



TRADER INFORMATION REGARDING ORIGIN OF GOODS

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ORIGIN OF GOODS

1. THE ORIGIN OF GOODS FOR CUSTOMS PURPOSES

1.1. INTRODUCTION

Another area of requirements when goods are declared to Customs for cross border purposes is the origin of goods. This means that a correct country of origin of goods should be stated on the declaration document called Bill of Entry (SAD Form), supported by relevant certificates or other types of authorization of origin if necessary.

On the bill of entry, origin accounts for only one field and often origin is misunderstood such as taking it to refer to the country of export. The fact of the matter is that origin is more complex as it is guided by rules of origin found in the Customs and Excise Act for general purposes as well as origin rules found in various international agreements and similar arrangements of preferential trade between Lesotho and other countries.

The purpose of this booklet is to provide a basic understanding about the origin of goods to importers and exporters who may wish to:

- Import goods which are restricted in Lesotho in relation to country of origin such as disease control and political sanctions;
- Export goods to countries which have restrictions based on origin of goods such as reasons of disease control and political sanctions;
- Import or export goods and benefit from preferential tariff rates when goods are imported from countries which have preferential trade arrangements with Lesotho.

This booklet shall respond to the following questions which are often asked in relation to origin of goods:

- What are customs requirements in relation to the origin of goods?
- Why is it necessary to determine the country of origin for goods imported into Lesotho and to determine whether or not goods exported from Lesotho originate in Lesotho?
- What is the difference between country of export and country of origin?
- How is origin of goods determined?
- What are the risks if origin of goods is not correctly determined?
- What are the responsibilities of the importer and exporter in relation to origin of goods?
- What are the responsibilities of customs in relation to origin of goods?
- Which rights do the importer and exporter have in relation to origin of goods?
- Which services provide for importers and exporters in relation to origin of goods?

1.2. WHAT ARE CUSTOMS REQUIREMENTS IN RELATION TO THE ORIGIN OF GOODS?

- a) When an importer or exporter submits a bill of entry to lodge a declaration of goods for purpose of importing or exporting them, such a declaration must include:
- i. A country of origin of the goods in question
 - ii. A general movement certificate or certificate of origin for imports if there is a possibility that the goods were exported from a country whose goods of a particular class are prohibited or restricted e.g. for disease control reasons
 - iii. A preferential certificate of origin or other relevant authorization¹ for goods where the importer wishes to claim preferential rates of duty under an international trade arrangement. The certificate must be in the format prescribed in the relevant trade arrangement;
 - iv. A preferential certificate of origin or other authorization for exports from Lesotho if the exporter wants to claim preferential rates of duty upon entry into the destination country under an international trade agreement or other arrangement;
 - v. A Lesotho Movement certificate for exports if the destination country requires such certificate for any reason other than preferential trade reasons e.g. prohibitions and restrictions related to disease control, environment, political sanctions etc.

1.3. WHY IS IT NECESSARY TO DETERMINE THE COUNTRY OF ORIGIN FOR GOODS IMPORTED INTO LESOTHO AND TO DETERMINE WHETHER OR NOT GOODS EXPORTED FROM LESOTHO ORIGINATE IN LESOTHO?

- a) Preferential trade reasons:

Reciprocal trade arrangements

- i. If an international trade agreement is concluded between Lesotho and another country or group of countries, it means that goods from Lesotho when imported into that country or countries will be charged a customs duty less than that charged from goods from the rest of the world and vice versa. The conditions for trade in this context including rules of origin, are normally negotiated and mutually agreed based on reciprocal benefit by all parties;
- ii. In many cases preferential duties or tariffs as they are commonly known, could be “free” i.e. zero;
- iii. Such preferential trade in goods applies only to goods that **originate** from Lesotho and from the other country or countries which are parties to the agreement;

¹ Other relevant authorizations may include an invoice declaration or a supplier’s declaration or others as may be required by the applicable regime of preferential trade.

