



# **Report on the Implementation of Rules of Origin in Egypt**

**PREPARED BY**  
Michael Hathaway

**SUBMITTED TO**  
USAID

**SUBMITTED BY**  
Nathan Associates Inc

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## REPORT ON IMPLEMENTATION OF RULES OF ORIGIN

### REASON FOR ACTION

The Government of Egypt has identified the need to develop and improve the measures to implement and enforce rules of origin, trade remedies and trade related intellectual property rights. For exports, the principle objectives are to provide credibility for the certificates of origin issued by Egypt, and to ensure that the intended benefits of preferences accrue to economic activity in Egypt, as opposed to benefiting operations that merely transship, or minimally process, third country products. For imports, the principle objectives are (1) to prevent false or improper claims of preferential origin that deprive Egypt of tariff revenue and unfairly claim reciprocal benefits, (2) to prevent the circumvention of trade remedy or safeguard measures that are imposed to offset the injury caused, for example, by unfair imports, and (3) to prevent piratical or counterfeit imports from violating intellectual property rights in Egypt.

These matters are recognized as a global problem that is of increasing importance to Egypt. As preferential access increases<sup>1</sup>, so do the attempts to improperly divert the economic benefits from the intended beneficiaries in Egypt, and elsewhere, to producers in non-qualifying third countries. The incentive to divert the legitimate economic benefit from Egypt can come from new preferential access, such as under the QIZ program or new preferential trade agreements, such as with Turkey or Romania. The incentive can also come from existing preferential access, or it can increase from the the phasing in of the tariff reductions in existing agreements. The phasing in of tariff preferences heightens the problem because the phased reductions apply to the most sensitive products and sectors. This means that the later years of preferential agreement implementation schedules will create the greatest incentive for third country products to be imported with an improper claim of origin asserting preferential treatment. Changing and improving preferential market access for more sensitive products raises the importance of ensuring the accuracy of claims of origin for imports. On the export side, coverage of sensitive products in an export market

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<sup>1</sup> The number of preferential trade agreements may exceed 300 by the completion of the Doha Round. The WTO reported that "(T)he surge in RTAs has continued unabated since the early 1990s. Some 250 RTAs have been notified to the GATT/WTO up to December 2002, of which 130 were notified after January 1995. Over 170 RTAs are currently in force; an additional 70 are estimated to be operational although not yet notified. By the end of 2005, if RTAs reportedly planned or already under negotiation are concluded, the total number of RTAs in force might well approach 300." [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)

also creates a greater incentive for transshipment and minimal processing of third country products and materials to claim Egyptian origin. The more valuable the preferences Egyptian importers or Egyptian exporters are entitled to receive, the greater the incentive is to cheat.<sup>2</sup>

This dynamic problem would be difficult enough if it were limited to the application of multiple rules of origin for trade under an increasing number of reciprocal preferential agreements, each with different schedules to phase in preferences, and changing preference schemes.<sup>3</sup> However, the incentive to cheat is not static, but also changes when market conditions change. For example, the incentive to cheat can occur when Egypt, or an export market, puts a trade remedy or safeguard measure in place. Third country producers, including those that entice local Egyptian entities to participate, may be able to avoid a market restriction by improperly manipulating the origin of a good or falsely claiming qualifying origin. The dynamic nature of the problem can also be seen when illicit trade in goods protected by intellectual property rights seeks to displace, or find a place, in Egypt's markets, or, through Egypt, seeks to find a place in another market. This dynamic problem is greatest for products whose intellectual property content has the highest market value, such as a new medicine, a new creative work or those whose compliance with technical specifications is difficult for consumers to assess, such as an automotive part.

The inability to control this incentive to cheat can damage the credibility of Egyptian products in other markets, and damage bilateral trade relations. Indonesia, for example, has seen circumvention of antidumping orders the US has imposed on Thai shrimp, as well as transshipment of garments and shoes from China, become a prominent element on the bilateral trade agenda.<sup>4</sup> Egyptian producers, absent adequate enforcement on rules of origin, circumvention of antidumping orders or intellectual property rights are at risk of suffering unfair harm, both domestically and in export markets. Because of preferential trade agreements, such as with the EU, the incentives to cheat can have the multiplier effect. For example a false claim of Egyptian origin might avoid a trade remedy *and* gain a tariff preference. Egypt has an interest in preventing such circumvention.

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<sup>2</sup> There are ways to legitimately utilize preferences, to avoid trade remedies or to trade without violating intellectual property rights. The term "cheat" is intended to identify those activities that seek to divert the intended economic benefits through illegitimate means.

<sup>3</sup> These include the EU-Egypt Agreement, the Greater Arab Free Trade Agreement (GAFTA), COMESA and others. There are also preference schemes to which Egyptian exporters may benefit, such as the Qualified Industrial Zone program (QIZ) agreed to with the United States, or the Generalized System of Preferences (GSP or GSTP) in developed countries such as the EU and the US. Egypt also provides preferences to imports from least developed countries (LDCs).

<sup>4</sup> See, "How to Beat US Trade Barriers" by Bill Guerin, 2006 Asia Times Online Ltd., which describes offers of \$1000 per container for false Indonesian certificates of origin for transhipped Chinese goods.

