information on this subject, please contact Miguel Izam: Miguel.izam@cepal.org.

I. INTRODUCTION

Chile stands out within Latin America and the Caribbean, not only because of the number of trade agreements it has signed, but also because of the geographical diversity of some of its trading partners. Chile has signed free trade agreements (FTAs) with the European Free Trade Association (EFTA), Canada, Central America, China, [1] the Republic of Korea, the United States, Mexico, [2] Panama and Peru. It has also signed partnership agreements with the European Union (EU), and with the group known as P4, which also includes Brunei Darussalam, New Zealand and Singapore. Chile has signed economic complementarity agreements with LAIA partners Argentina, Bolivarian Republic of Venezuela, Bolivia, Colombia, Cuba, [3] Ecuador and MERCOSUR. A similar agreement has also been signed with India and a free trade accord is being negotiated with Japan.

II. REVIEW OF ORIGIN PROCEDURES IN FOUR TRADE AGREEMENTS SIGNED BY CHILE

The agreements mentioned above employ four different modalities for issuing and verifying certificates of origin. For each of these, the main contents of a prototype agreement are explained below.

A. With the European Union

1. Certification of origin

There are two procedures for issuing certificates of origin under this agreement. The first is a certificate of circulation of goods (EUR.1), which is extended by the competent government authority of the exporting country upon written request from the exporter or from the export company's authorized representative (in the latter case under the exporter's responsibility).

In the European Union, EUR.1 certificates are issued by customs authorities. In Chile they are issued by the Office of International Economic Affairs (DIRECON), which reports to the Ministry of Foreign Affairs. DIRECON does not have the capacity to conduct the entire process, however, and subcontracts pre-certification out to two private business organizations: the National Chamber of Commerce (CNC) for agricultural goods and the Manufacturers' Association (SOFOFA) for industrial goods.

The second procedure for issuing proof of origin is an "invoice declaration", which may be made on an invoice, delivery note or any other commercial document that describes the products in detail. Both certificates of origin and invoice declarations must be kept for three years.

2. Verification of origin

Verification of origin is conducted at random or when there is reasonable doubt over the authenticity of the documents submitted or the origin of the products. Where an investigation is warranted, it falls to the exporting country's competent authorities, which are empowered to require any type of proof and to inspect exporters' accounts or to carry out any other procedure they deem necessary for the purpose.

Should the customs authorities in the importing country decide to withdraw preferential treatment for particular products pending the outcome of verification procedures, the importer will be offered the opportunity to clear the merchandise through customs subject to any precautionary measures considered necessary.

Any dispute over verification that the parties cannot settle between them is referred to the Special Committee on Customs Cooperation and Rules of Origin. All disputes between importers and their customs authorities are settled under the country's own legislation. National

sanctions may be imposed upon any individual found to have made out a document containing inaccurate information.

A. With MERCOSUR

1. Certification of origin

All certificates of origin must contain a sworn statement by the final producer or exporter of the merchandise, stating full compliance with the provisions on origin set out in the respective agreement. Certificates of origin are obtained after submission of a formal request.

Certificates of origin are issued by the official agencies nominated by each signatory party. These agencies may delegate this responsibility to other public or private agencies that have nationwide coverage. Each signatory party nominates one official agency to oversee the issuance of certificates of origin.

In Chile, DIRECON is the official issuing agency and it subcontracts the certification of agricultural and industrial goods to CNC and SOFOFA, respectively, for all agreements signed with LAIA countries and for the Generalized System of Preferences (GSP). A number of other government agencies also issue certificates of origin: the Crop Farming and Livestock Service (SAG) for wines, the National Fisheries Service (SERNAPECSA) for marine products and the Chilean Copper Commission (COCHILCO) for minerals. These three agencies operate independently and do not report to DIRECON.

Certificates of origin are valid for 180 days and must be issued within 10 working days after the goods are shipped.

Certificates must be retained for two years after the date of issue, together with all the substantiating data.

2. Verification of origin

Where justifiable doubt arises over the authenticity or veracity of certificates of origin, customs authorities may require additional documentation from the official verification and oversight agency in the exporting signatory country, in order to clarify the doubt or initiate investigations, as the case may be.

The customs authority must report the initiation of an enquiry to the importer and to the verification and oversight authority in the exporting signatory country, from whom it requests information as needed for the enquiry.

As part of the verification process, the importing signatory party may, through the competent exporting authority:

address written questionnaires to exporters or producers on the exporting side;

conduct visits to an exporter's facilities for verification purposes;

carry out other procedures upon agreement.

