



RULES OF ORIGIN

EPA Business Brief

Issue 1

Introduction

The CARIFORUM¹-European Union Economic Partnership Agreement (EPA) was signed by fourteen CARIFORUM¹ states (Haiti signed the agreement in December 2009) and the twenty seven European Union (EU) member states in October 2008. The agreement, which came into effect through provisional application in December 2008, replaces the trade component of the Cotonou Agreement signed in 2000. Under the Cotonou Agreement the European Community granted African, Caribbean and Pacific (ACP) countries non-reciprocal preferential trade access for ACP goods into Europe.

The EPA is a reciprocal trade agreement that is intended to make it easier for people and businesses from the CARIFORUM and the European Union to invest in and trade with each other and thus assist in the growth of the Caribbean countries. The agreement also has a strong development component.

The EPA Business Brief series examines the opportunities and challenges for CARIFORUM businesses with an interest in trading under the EPA. The series also look at the implications of the relevant provision(s) being discussed for regional trade development.

Rules of Origin

“Rules of origin” are the criteria used to define where a product was made. The concept encompasses the laws, regulations and administrative procedures which determine a product’s origin. It is essential to determine a product’s origin as a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies). Rules of Origin are an important component of any trade agreement as they determine which goods would benefit from the preferences granted under such an agreement. A product’s origin is also important when compiling trade statistics.

Rules of Origin under the EPA

Articles 9 and 10 of Chapter 1 of the EPA, as well as Protocol 1 govern the rules of origin within the EPA.

Rules of Origin (RoO) under the EPA maintain the structure of the relevant provisions in the Cotonou Agreement, though there are changes in the conditions governing production and manufacture of some goods and some adjustments in others. It must also be noted that the rules of origin in the EPA apply to production and trade in both directions (between the European Union and CARIFORUM countries).

The key changes in the RoO provisions under the EPA are related to the products that are considered to be originating in CARIFORUM States; revised provisions on ‘cumulation’ which allow for sourcing from neighboring countries including Mexico; and a relaxation on the rules for specific products including fisheries, garments, and some agro-products.

“ORIGINATING PRODUCTS”

The following products are considered as originating in CARIFORUM States:

- a) Products “wholly obtained” in the CARIFORUM States, and
- b) Products obtained in CARIFORUM States incorporating materials which have not been wholly obtained there, provided that such materials have undergone “sufficient working or processing in that CARIFORUM State.

Provision on ‘Wholly Obtained’²

The provisions on ‘wholly obtained’ content “define what goods and materials are automatically considered to be of local origin, and relate mainly to natural resources, agriculture products, and livestock”³ and is structured to ensure that goods are either wholly obtained in the exporting country or are substantially transformed there (as opposed to simply being trans-shipped from a third country). These provisions have been expanded to include aquaculture products.

Examples of ‘Wholly Obtained’ Products

- a) Mineral products extracted from CARIFORUM countries or their seabed;
- b) Fruit and vegetables products grown and harvested in CARIFORUM countries;
- c) Live animals born and raised in CARIFORUM, or products from them including those obtained by (i) hunting and fishing there; or (ii) products of aquaculture, including mariculture, where they are born and raised there;
- d) Products of sea fishing and other products taken from the sea outside the territorial waters of CARIFORUM countries or EU countries by their vessels;

Provision on ‘Sufficiently worked or processed’

Products which are not ‘wholly obtained’ may still be considered to be originating in CARIFORUM if the product is “sufficiently worked or processed” in accordance with the conditions which indicate the working or processing which must be carried out on non-originating materials used in the manufacture of the products covered by the Agreement. Conversely, there are also operations which may be considered as “insufficient working or processing” to confer originating status⁴.

Examples of Insufficient Processing

- a) Break-up and assembly of packages (i.e. repackaging)
- b) Washing, cleaning, removal of dust, oxide, oil, paint, or other coverings; or ironing or pressing of textiles
- c) Husking, partial or total bleaching, polishing, and glazing of cereals and rice
- d) Affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging
- e) Simple mixing of products, whether or not from different kinds, mixing of sugar with any other material

¹ The Forum of the Caribbean Group of African, Caribbean and Pacific (ACP) States (CARIFORUM) is the body that comprises Caribbean ACP States for the purpose of promoting and coordinating policy dialogue, cooperation and regional integration, between the ACP and the European Union under the CARIFORUM-European Community Economic Partnership Agreement (EPA).