Egypt also has a self interest as well as an obligation to ensure that intellectual property rights are protected in Egypt, particularly against pirated or counterfeit imports<sup>5</sup>. This is recognized in new intellectual property laws, as well as in the border enforcement provisions of Ministerial Decree No. 770/2005. It is also not uncommon for imports that violate intellectual property laws to be accompanied by a false claim of origin. The incentive is greatest in connection with goods where the creative value and brand reliability of goods are at their highest, such as, automotive parts, garments, footwear, medicines, software and media. In addition to the economic harm to legitimate business in Egypt, consumers may ultimately pay the highest cost if such practices are not prevented since illegitimate traders have not invested in the quality and reliability of the product. With the significant progress in enhancing its intellectual property regime to support greater domestic participation in knowledge-based and creative economic activity, Egypt has a growing self interest in including the enforcement of intellectual property rights at the border in these efforts to assess and improve implementation and enforcement of rules of origin.

For these reasons, Egypt has identified the need to develop and improve the measures to implement and enforce rules of origin, trade remedies and trade related intellectual property rights.

## **OBJECTIVE OF CONSULTANCY**

To assist in addressing these objectives, the Assistance for Trade Reform Project has undertaken to provide:

- A summary of the system currently operating in Egypt to issue certificates of origin for exported commodities and to evaluate certificates of origin for imported commodities.
- A report drawing on international experience in implementing preferential and non-preferential rules of origin, recommending a framework for the development of Egypt's rules of origin regime in a manner that is consistent with the expected results of the WTO negotiations on a harmonized set of non-preferential rules of origin.
- A draft work plan identifying tasks to be performed by the government and the support needed from ATR to improve the operations of Egypt's rules of origin system.

## **The Current System**

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<sup>5</sup> TRIPS Agreement, Article 51.

In some areas of international trade, international agreements provide a good substantive basis for domestic legal guidance. This is more so the case in Egypt because Article 151 of their Constitution provides that any international agreement or convention, upon its ratification by the Assembly and publication in the *National Gazette*, is self-executing and supersedes national legislation or contradictory constitutional provisions. International agreements may be invoked in Egypt's national courts without further implementation. Unfortunately, all the areas under consideration in this report other than preferential rules of origin do not provide specific guidance. Rules of origin, particularly for non-preferential rules of origin, circumvention of trade remedies and the border enforcement of intellectual property have significant gaps in the specific international requirements.

Domestic legal instruments in Egypt do not yet provide clear definitions, standards, implementation and enforcement for rules of origin, circumvention of trade remedy orders or a well established regime for enforcing intellectual property rights at the border. Preferential rules of origin are provided in trade agreements and preference schemes, but there are issues of implementation and enforcement concerning both imports and exports. The WTO agreements dealing with antidumping and countervailing measures do not mention circumvention, and practices, while discussed internationally, are left to domestic policy, subject to the application of general International obligations. These obligations may involve the definition of an imported "product" that is the subject of a trade remedy order, and whether circumvention of the order, or interpretations of the scope of the order, are consistent with WTO obligations. Disputes have been addressed under domestic law, and international discussions do not appear to offer a solution.

### **Rules of Origin**

A non-preferential rule of origin in Egypt is not specifically defined, with applicable law stating that the origin of goods is the country of production.<sup>6</sup> The absence of specific obligations in the GATT or in relevant WTO Agreements is so pronounced that dispute resolution will not easily fill the gaps,<sup>7</sup> at least until the WTO Agreement on Rules of Origin's Harmonized Work Programme(HWP) is completed and non-preferential harmonization is adopted. However, WTO members have general obligations under the WTO Agreement on Rules of Origin (ROO Agreement) during the transition to the adoption of the HWP, to ensure that:

(a) rules of origin, including the specifications related to the substantial transformation test, are clearly defined;

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<sup>6</sup> This was codified in Article 19 of the Customs Law No. 66 of 1963.

<sup>7</sup> See, *United States-Rules of Origin*, WT/DS/243/R, which concluded that the objectives of protecting a domestic industry against competition and favouring imports from one country over another may, in principle, be an objective proscribed by the Rules of Origin Agreement, but that India failed to establish the restrictive effects of the US measure, and failed to show discrimination.

(b) rules of origin are not used as a trade policy instrument;

(c) rules of origin do not themselves create restrictive, distorting or disruptive effects on international trade and do not require the fulfillment of conditions not related to manufacturing or processing of the product in question;

(d) rules of origin applied to trade are not more stringent than those applied to determine whether a good is domestic, and do not discriminate between Members (the GATT MFN principle). However, with respect to rules of origin applied for government procurement, Members are not be obliged to assume additional obligations other than those already assumed under the GATT 1994 (the national treatment exception for government procurement contained in GATT Article III:8).

(e) rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(f) rules of origin are based on a positive standard. Negative standards are permissible either as part of a clarification of a positive standard or in individual cases where a positive determination of origin is not necessary;

(g) rules of origin are published promptly;

(h) upon request, assessments of origin are issued as soon as possible but no later than 150 days after such request, they are to be made publicly available; confidential information is not to be disclosed except if required in the context of judicial proceedings. Assessments of origin remain valid for three years provided the facts and conditions remain comparable, unless a decision contrary to such assessment is made in a review referred to in (j). This advance information on origin is considered as a great innovation of the Agreement;

(i) new rules of origin or modifications thereof do not apply retroactively;

(j) any administrative action in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures independent of the authority issuing the determination; such findings can modify or even reverse the determination;

(k) confidential information is not disclosed without the specific permission of the person providing such information, except to the extent that this may be required in the context of judicial proceedings.

The Agreement covers only rules of origin used in non-preferential commercial policy instruments, such as MFN treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements and any discriminatory quantitative restrictions or tariff quotas, as well as those used for trade statistics and government procurement. It is, however, provided that the determinations made for purposes of defining domestic industry or “like products of domestic industry” shall not be affected by the Agreement.