If the enquiry is not concluded to the satisfaction of the parties, or if the parties cannot reach an agreement through subsequent bilateral consultations, they may resort to the dispute settlement procedure established under the agreement.

If the certificate of origin is proven to violate the provisions of the agreement or if any falsification, adulteration or any other circumstance causing fiscal or economic prejudice is found in the certificate or in the substantiating documentation, the signatory parties may adopt sanctions under their own legislation and take measures against producers, exporters and the agency that issued the respective certificate.

C. With Mexico

1. Certification of origin

This agreement provides for a declaration and a certificate of origin. Each country has rules requiring producers or exporters who fill out and sign certificates or declarations of origin to keep those documents for at least five years after signature, together with all substantiating commercial data.

Under rules adopted in each country, producers or exporters, as well as importers, who make fraudulent declarations contravening the country's rules and customs regulations face the same legal consequences.

2. Verification of origin

In order to verify whether a product qualifies as originating, each party may, through its customs authority:

address written questionnaires to exporters or producers on the exporting side;

conduct visits to an exporter's facilities for verification purposes;

carry out other procedures as agreed.

If written consent to the visit is not received within 30 days after the producer or exporter receives notification, the importing party may deny the corresponding preferential tariff treatment.

Each party is obliged to establish or maintain penal, civil or administrative sanctions for infractions of its laws and regulations in relation to the provisions on customs procedures.

D. With the United States

1. Certification of origin

Each party must require an importer claiming preferential tariff treatment for a good to make a written declaration in the import document that the good qualifies as originating. The importer must retain certificates of origin and all the associated records for a period of five years.

Each party must provide that a certificate of origin may be issued by the importer, exporter, or producer of the good.

A certificate of origin is valid for four years from the date on which it is issued and it may cover the importation of one or more goods or several importations of identical goods within a period specified in the certificate.

2. Verification of origin

Each party is obliged to grant any claim for preferential tariff treatment, unless the party possesses information indicating that the importer's claim fails to comply with any requirement set forth in the regulations. To determine whether a good qualifies as originating, the importing party may, through its customs authority, verify the origin in accordance with its customs laws and regulations. For the textile sector in particular, verification visits may be conducted.

Where a party determines through verification that an importer has certified more than once, falsely or without substantiation, that a good qualifies as originating, the party may suspend preferential tariff treatment to identical goods imported by that person.

To summarize, then, Chile has two systems for certifying origin – self-certification and certification by an agency. Self-certification may be carried out by the producer or the exporter in the agreement with Mexico and, in the agreement with the United States, by the importer as well. In the agreement with MERCOSUR, DIRECON delegates responsibility for certification to CNC and SOFOFA. Under the agreement with the European Union, these two agencies pre-certify and DIRECON is the official certifying body.

It is interesting that no public or private agency is responsible for verifying self-certification, even though this might be considered necessary in terms of country-image and although article 69 of the Customs Ordinance establishes penal sanctions and fines for fraudulent entry of information in a declaration of origin.

By contrast, certifying and pre-certifying agencies work to verify the data provided by producers or exporters requesting certificates of origin. This is in addition to the verification process DIRECON conducts in relation to the certifying and pre-certifying agencies and to producers and exporters. In the case of imports, Customs is responsible for verifying compliance with rules of origin. The following section looks at the different verification of origin procedures employed by each of these three powers. The procedures of other public agencies that issue certificates of origin (i.e., SAG, COCHILCO and SERNAPESCA) are not discussed because these agencies deal with products whose origin is easy to identify.

III. POWERS VERIFYING CERTIFICATES OF ORIGIN IN CHILE

A. DIRECON

This agency verifies the issuance of certificates of origin as follows:

1. Checks on export companies

DIRECON maintains a statistical database which it uses to cross check information on exports and imports. This system alerts the agency when an exporter imports and exports the same product. DIRECON then makes enquiries of the firm and asks it to supply information on its own production and to identify its suppliers. The electronic system also alerts the agency when a new export company or a new export product appears. In this case too, a verification process is conducted. In all these investigation processes, DIRECON requests supports from certifying and pre-certifying agencies.

2. Checks on private certifying and pre-certifying agencies

DIRECON hires an external auditor to carry out an annual audit of each of the certifying and pre-certifying agencies. This is a broad-based and thoroughgoing study that looks at a range of areas from how certificates of origin are issued to the agencies' expenditure on training programmes. The external auditor also visits some of the firms that have requested certificates of origin. The audit is financed with 2% of the total revenues collected by the certifying and pre-certifying agencies for issuance of certificates of origin.

