

The Certificate of Origin: Getting It Right

ITAGC Presentation
June 19, 2013

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I. INTRODUCTION

- The concept of the Certificate of Origin
- Types of Certificates of Origin
- Purposes of Certificates of Origin
- Certification Aspects / Chambers of Commerce
- Consequences of “Not Getting it Right”

II. WHAT IS A CERTIFICATE OF ORIGIN?

- A Certificate of Origin (CO) is generally defined as a document of varying format according to purpose, which attests through a declaration of the party signing that an article or product is of the origin of a specific country.
- There are many types of COs and used to validate origin for many reasons.

II. WHAT IS A CERTIFICATE OF ORIGIN? (continued)

- The CO may, or may not, be stamped or validated by a government or non-governmental authority depending upon requirements imposed by the country in which the CO will be presented or utilized.
- The CO may, or may not, be required to be submitted to the Customs Authority.

III. DIFFERENT TYPES AND PURPOSES OF CERTIFICATES OF ORIGIN

Certificates of Origin are typically divided into two types:

1) Preferential

- NAFTA
- Generalized System of Preferences (GSP Form A)
- Free Trade Agreements (FTAs)
- Quotas
- VRAs

III. DIFFERENT TYPES AND PURPOSES OF CERTIFICATES OF ORIGIN (continued)

2) Non-Preferential

- Attesting to origin for generic purposes
- Statistics
- Confirming country of export
- Used with Letters of Credit

III. DIFFERENT TYPES AND PURPOSES OF CERTIFICATES OF ORIGIN (continued)

Preferential

- As a general rule, COs falling under the preferential category are forms specified and published by the government (Customs authority or related agency).
- They are used to qualify for preferential tariffs or exemptions.
- The COs require an attestation by the declarant that the product meets the requirements of origin specified for its particular purpose. Usually this is the exporter but it could be an agent, importer or other party having knowledge.

III. DIFFERENT TYPES AND PURPOSES OF CERTIFICATES OF ORIGIN (continued)

- These types of COs are usually part of a statutory scheme.
 - 1) Forms are standardized and consistent
 - 2) Requirements are uniform
 - 3) May or may not require a stamp or certified attestation
 - 4) May or may not be required to submit the CO with the Customs entry
 - 5) Penalties for false declarations are clearly spelled out

III. DIFFERENT TYPES AND PURPOSES OF CERTIFICATES OF ORIGIN (continued)

Non-Preferential

- As a general rule, COs that are non-preferential fall within a broad, generalized scheme rather than a specific statute or program
 - 1) The certificate of origin forms may take many shapes
 - 2) Requirements not necessarily uniform
 - 3) Issues as to which bodies or agencies may authorize and stamp
 - 4) Issues regarding country of origin v. country of export

IV. ISSUES OF COUNTRY OF ORIGIN VS. COUNTRY OF EXPORT

Most non-preferential COs deal with the country of export as much as traditional concepts of “origin”.

- 1) Transshipment Issues
- 2) Trade Statistics

Most preferential COs deal with a determination of origin.

V. WHAT IS ORIGIN?

– The origin of a product can be, at once, readily apparent or very complicated.

- 1) Products wholly obtained or produced in a single country
- 2) Products involving raw materials imported into the country of manufacture
- 3) Numerous sub-assemblies, raw materials, etc. / various transshipments and processing along the way

V. WHAT IS ORIGIN? (continued)

General Rule: The country of origin is the last country in which a “substantial transformation” or significant processing occurs.

- 1) Substantial transformation is generally defined as a processing so significant as to result in a new and different article of commerce with a new name, character, identity, and use.
- 2) If substantially transformed in country A, and sent to country B for inspection and/or packing, the product will retain its origin of country A.

Why is the country of origin and the country of export important?

VI. CERTIFICATION AND CONSEQUENCES OF FALSE CERTIFICATES OF ORIGIN

– Problem of Lack of Uniformity and Centralized Oversight

- 1) No uniformly recognized governing body on these issues
 - Geneva and Kyoto Treaties
 - WCO
 - WTO

VI. CERTIFICATION AND CONSEQUENCES OF FALSE CERTIFICATES OF ORIGIN (continued)

- International Chamber of Commerce (ICC) and World Chambers Federation (WCF)
- ACCE – American Chamber of Commerce Executives
- Numerous other Chambers of Commerce
- Oversight Issues

VI. CERTIFICATION AND CONSEQUENCES OF FALSE CERTIFICATES OF ORIGIN (continued)

For statutory COs (e.g., NAFTA certificates, Form A, U.S. – Israel FTA, etc.) the enforcement mechanism is built in and readily apparent. The same would generally be true in Europe and Canada.

- 1) In the U.S., enforcement is covered by Customs penalties (19 U.S.C. §1592) and the False Statements Act (18 U.S.C. §1001)
- 2) Also may be covered by specific penalties provided for in the particular statutory regime, e.g., FTA

VI. CERTIFICATION AND CONSEQUENCES OF FALSE CERTIFICATES OF ORIGIN (continued)

For non-preferential and export COs, there may be Customs penalties in the country to which product is shipped.

- 1) Importer may have a problem
- 2) Exporter

FTC “Made in USA” Issues

- 1) Certification may violate FTC Regulations
- 2) “Made in USA” scenario

VII. SUGGESTIONS

- Always know why you are signing a CO and what it is being used for.
- If you don't understand it, don't sign it.
- Contact a chamber or recognized service that has experience and examines your transaction if it requires certification.
- Know why you are required to provide the CO and why it must be certified by an independent agency or body.