These obligations raise issues on implementation for Egypt in that there must first be clarity on the rule and a technical understanding of it before it can be successfully implemented. Egypt must also give consideration to the HWP and anticipate the implementation issues that it will raise. While dispute resolution will not provide guidance on substantive rules of origin being addressed in the HWP, the Dispute Settlement Understanding does apply to the ROO Agreement, and issues under anti-dumping measures, safeguards or challenges concerning transparency. Challenging a ROO as being an instrument of trade policy or other general obligation could be raised. Where a tariff heading change is used in determining origin, dispute resolution might also address classification. There is an incentive to properly understanding rules of origin principles and future directions in any implementation and enforcement scheme. Therefore, it is essential to understand basic principles.

In general, the WTO has provided a description of the options for national rules of origin.<sup>8</sup> These are:

- *Wholly-Obtained*: This test recognizes origin where an article is produced wholly in one country. It generally applies to minerals, agricultural and other articles from a vertical production process using local raw materials;
- *Change in Tariff Heading*: This test bases origin of a product on an article undergoing a classification change, generally from one four digit tariff heading to another;
- *Value Added*:: This type of test confers origin based upon specific value, such as labor and materials, added in operations a country;
- *Substantial Transformation*: This method of determining origin bases the origin on the significance of processes, often defining processes that do not confer origin.

These general forms of origin are also often combined, such as requiring a substantial transformation of third country inputs before the resulting material can be used in a value added origin test. WTO members are allowed to use any or all of these methods in establishing their laws and regulations on preferential and non-preferential rules of origin.

While the increasing number of WTO accessions leaves a decreasing and small amount of world trade that does not receive most favored nation treatment, the incidence of other measures such as trade remedies or safeguards, makes non-preferential rules of origin of increasing importance. Hence, even after China's accession reduced non-MFN concerns for most WTO Members, and the increase in importance of non-preferential rules of origin arising from the proliferation of preferential agreements, the implementation of non-

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<sup>8</sup> See, Technical Information on Rules of Origin, [www.wto.org](http://www.wto.org) .

preferential rules of origin are still important. The likely WTO agreement on specific rules of origin, the general obligations of the ROO Agreement and especially the application of other restrictions on injurious trade and the incentive of third countries to avoid such measures all make non-preferential rules of origin of increasing importance.

Preferential rules of origin have been an important issue. This is clearly the case for Egyptian exports and imports as the central question has been whether an import or export qualifies for a preferential rate of duty. The differential in trade cost between qualifying and not qualifying for preferential trade is what drives this issue. Qualifying for a preference can easily make the difference in sourcing decisions, both because of reduced cost and because of avoiding a prohibitive cost or a quantitative restriction. In this latter case, qualifying origin is essential.

Since the trade objective is to satisfy the rule of origin that will qualify for a preference, or the greatest preference, Egypt's priority in implementation and enforcement has been focused on the rules of origin in preferential agreements and preferential programs. Each of these regimes will be discussed as a preface for addressing implementation issues.

### **Non-preferential Regime**

For non-preferential imports, the origin of goods has been defined as the "country of production".<sup>9</sup> Subsequent laws and clarifications, culminating with Ministerial Decree No. 770/2005, as amended by Ministerial Decree No. 32/2006 (hereinafter the Import and Export Regulation), reinforce this concept without providing specific criteria for a non-preferential rule of origin. Several provisions of Decree 770/2005 confirm this, including:

- Article 1: C: Import for Retail: covers goods to be sold in the same condition as imported or after being packed or packaged, "without undergoing any process of *transformation*."
- Article 1: D: Import for the Production of Goods and Services: includes..."Items imported by *production* companies to be sold after *transformation*...to the final product";
- Article 6: includes "The import of goods...intended for *trade or production*...";
- Article 8: ...accompanied by an invoice with the name of the *producer*..."; Article 39: refers to the export of "locally *produced*" goods; and

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<sup>9</sup> Article 19 of Customs Law No. 66 of 1963 as amended by Law No. 75 of 2005

- Article 40: states that “*Egyptian made products*” shall be exported...without export approval...and “*Manufactured goods*” shall not be exported unless “*produced*” in licensed companies. (Emphasis added for all).

There is also an Exporters’ Register provided for in Chapter 3 or Decree 770/2005 which has one register for industrial or agricultural “*production* companies which export only their products.”

With respect to goods changing origin in a third country, Article 19 of the Customs Law authorizes the “Competent Minister” to specify the rules of origin. Treasury Ministerial Decree No.100 of 1964 imposed origin on a third country where “manufacturing” takes place if the original good came from a country that had a duty exemption and the country of manufacture had a higher duty. However, if the situation were reversed and the third country manufacturing would result in a duty exemption, the materials and labor from that manufacturing would have to be at least 50 percent of the cost of production of the good in order to confer origin on the third country. If duty exemptions resulted from preferential agreements, the terms of the agreement would determine origin and availability of duty exemption. If such provisions have present application apart from preferential agreements, they may conflict with the obligations in the GATT or the ROO Agreement for origin rules, such as, not to be used as instruments of trade policy or discriminate in favor of domestic production. This would require further examination. It should be noted that Article 20 of the Customs Law states that the “origin of the goods shall be the country from which they are directly imported.” This creates further ambiguity in the absence of a specific non-preferential origin regime.