Unilateral Trade arrangements

- iv. Developed countries which are member states of the World Trade Organization (WTO) often provide duty free market access to lesser developed countries like Lesotho. The conditions for qualifying for preferential market access under these regimes including the rules of origin, are normally decided unilaterally by such preference giving countries;
- v. Such duty free market access or preferential market access, is granted to goods that originate in a country that qualifies according to the set criteria e.g. least developed country;

In general

- vi. In short for any goods to be imported into any country to benefit from preferential tariff treatment, such goods should qualify as originating in a country that is either a party (in the case of reciprocal agreements) or a beneficiary in the case of unilateral arrangements by developed countries;
- vii. Any agreement of preferential trade and a regime of duty free market access for less developed countries always contains a set of **rules of origin**;
- viii. The following are the reciprocal preferential trade agreements to which Lesotho is currently a party²:
 - a. The Free Trade Agreement between member states of the Southern African Customs Union (SACU) and the European Free Trade Association (EFTA);
 - b. The Trade Protocol agreed between member states of the Southern African Development Community (SADC)
- ix. Unilateral preferential trade arrangements to which Lesotho is currently a beneficiary are the following³:
 - a. The African Growth and Opportunity Act (AGOA) regime which provides duty free market access to countries listed therein including Least Developed Countries;
 - b. The European Union “Everything But Arms” (EBA) initiative which provides duty free market access to countries listed therein including least developed countries;
 - c. Other countries which offer duty free market access:
 - 1. Canada
 - 2. China
 - 3. Japan
 - 4. Taiwan
- x. Other possible reciprocal trade agreements which are still under negotiations or not yet concluded are:
 - a. The SADC – European Union Economic Partnership Agreement
 - b. SACU – India Preferential Trade Agreement
 - c. SACU – Mercosur Preferential Trade Agreement

² Available on www.lra.org.ls/trade_agreements.php

³ Available on www.lra.org.ls/trade_agreements.php

- b) Non-Preferential Trade reasons:
 - i. Under circumstances other than where preferential trade has been arranged, the customs law of every country specifies the conditions which shall be satisfied in order to consider goods as originating from any country;
 - ii. Section 47 of the Customs and Excise Act provides the general conditions which shall confer origin of goods from any country under all circumstances except under preferential trade arrangements;
 - iii. There are various reasons why governments can be concerned about origin of goods even if there is no preferential trade arrangement. These include:
 - a. Control of goods in cases where goods from all or certain countries are prohibited or restricted due to political sanctions;
 - b. Control of goods in cases where goods from all or certain countries are prohibited or restricted due to disease control.

1.4. WHAT IS THE DIFFERENCE BETWEEN COUNTRY OF EXPORT AND COUNTRY OF ORIGIN?

- a) Country of Export:
 - i. The last country from which goods entering Lesotho were exported;
 - ii. In this case it does not matter whether or not the goods were produced there or how they ended up in that country except if they were only in transit.
- b) Country of Origin:
 - i. The country where a product has been wholly obtained or produced; or
 - ii. In the case of products with inputs from more than one country, the country where the last substantial transformation of the product was acquired;
 - iii. The rules for substantial transformation are uniquely set under the Customs Law of each country and each unique trade agreement. While they are largely the same across preferential trade agreements, they may differ.

1.5. HOW IS ORIGIN OF GOODS DETERMINED?

- a) The rules of origin prescribe the conditions that should be met in order to render goods wholly obtained or as substantially transformed;
- b) Anyone who wishes to establish the origin of their goods must:
 - i. Know whether or not there are non-preferential restrictions in Lesotho or destination country in regard to country of origin e.g. disease related controls, political sanctions;
 - ii. Know whether there are preferential trade arrangements in the country of import and whether they want to benefit from preferential duties;
 - iii. Know the rules of origin applicable to the goods in question identified by a specific description and commodity code;
 - iv. Determine whether the production of the goods in question confer origin of the goods in the country of export e.g. Lesotho.

1.6. WHAT ARE THE RISKS IF ORIGIN OF GOODS IS NOT CORRECTLY DETERMINED?

- a) In the case of preferential exports, it will not be possible to benefit from preferential (reduced customs duties) in the country of import. This may:
 - i. Push the selling price higher than it would be if preferential treatment was acquired;
 - ii. Increase competitive pressure against the exporter due to influence on the price;
 - iii. Lead to sanctions if the violations are detected.
- b) In the case of preferential imports:
 - i. Loss of revenue as preferential rates may be applied where they should not be applied;
 - ii. Unfair competition caused by those who do not qualify for origin;
 - iii. Sanctions on the importer or country of export if violations are detected.
- c) In the case of non-preferential exports:
 - i. Denial of entry in the country of import if there are restrictions based on country of origin;
 - ii. Sanctions against the Lesotho exporter and/or real country of origin if the violation is detected.
- d) In all cases, misleading statistics for policy making.