² Protocol 1, Article 6

³ Naumann, Echert, “Rules of Origin in EU-ACP Economic Partnership Agreements,” Issue Paper No. 7, page 12

⁴ Protocol 1, Article

Provisions on Cumulation⁵

The new rules for ‘cumulation’ extend beyond the EU, ACP and the Overseas Countries and Territories or the EU (OCTs) to include materials from neighboring developing states to CARIFORUM (i.e. Central America plus Colombia, Cuba, Mexico, and Venezuela)⁶. In short, this change in the provision allows CARIFORUM countries to source goods and materials for productive inputs not only from other ACP countries (except South Africa), the EU and OCTs but also from the list of countries specified in the Agreement for use in their production, and for the final products to still be considered as originating from CARIFORUM. For the small islands countries within CARIFORUM, this allows producers and exporters to take advantage of trade relations with suppliers in these countries. For example, a producer of hot sauces from Saint Lucia can source the hot peppers for the hot sauce from Mexico or Costa Rica, and the final product (e.g. the bottle of hot sauce) would be considered originating from Saint Lucia and hence be able to enter the EU market as CARIFORUM export.

However, there are a number of exceptions to this rule of ‘cumulation’ under the EPA, including cane and beet sugar⁷.

Table 1: Products excluded from ‘cumulation’ until 2015

SUGAR	COCOA PRODUCTS	COFFEE-BASED PREPARATIONS
Food Preparations of Flour, Groats, Meal, Starch or Malt Extract, not Containing Cocoa or Containing Cocoa in a Proportion by Weight of < 40%	Food preparations containing cocoa in blocks or bars weighing more than 2 kg	Preparations based on odiferous substances, of a kind used in the drink industries.
Tea-based preparations	Flavoured or coloured sugar syrup	

Product Specific Provisions

The EPA also relaxes rules on specific products mostly of interest to CARIFORUM states.

Fisheries – the provisions relating to fisheries have been simplified and relaxed. For instance, the new definition of ‘wholly obtained’ is now expanded to include aqua-culture products including mari-culture in cases where the fish is “born and raised there”. This means that not only catch-fisheries products (i.e. those caught in the seas from fishing boats) but also farmed-fish products, such as shrimp and tilapia, qualify as originating providing the latter are born and raised in the exporting country. This is of particular interest to countries such as Belize that have a vibrant aqua-culture industry.

Illustrative Examples: Fisheries Products

A Surinamese exporter of fisheries products has a number of shrimp trawlers operating off its coast and in the Atlantic Ocean. The vessels are registered in Suriname and are 50:50 owned between the exporter (a Surinamese national) and an American investor. The crew on the trawlers are a mix of Guyanese and



Latin American nationals. The exporter also imports shrimp from Mexico to help meet supply quotas.

Example 1: All shrimp and fish caught by the trawlers, even if done so outside of the 12 mile territorial waters for Suriname would be considered originating in CARIFORUM (meets ownership requirements and crew requirements no longer applicable).

Example 2: 60% of the shrimp exported by the exporter was imported from Mexico, with the other 40% comprised of catch from the trawlers- product would still be considered originating from CARIFORUM as Mexico is on the list of neighboring developing states from which ‘cumulation’ is allowed.

Example 3: Tilapia are imported from neighboring Brazil, filleted, and exported by the exporter under his brand and in his product packages. This would not be considered originating as it involves insufficient processing.

The new rules also simplify the conditions relating to ownership and crew requirements for vessels for fish caught beyond a country’s territorial waters (i.e. outside of the 12 mile territorial zone). While the new rules maintain that the fishing vessels must be registered in an ACP or EU country, and be at least 50% owned by nationals of either, it no longer requires that at least 50% of the crew must be nationals of either an ACP country or the EU. In other words, crew nationality is no longer a qualifier for whether fish is originating in a CARIFORUM country. A fishing boat, therefore, registered in Jamaica and at least 50% owned by Jamaicans, but with crew of mostly Honduran nationality would have any fish caught from outside of its 12 mile territorial waters qualify as originating in Jamaica irrespective of any further processing done as the crew requirement has been removed under the EPA.