Since Article 14 of the Import and Export Regulation requires that a certificate of origin accompany goods imported for retail, appears that imports for retail are subject to different provisions. Such goods may receive greater scrutiny than imports for production. Even though separate provisions indicate in practice may be that a “production” company includes producing, manufacturing or assembly. This would include any level of assembly. Therefore, production companies include those that are not assured, or are even unlikely, to confer Egyptian origin by virtue of their operations. That is, the final product may remain a product of a third country under preferential agreement definitions of origin. This may translate from a standard requirement of many preference agreements and preference schemes that direct shipment from the qualifying country is required. However, Egyptian

### **Preferential Regime**

Rules of origin under preferential trade agreements do have specific origin definitions and other requirements in those agreements. These agreements, and their rules of origin,

are briefly described in Egypt's WTO Trade Policy Review, completed in July of 2005<sup>10</sup> and are described below. These agreements provide specificity in some detail as to the requirements for determining origin, and, as previously stated, Article 151 of Egypt's Constitution makes these provisions supersede domestic laws or other provisions of the Constitution that contradict those agreements.

Egypt has signed a number of bilateral and regional trade agreements. Negotiations on a free-trade agreement are ongoing with EFTA and Turkey. Discussions have begun with Romania and preliminary discussions have been held with the US.

#### *EU-Egypt Agreement*

The Agreement between Egypt and the European Union contains rules of origin in Protocol 4. The Agreement<sup>11</sup> establishes an Association Council, which will meet at ministerial level once a year, and an Association Committee, which is responsible for the implementation of the agreement. The Association Council prepared an amendment to Protocol 4 of the Agreement that sets forth Common Guidelines defining the concept of originating products and methods of administrative cooperation. The rules of origin define wholly obtained products and products which have not been wholly obtained, but have undergone sufficient working or processing defined in Article 6, and a negative list of insufficient working or processing in Article 7. Diagonal cumulation is provided within the EU and for Egypt with materials originating in Algeria, Israel, Jordan, Lebanon, Morocco, Syria, Tunisia, Turkey, or the West bank and the Gaza strip. Bilateral cumulation allows the origin of one of the parties to be applied to products wholly obtained from, or sufficiently worked or processed in it.

The agreement provides for the establishment of a free-trade area within 15 years. With the exception of a number of products (including wool, cotton, hides and skins, various oils), imports into the EU, of products of HS chapters 25 to 97 originating in Egypt are allowed free of customs duties. Customs duties on imports into Egypt originating in the EU are to be phased out over a maximum of 15 years, depending on the product and according to four product lists annexed to the agreement. This phased reduction of duties makes the incentive to cheat vary over the phase in of the free trade area, making enforcement more difficult.

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<sup>10</sup> [T/WTTPRM150.doc](#) ; [T/WTTPRM150.doc](#) ; [T/WTTPRG150R1.doc](#) ; [T/WTTPRS150R1-0.doc](#) ; [T/WTTPRS150R1-1.doc](#) ; [T/WTTPRS150R1-2.doc](#) ; [T/WTTPRS150R1-3.doc](#) ; [T/WTTPRS150R1-4.doc](#) ; [T/WTTPRS150R1-5.doc](#) .

<sup>11</sup> The agreement is available online in English: [http://europa.eu.int/comm/external\\_relations/egypt/aa/06\\_aaa\\_en.pdf](http://europa.eu.int/comm/external_relations/egypt/aa/06_aaa_en.pdf).

The EU-Egypt agreement provides that certificates of origin “shall be issued by the customs authorities of a Member State of the Community or Egypt. The certificate of origin is required to note whether or not cumulation is used in obtaining origin.

### COMESA

Egypt became a member of COMESA in June 1998.<sup>12</sup> COMESA's customs union has not yet been implemented. On 31 October 2000, Egypt, together with eight other member states (Djibouti, Kenya, Madagascar, Malawi, Mauritius, Sudan, Zambia, and Zimbabwe) eliminated tariffs on COMESA - originating products. Burundi and Rwanda joined this free-trade area on 1 January 2004.

Goods shall be accepted as originating in a Member State if they are consigned directly from a Member state to a consignee in another Member state and:

(a) they are wholly produced, or

(b) they have been produced in the Member states wholly from materials imported from outside the Member states or of undetermined origin by a process of production which effects a substantial transformation of those materials such that:

(i) The c.i.f. value of those materials does not exceed 60 percent of the total cost of the materials used in the production of the goods, or

(ii) The value added resulting from the process of production accounts for at least 45 percent of the ex-factory cost of the goods, or

(iii) The goods are classified or become classified under a tariff heading other than the tariff heading under which they were imported, or

(c) produced in the Member State designated in a list by the Council upon the recommendation of the Trade and Customs Committee through the Intergovernmental Committee to be goods of particular importance to the economic development of the Member States, and containing not less than 25 percent of value added notwithstanding the provisions of sub-paragraph (b) (ii) of paragraph 1 of this Rule.

### *Agreements with Iraq, Lebanon, Libya, and Syria*

Egypt has bilateral trade agreements with Syria and Libya (entry into force in 1991), Lebanon (1999), and Iraq (2001). The authorities indicate that preferences under these agreements will eventually be absorbed by PAFTA.

### *Pan Arab Free Trade Agreement (PAFTA)*

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<sup>12</sup> The other members are Angola, Burundi, Comoros, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Malawi, Mauritius, Namibia, Rwanda, Seychelles, Sudan, Swaziland, Uganda, Zambia, and Zimbabwe. Lesotho, Mozambique, and Tanzania have withdrawn.