In addition, private certifying and pre-certifying agencies must report regularly to DIRECON on the certificates of origin they have issued, including the tariff code and breakdown of goods exported, destination market and export value. Significantly, DIRECON has been affording increasing importance to the origin verification process.

B. Private certifying and pre-certifying agencies

1. National Chamber of Commerce

CNC works with the Chilean Exporters Association on issuance of certificates of origin, in order to cover the whole of the country. The increasing importance CNC is attributing to certification of origin is illustrated by the recent establishment of the Central Certification of Origin Unit, comprising three individuals mandated to energize the operation of the system. They are also working on a procedures manual for the issue of certificates of origin and the collection of fees. The unit cost of certificates is 4,000 Chilean pesos (Ch\$) (about US\$ 7.50) for LAIA and Ch\$ 6,500 (some US\$ 12) for agreements with Europe.

CNC does not carry out as many visits as might appear necessary to verify the information provided by requesters of certificates of

origin, however, and in this regard it infringes the contract signed with DIRECON, which does require such visits. This is an important point because triangulations have been discovered in the exportation of certain agricultural goods which had originally been imported from China and other countries. In addition, CNC has conducted only two investigations into export companies in the last two years, based on evidence supplied by national producers. In short, CNC acts on the principle of good faith through sheer lack of capacity.

CNC also infringes its contract with DIRECON inasmuch as it does not carry out training programmes for the staff who issue certificates of origin or for producers and exporters who request the documents. In fact, CNC joins in with the training programmes organized by SOFOFA jointly with DIRECON. Be this as it may, CNC is aware of the need to create training programmes and conduct verification visits on a selective basis to producers and exporters requesting certificates of origin.

2. Manufacturers' Association (SOFOFA)

SOFOFA is quite strict as regards the issuance of certificates of origin. In fact, except when there is a need for a sworn statement under the terms of the respective agreement, SOFOFA always requires the exporter to fill out a technical report containing general, economic and legal data on the manufacturer, as well as specific information on the product to be exported, including its cost structure and inputs originating from third trading partners.

SOFOFA raises objections to 30% of the requests for certificates of origin it receives and has found that a third contain false information. Even so, it conducts an average of just two company visits per month, which is clearly not enough. SOFOFA therefore needs to increase its capacity to conduct visits to firms providing dubious information, on the one hand, and to afford more importance to the application of sanctions to exporters who submit adulterated data, on the other.

The rates SOFOFA charges for the issuance of certificates of origin are different to those charged by CNC. SOFOFA certificates cost Ch\$ 6,000 for certificates going to LAIA countries and Ch\$ 6,500 for those going to the European Union.

C. Customs

Customs has a computerized integrated external trade system which is used to perform quite comprehensive risk management. The system consists of over 100 filters, one of which exists solely to check for imports carried out under trade agreements involving preferential tariff treatment. This is an electronic process that verifies the consistency and integrity of data contained in import documentation. The system analyses transactions of over US\$ 100,000 and any import operation that generates a "red light" must undergo physical and documentary inspection.

However, the review of the documents is somewhat of a formality and so is the physical inspection, since the products observed by the inspector would have to very clearly infringe the origin criteria for the commercial transaction to be questioned. This is because there are no customs inspectors specialized in matters of origin. This lack of capacity on the part of Customs is also evident in the absence of a unit specialized in inspection of origin. What this formality means is that the inspection is normally confined to checking that the certificate of origin is presented in a timely manner, that all fields of the document are properly filled out and that it carries the signatures of the competent officials in the country of origin.

Customs' lack of capacity in terms of verification of origin is compounded by the lack of financing to conduct visits to exporting countries. Given that Customs is the sole agency verifying the origin of imports, its verification procedures are evidently not stringent enough, which is all the more worrying in the case of self-certification.

IV. MAIN CONCLUSIONS

Although the different powers responsible for verifying origin in Chile have improved significantly in recent years, much remains to be done. Increased financial resources and a skilled human resource endowment are needed to accomplish this responsibility at all the levels examined. The certifying and pre-certifying agencies also need to coordinate better in order to employ identical procedures to extend certificates of origin and charge the same rates for issuing them. It would also be beneficial to improve relations between DIRECON and Customs, and to evaluate the possibility of imposing sanctions on producers, exporters and importers who provide false information in sworn statements or certificates of origin.

[1] FTA covering goods only for the time being.

[2] FTA which has recently evolved into a partnership agreement.

[3] Partial scope agreement that has yet to come into effect.