Garments - the EPA also relaxes the rules on the treatment of textiles. The new requirement for only single transformation now make it possible to producers and exporters from CARIFORUM countries to source the textiles from other countries (i.e. third countries). In other words, it gives exporters access to suppliers of competitive textiles from other parts of the global value chain for

⁵ Article 6; Appendices 7- 11

⁶ See Annex VII to Protocol 1 and Title I Article 5 of the EPA

⁷ See Protocol 1, Annex X

this industry irrespective of country of origin. This is something that was not possible under Cotonou.

Illustrative Examples: Garments

A clothing manufacturer from the Dominican Republic imports the fabrics from Bangladesh and China that is used in the manufacture of men's and women's pants, skirts, and jackets.

Example 1: *The uncut denim and cotton fabrics from both countries are imported, cut into patterns, and sewn into the final products. Considered originating as it meets the single transformation requirement.*

Example 2: *Semi-finished pants and skirts are imported from Chile and they are trimmed to size and finished in the Dominican Republic (buttons, pockets, and tags added). Not considered originating as this involves insufficient processing and does not meet the single transformation requirement.*

Trade Benefits for CARIFORUM

Recent trade data suggests that trade performance of specific CARIFORUM countries for garments and for fisheries products that the relaxations in the RoO provisions under the CARIFORUM-EU EPA have resulted in export growth for these products.

The new rules for RoO under the EPA have made it possible for CARIFORUM States to enhance trade and exports in a number of sectors and for some specific products, at the same time that it provides a strong incentive to move production up the global value chain – especially in the case of garments and or fish products.

CARIFORUM exports for garments totaled US\$31 million in 2013 mainly on exports from the Dominican Republic and Haiti who together accounted for roughly 96% of all exports of garments from CARIFORUM to the EU. The top three markets for garment exports from CARIFORUM into the EU were Belgium (46%), the United Kingdom (27%), Germany (10%), and the Netherlands (about 4.5%). The main garment products exported to the EU from

CARIFORUM include T-shirts (Product Code 6109), Men's suits, jackets, trousers (Product Code 6103), and women's suits, dresses, skirts, (Product Code 6104). Exports in these products saw significant increases in exports to the EU between 2010 and 2013 suggesting that the new provisions of RoO under the EPA are providing immediate benefits and that the DR and Haiti are taking advantage of these opportunities.

For the fisheries sector, in 2013 CARIFORUM exports of fish products totaled approximately US\$70 million in 2013 with Suriname, the Commonwealth of the Bahamas, Guyana, Jamaica and Belize – in that order – being the main exporters. The main import markets in the EU are France (34%), the Netherlands (23%), Belgium (18%), and Spain. The main fish products exported from the region are frozen whole fish (Product Code 0303) and fresh whole fish (Product Code 0302) and while fillets and pieces (Product Code 0304) and cured and smoked fish (Product Code 0305) had decent exports in 2006 those have fallen off completely and were only nominal in 2013.

The new RoO provisions on fisheries give exporters an opportunity to enhance their exports of fish products on the basis of exports of farmed shrimp and tilapia amongst other types of farmed fish. This could already be the case for The Bahamas, Guyana and Suriname who experienced significant increases, on average, in their exports to the EU between 2010 and 2013, while Jamaica and Belize saw some decline, though Belize's total exports in 2013 was about 1.5 times that of 2012. Although Dominica and Saint Lucia do not feature as key exporters of fisheries products to the EU, there is a real opportunity for them to grow their exports of catch fish products to the neighboring markets of Guadeloupe and Martinique.

For other products such as jams, jellies, biscuits CARIFORUM producers and exporters can benefit from the expanded list of countries in terms of 'cumulation' in order for a product to be considered wholly obtained'. These products can also benefit from new flexibilities on alternative origin requirements for certain agriculture and related products.

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