The Greater Arab Free-Trade Area (GAFTA) programme, signed on 19 February 1997 to implement the Agreement on Facilitation and Development of Trade among Arab Countries, entered into force on 1 January 1998, now named PAFTA. This agreement is considered to be the backbone of Arab economic integration. It encompasses all the members of the Arab League<sup>13</sup>, and aims to create a vast Arab free-trade area by 2007 by dismantling customs tariffs by 10 percentage points annually over a decade. The principal entity responsible for implementing the programme is the Economic and Social Council of the Arab League. In addition, the Union of Arab Chambers of Commerce has been tasked to produce a half-yearly report on the difficulties encountered by traders with the customs administration and regulatory agencies of individual member countries. Currently, 17 members are implementing the programme (Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen).

The Arab League is developing a comprehensive set of rules of origin which will determine origin for purposes of qualifying for preferential treatment under this Agreement. In the meantime, rules of origin of the Agreement on Trade Facilitation and Development, ATFDA, signed in 1997 apply. The Rules of Origin Protocol, which appears in Annex 1 to the Agreement, stipulates the following:

Goods shall be accepted as originating in a Member State if they are consigned directly from a Member state to a consignee in another Member state and:

- (a) they have been wholly produced, or
- (b) they have been produced in the Member states where the value added resulting from the process of production accounts for not less than 40 percent of the ex-factory cost of the goods, and either,
  - (c) The goods are classified or become classifiable under a tariff heading other than the tariff heading of the non-originating inputs, or
  - (d) They have been produced in the Member states from materials imported from outside the Member States by a process of production which effects a substantial transformation of those materials.

*Agreement for the Establishment of a Free Trade Zone between the Arabic Mediterranean Nations (Agadir Agreement, signed in Rabat on 25 February 2004, for entry into force on 1 January 2006)*

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<sup>13</sup> The 22 members are: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, and Yemen.

The Adigar Agreement includes the Hashemite Kingdom of Jordan, the Tunisian Republic, the Arab Republic of Egypt, and the Kingdom of Morocco. The rules of origin are in accordance with the Pan European Protocol and any future alterations to it.

## **EGYPTIAN AND INTERNATIONAL ADMINISTRATIVE REGIMES**

Rules of Origin, trade remedy, safeguard and intellectual property enforcement is a new priority for Egypt. That is not the case in a growing number of other countries. The most sophisticated developed countries have substantially consolidated border responsibility, and have elaborate systems to facilitate trade on the one hand, and improve enforcement of illegitimate trade, on the other. Several of the issues of how this should be accomplished are being dealt with in the WTO Trade Facilitation negotiations in which Egypt has been active in describing its accomplishments.

International practice has progressed to move trade through the border with increasing sophistication and reliance on the assessment of risk. On matters such as rules of origin, circumvention and intellectual property protection, risk assessment is the first line of defense, with post entry regulatory audit and review of data on production activities through questionnaires. These sophisticated approaches require clear rules, advance rulings and trained personnel. This is reflected in, for example, the European Union Green Paper on Rules of Origin and the subsequent COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE: The rules of origin in preferential trade arrangements--Orientations for the future,<sup>14</sup> the EU-Egypt Common Guidelines on Protocol 4 defining the concept of "originating products" and methods of administrative cooperation,<sup>15</sup> the US Customs Rules of Origin Regulations,<sup>16</sup> US Customs Regulatory Audit Guide for Supporting Generalized System of Preferences Claims, US Department of Commerce requirements on scope and circumvention and the WTO discussions and submissions in the Rules of Origin negotiating group.

Egypt's regime has some elements of effective enforcement, such as risk assessment, and regulatory audit, but it does not appear to have experience in application to rules of origin, circumvention or border enforcement of intellectual property rights. While certificates of origin are issued for export, and information given on requirements, the practice is for certificates of origin to be substantively reviewed with a producer when the importing country requests verification. There are several types of export certificates of origin issued by GOEIC. These are described as the Arab League form for PAFTA and for

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<sup>14</sup> Brussels, 16.3.2005, COM(2005) 100 final

<sup>15</sup> Council of the European Union document 9524/05, 28 September 2005.

<sup>16</sup> 19 CFR Ch. 1, Part 102, Rules of Origin.

Morocco, Tunisia and Lebanon; the EUR 1 for the EU agreement along with the Textile Certificate of Origin if requested, Form A for the GSP, the Globalized System of Trade Preferences (GSTP) certificate of origin form for developing countries, the COMESA certificate of origin, the China form issued upon request, the Textiles form for Mexico, and the certificate of origin F25 for countries without agreements with Egypt. Separate requirements exist for the QIZ program.

Under the Import and Export Regulations, Article 14, Imports for Retail are generally authorized to be released only if an authenticated certificate of origin<sup>17</sup> is attached. One of the exceptions to this general requirement is for goods with “invoices including the country of origin whenever issued by the *producing* company.” An exception to requiring an authenticated certificate also exists for “goods *originating* the member countries of the EU, the Common Market for Eastern and Southern Africa (COMESA) and the Trade Facilitation Agreement Among Arab Countries as well as in countries to which the principle of equal treatment is applicable concerning exemption from authentication in accordance with governing regulations in this connection.”

Article 14 also requires the importer to be responsible for the data recorded on the certificate of origin, and where Customs finds “adequate evidence to suspect the conformity of the certificate of origin or its contents,” it is required to adopt verification measures “in accordance with regulations decreed by the Minister of Foreign Trade upon consultation with the Minister of Finance.” The current practice is for Customs to refer questionable certificates of origin to GOEIC and which can then be reviewed by a National Committee on Rules of Origin. Information indicates that the term “adequate evidence to suspect” is not considered a standard of evidence, and the practice is to accept completed certificates of origin if they are appropriately signed. Missing data may be found in 20 percent of certificates of origin, and GOEIC’s informal estimate was that of the approximately 50 inquiries per month that it receives from Customs on certificates of origin, only 5 percent of those have a problem, most of which a result of unclear data.