1.7. WHAT ARE THE IMPORTERS' OR EXPORTERS' RESPONSIBILITIES IN REGARD TO ORIGIN OF GOODS?

- a) Recall that Customs and Excise Act requires every person entering goods for any purpose shall subscribe to a declaration in the prescribed form as to the correctness of the particulars and purpose of the form (section 40 of the Act);
- b) Among other things that a person must declare correctly and accurately, is the origin of the goods in question;
- c) The importer or exporter of any goods is responsible to provide a correct country of origin based on the applicable rules of origin on the form known as the Bill of entry and on the certificate of origin or other document for declaration of origin;
- d) They shall not expect the Customs Authority to fill the form on their behalf;
- e) If the importer or exporter is unable to determine the origin of goods, they may appoint a duly licensed Clearing Agent to determine origin of goods on their behalf.

1.8. WHAT ARE THE RESPONSIBILITIES OF CUSTOMS?

- a) When the importer or exporter has submitted the declaration including the origin of the goods (country of origin) Customs shall verify the particulars declared including the origin;
- b) If everything is correct in the opinion of Customs, complies with the law and all duties and taxes due have been paid, Customs shall release and effect clearance of such goods;

- c) If there are inconsistencies, Customs shall follow up and make a decision based on the circumstances including:
 - i. Making its own determination whether or the origin declaration is correct;
 - ii. Deciding not to grant preferential tariff treatment
 - iii. Detention;
 - iv. Seizure;
 - v. Penal Measures consistent with the Act

1.9. WHAT ARE THE RIGHTS OF THE IMPORTER OR EXPORTER?

- a) The right to discuss with a Customs Officer matters pertaining to the origin of goods and relevant issues ;
- b) The right to a written decision or determination about the origin of their goods
- c) The right to submit a written administrative appeal to a decision or determination by customs regarding origin of goods
- d) The right to appeal to the Revenue Tribunal if not satisfied with an administrative appeal
- e) The right to appeal to national courts of law if not satisfied with a tribunal decision

1.10. WHAT SERVICES DOES LRA OFFER IN RELATION TO THE ORIGIN OF GOODS TO FACILITATE TRADE?

- a) Pre-entry information about the origin of goods
- b) Settlement of origin disputes internally
- c) Public rulings on origin matters
- d) Publication of origin related information and other trade related matters

2. SPECIFIC GUIDELINES TO SERVICES PROVIDED BY LRA IN REGARD TO ORIGIN OF GOODS

2.1. PRE-ENTRY ORIGIN INFORMATION

- a) An applicant shall submit an application form in the prescribed format⁴;
- b) The applicant shall when requested to do so by an officer submit a sample of the goods and other related materials⁵ (to the extent possible) for which pre-entry information is sought;
- c) The pre-entry information shall be communicated to the applicant within a period of 30 days but when it is not possible to communicate within such time, the Commissioner shall respond in writing indicating the time when the ruling can be issued;
- d) Pre-entry information provided in this nature is not binding on LRA at the time of importation or exportation.

2.2. DISPUTE SETTLEMENT

- a) If the Customs Office at which goods are declared disagrees with the importer or exporter's origin declaration and makes a decision to change it, the importer or exporter has a right to discuss with the officer in charge to reach an understanding;
- b) If agreement cannot be reached on desk level discussion, the importer has a right to submit a written opinion about the origin of his goods;
- c) Customs shall then examine the issue further and issue a final ruling on the origin;
- d) If the importer or exporter is not happy with the ruling, he has the right to submit a written appeal letter referring to the ruling and stating his arguments to the Commissioner of Customs and Excise;
- e) The Commissioner will respond in writing to the appeal;
- f) If Importer or exporter is still not satisfied, they may submit a written appeal to the Revenue Tribunal which shall arrange for proceedings to resolve the matter and make a ruling;
- g) If importer or exporter is still not satisfied with the Tribunal Decision, they have a right to appeal to a competent court of law of Lesotho.

2.3. ORIGIN AND OTHER TRADE RELATED INFORMATION PUBLISHED TO DATE

- a) The Free Trade Agreement between members states of Southern African Customs Union (SACU) and member states of the European Free Trade Association (EFTA). Available on www.lra.org.ls/Trade_Agreements.php;
- b) The Interim Economic Partnership Agreement between member states of the Southern African Development Community (SADC) and the European Union (EU). Available on www.lra.org.ls/Trade_Agreements.php.

⁴ Forms available at all Customs offices and LRA advice centres

⁵ Other related materials may include detailed specifications of the product and pictures