For exports, Article 46 provides for Egyptian goods that are allowed duty free treatment under a preferential agreement are required to attach to each consignment a certificate of origin in compliance with the agreement. The exporter is held liable for proving that the exports meet the required standards of origin and verifying the conformity of the data in the certificate of origin.

Article 47 states that:

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<sup>17</sup> Authentication is by the “appropriate authorities.”

The General Organization for Export and Import Control (GOEIC) shall exclusively be responsible for issuing the certificates of origin or transit for exports of goods originating in Egypt or exports acquiring Egyptian origin to countries” with which “Egypt enjoys preferential treatment, unless otherwise provided for in any of the said agreements.”

Article 17 of Protocol 4 of the Euro-Mediterranean Agreement, including the DECISION OF THE EU-EGYPT ASSOCIATION COUNCIL of 28 September 2005 amending Protocol 4, states that certificates of origin, referred to as the “movement certificate,” EUR.1 or EUR-MED, “shall be issued by the customs authorities of the exporting country...” Article 46 provides that exports to a party to a preferential agreement, under which Egyptian goods are duty free must have a certificate of origin in accordance with the agreement. Exporters are liable for proving that exports meet origin standards and verifying data in the certificate of origin.

This provision raises issues of interpretation. One interpretation is that customs authorities shall be responsible for issuing certificates of origin for all countries which enjoy preferential treatment because a contrary designation is provided for in “any” preferential agreement. The Import and Export Regulation could have provided that certificates of origin be issued by GOEIC for exports to all preferential countries except for those countries where the agreement provides otherwise *for that country*. However, the EU agreement seems to indicate that customs shall issue the export certificates, and the Import and Export Regulations may reasonably prefer that any agreement establish uniformity in the entity issuing certificates of origin. That entity, as a result of the EU agreement is customs.

Since the Minister of Foreign Trade and Industry has responsibility for international trade agreements, this issue may be resolved by further regulatory or legal provisions. Other provisions would need to be adjusted.

The subsequent Articles provide for the procedures for GOEIC to issue certificates of origin. The documents required to accompany the application include:

- A copy of the sales receipt signed by the exporter,
- A declarations of conformity of the data and compliance with the preferential agreement, and
- For free zone products, a notation from the Board Chairman of the free zone that the goods were manufactured in the zone.

Article 50 obliges the exporter “to provide GOEIC with all the data and information...in order to verify the origin *if so requested by the country of destination*. (Emphasis added.)

As a practical matter, foreign certificates of origin, completed and properly issued, appear to be accepted at face value. This does not protect Egypt’s interest in ensuring compliance. Export certificates of origin are validated for substantive compliance upon the receipt of a request from a trading partner.

## **INSTITUTIONAL STRUCTURE OF RULES OF ORIGIN ISSUANCE AND ENFORCEMENT**

Responsibility for implementing Egypt’s laws on rules of origin are distributed between Customs and GOEIC. For goods imported for retail sale, certificate of origin issues are, in the first instance handled by Customs. New Ministerial decree No. 770/2005 issuing executive regulations to implement the Import and Export Law indicate that goods imported for retail shall be released by Customs if a certificate of origin authorized by appropriate authorities is provided as part of the documents submitted by the importer. The importer shall be held responsible for the data recorded in the certificate of origin. A certificate of origin shall be accepted by Customs for goods originating in member countries of:

- European Union (EU)
- Common Market for Eastern and Southern Africa (COMESA)
- Trade Facilitation Agreement among Arab Countries
- Countries to which the principle concerning exemption from authentication in accordance with governing regulation in this connection.

If Customs suspects that there is a problem with a certificate of origin, it submits the case to GOEIC to verify the certificate. Over the past year this happened about 360 times. GOEIC then checks the document to see if it is authentic but has few ways to check whether it is accurate.

Consignments of goods for retail sale with no certificates of origin shall be released provided that the person concerned shall submit an unconditional letter of guarantee indicating the value of released goods consistently with custom valuation. Goods imported for purposes other than for retail sale do not require a certificate of origin, unless they are imported under preferential agreements. In that case a certificate is required and it is reviewed by Customs in the first instance.

Subject to the exceptions listed below, for goods exported from Egypt, GOEIC has exclusive responsibility for issuing the certificate of origin originating in Egypt or exports acquiring Egyptian origin. These certificates will be issued to countries party to bilateral or regional or multilateral trade agreements with the Egypt, under which Egypt enjoys preferential treatment. GOEIC issues about 1800 certificates a year.

The following organizations assist GOEIC in issuing certificates of origin:

**Federation of Egyptian Industries** submits to GOEIC annual statement of companies and what they produce for the various industrial chambers. An Egyptian certificate of origin is only provided for goods and companies on these lists.

**The Exporter**

The exporter is required to provide GOEIC with all the data and information necessary to issue a certificate of origin. Exporters must keep records and documents certifying the statement of origin for five years starting from the date of issuance of the certificate of origin.

On a geographical basis, the Chambers of Commerce issue the certificate of origin for Egyptian exports to countries without preferential agreements. For goods emanating from Free Zones, the free zone board chairman signs a document attesting to the fact that free zone goods have been manufactured inside the zone.

**CIRCUMVENTION OF TRADE REMEDIES**

The administrative requirements involving the prevention of circumvention of trade remedies and safeguards are not subject to specific international requirements, nor specific requirements in Egypt. This is not the case in countries which substantially use trade remedy laws. The Rules of Origin negotiations discussed this issue at length but came to no resolution. Egypt has a domestic practice, but it is not reduced to a policy statement or decree. All that exists is a provision authorizing investigation of “circumvention” in Article 92 of the trade remedy law. The United States, for example has extensive coverage on two related issues. One is the prevention of circumvention of trade remedies. The other is the “scope” of a trade remedy order.

Egypt has recognized that the use of trade remedies to prevent unfair, injurious trade is accompanied by efforts to avoid those remedies. Some of this activity is legitimate by trade rules, and may involve changes of the source of production, or shifting trade to different articles of commerce. However, avoidance also includes improper efforts to circumvent the trade remedy. This can include incorrect classification of the products subject to an order, transshipment through a third country, false claims of origin in a third country and other mechanisms.

Importers and exporters, as well as enforcement agencies, need to have clear requirements for what is permissible and what is not. Rulings on circumvention and scope must be available, and effective measures must be in place to anticipate and address illegitimate efforts to circumvent legitimate orders. These may require specialized skills and training, and as with enforcing rules of origin, the proper application of risk analysis, post entry regulatory audit and enforcement of requirements of providing information to the proper authorities.

## **BORDER ENFORCEMENT OF INTELLECTUAL PROPERTY**

The Import and Export Regulations provide for the border enforcement of intellectual property. They do not provide for enforcement on exports, a provision that is optional under the TRIPS Agreement but highly desirable by intellectual property owners since a source of counterfeit and piratical goods in Egypt, or through Egypt, can cause the loss of credibility in export markets and bilateral trade problems just as would a false certificate of origin. Such illicit goods may also find their way back into Egypt.<sup>18</sup>

## **FUTURE WORK PROGRAM**

Implementation and enforcement of rules of origin, anti-circumvention and border protection of intellectual property will require assistance for the development of policy guidance, legal instruments for the specification of clear standards, compliance mechanisms and enforcement. These elements will require training activities in several substantive disciplines and coordination among at least two agencies and offices within those agencies. This may be built upon a structure for verifying certificates of origin with the Ministry of Foreign Trade and Industry providing guiding regulations to Customs after consulting the Minister of Finance. It may also involve activities with GOEIC, and possibly prosecutors. Each of the areas may have commonalities and synergies with each other, as well as areas of customs expertise such as classification, or trade remedy expertise in the calculation of cost of production. Risk analysis and regulatory audit units would benefit from interaction with substantive experts on the subject matter being implemented and enforced, and practical business expertise may be important in developing a system that addresses fraud and circumvention with minimal burdens on legitimate business.

Practical experience of the mechanisms of experts in working systems in the United States or Europe and traders who have experience in finding the line between legitimate and illegitimate trade will be important to include in training. Substantive areas of expertise include rules of origin, anti-circumvention and scope of trade remedy orders, private sector expertise in business accounting and record systems, expertise in preparation of enforcement systems to ensure transparency, clarity of rules, advance rulings, risk analysis,

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<sup>18</sup> Africa is replete with examples of violations, such as those involving fabric and garment producers in Nigeria and Ghana. Local production of garments from local fabric designs has been diverted to Chinese manufacturers. In Ghana, production jobs in the sector have decreased from approximately 135,000 to 35,000. First, assembly was offshored, returned and sold as of Ghanaian origin. Then local fabric with copyright protected Kinte designs was copied and imported. This included false representation of the Ghanaian producer and country of origin in the selvage of the fabric, making local enforcement at factories difficult. The final step is falsely importing the finished product, supported by foreign fabric being passed off as local.

post entry regulatory audit, questionnaires for producers (including for importers to obtain from foreign producers) and exchanging information will be essential. Compliance with rules of origin must include more private sector responsibility and accountability.

This should include shifting the burden of compliance to the private sector through:

- Maintaining registries of producers that provide useful analytical information,
- Issuing certificates of compliance for various preference schemes,
- Providing special clauses for inclusion in commercial transactions, such as between exporters and importers.

The government actions must provide for:

- An effective administrative cooperation between the importing country and exporting countries,
- A means to exchange data between the private sector and the government including electronic submissions,
- Establishment of credible enforcement regimes for verification and appropriate responses, including penalties for violations of compliance with the rules,
- Effective risk assessment of potential violations, and
- Reasonable data retention, data examination and responses to inquiries and complaints.

The enforcement system should cover the entire spectrum of ways for ensuring compliance with: rules of origin, including, compliance with trade agreements; circumvention of national measures that may be essential to investments and import and export trade; and violations of intellectual property rights.

This system should apply to imports and exports since both are important for production, and essential for Egypt to capture benefits from preferential trade, especially with value chain production and regional content.

**The first stage of a work program** (ROO expert) should provide training to develop a core of expertise on rules of origin in the Ministry of Foreign Trade, GOEIC, Customs and the private sector. This exercise should bring working level professionals together to build coordination and cooperation on the rules of origin. This should begin with a consultancy to

- Develop an understanding of the concepts of origin using the WTO negotiating process and the Harmonized Work Programme as a guide.

Comparisons with other rule of origin regimes to illustrate optional approaches would include:

- US Rules: GSP, FTA's with Arab states and others, system for investigation of imports, risk assessment, questionnaires, post import audits, when to question imports
- illustrations of Pan European rules.

During this training, participants would identify:

- possible implementation issues resulting from WTO obligations and negotiations on ROO, including existing obligations of notification, provision of contact point, avoidance of ROO as policy instrument, and
- steps toward the development of non-preferential rules of origin for Egypt that could lead to a legal regime that will permit the implementation of the WTO negotiations on rules of origin when they are complete.

**The second stage of a work program (ROO and policy coordination)** would be to:

- compile publicly available guidance on how to qualify Egyptian products under FTA with the EU, COMESA, etc., including an electronic data base that would assist exporters and importers with the various origin requirements, provide explanations of the required elements under different preferential regimes, with a view to making such information available on the internet for the benefit of the government, importers and exporters,
- link ROO expertise to other negotiations or negotiating issues, such as, trade remedies and trade facilitation as it relates to the transparency of decisions, rulings, and guidance and its availability, including electronic availability, and
- assist in the institutional cooperation and integration of ROO, anti-circumvention and border enforcement of IPRs, including, for example, creation of electronic certificates of origin in conjunction with trade facilitation action.

**The third stage of the work program (anti-circumvention)**, which could operate in parallel to the second or even first stage, would be to assist in the development of regulations to address circumvention of trade remedy and safeguard measures. This would include:

- training on the regime in the United States to prevent circumvention or orders, including misclassification, transshipment and fraud, assembly or production processes in the country of the order or a third country;
- develop policy options for Egypt to address the issues, and
- assist in the preparation of regulatory measures.

**The fourth stage of the work program (compliance and enforcement)** would be to:

- Assess compliance and enforcement of ROO, anti-circumvention or trade remedies and border enforcement of intellectual property measures,
- Review and assist in enhancing skills in compliance techniques, including risk assessment, post entry regulatory audit and the use of questionnaires,
- Determine regulatory and personnel needs to ensure compliance and the adequacy of penalties and enforcement, and
- Assist in the preparation of regime changes as appropriate and identify training needs.

These stages of the work program should include private sector participation, and public workshops with business sectors

Further elements in the work program should include: TAS DG for ROO Thanaa Gohar; Ali Soliman, GOEIC Head of CD for Export and ROO, Ahmed Hammad, Head of Origin Department at GOEIC, Chairman El Banna and GM of International Relations Elmonem; Ahmed Hassanein, Customs DG of ROO Department; and Mowafak El Fayoumy, Head of CD for Trade Remedies.

Scope of Work No. 1

## RULES OF ORIGIN AND THEIR ADMINISTRATION

The term “rule of origin” is unfortunate as it gives the impression that a good would have a single country of origin for all trade regulation purposes. While that is a worthwhile goal (see the WTO Agreement on R/O) many countries nevertheless maintain different origin regimes for different trade programs. It would be more appropriate to refer to these country-based regulations as “rules of eligibility”, as in the case of preference programs or “product scope of application” as in the case of dumping or other trade-restrictive regulations.

When looked at in this context, it becomes understandable that the rules could be different for different regimes, even though maintaining different origin rules can undoubtedly cause administrative nightmares.

One of the primary difficulties in administering an origin program lies in the fact that an examination of the product rarely discloses its country of growth, extraction or manufacture. Therefore, one must rely almost totally on documentation and investigative resources.

The purposes of this scope of work are:

- Conduct training concerning the WTO Rules of Origin Agreement and the Harmonized Work Programme for policy officials in the Ministry of Foreign Trade and Industry, Customs, GOEIC and the private sector;
- Isolate operational elements of origin administration that will provide opportunities for ensuring compliance by border officials and traders. Separate training would be conducted at a later time on concerns regarding specific origin regimes.

The operational elements would include:

- **Data Requirements - the basis for decision-making**

Do the documents require sufficient information to make the origin determination?

Some examples:

Sources of raw materials, their classification and costs,  
Sources of third country components, their classification and costs,  
Operations performed and costs, including cost of local inputs,  
Customs value and actual value if CV not used in calculation

Is the declarant competent to confirm the accuracy of the information?

Does the law provide that the legal burden is on the trader to make a proper and correct declaration?

- **Notification and publication of requirements** - how circulated: official journal, posting on Customhouse wall, internet?

- **Documentation requirements**

Easing burdens on traders and border officials  
Pre-importation rulings  
Benefits for administration and traders

Centralized expertise - best to deal with the complexities of  
administration  
Avoiding repetitive submissions

- **Communication to port and other government entities**

- **Verification of information**

Record - keeping requirements  
Commercial invoices, creating a document trail  
Supplier certifications  
Foreign inspection  
Audits

- **Risk analysis - importers history of violations**

Scoring - frequency of examination

- **Enforcement**

Verification of transaction consistent with information submission  
Penalties, fines, forfeiture, denial of entry, loss of import privileges, increased inspections

- **Transshipments - proof of exportation**

- **Training**

Additional training needs would be identified.

Proposed Consultant: Gene Rosengarten

**EUGENE A. ROSENGARDEN**

15217 Manor Lake Drive  
Rockville, Md. 20853  
Telephone : (301) 460-4871  
E-mail: [generosey@comcast.net](mailto:generosey@comcast.net)

**KEY QUALIFICATIONS**

- Internationally recognized expert in product classification systems and rules of origin for Customs, trade, tariff and statistical purposes
- Experienced in Customs, tariff and trade regulation, legal reform, border control, foreign trade statistical collection programs, trade facilitation
- Extensive experience working with Congress and government agencies on legislative and executive programs
- Responsible for managing complex projects, including planning, program implementation, international negotiation and conflict resolution

- Worked closely with business and government leaders from around the world to find solutions to international trade problems.
- Over 25 years experience managing diverse staff of technical professionals.

## EDUCATION

Master of Laws

George Washington University Law Center, Washington, D.C,

Juris Doctor

University of Maryland, Baltimore, Maryland

Bachelor of Science, Economics

University of Maryland, College Park, Maryland

Advanced Management Program

Harvard Business School, Cambridge, Massachusetts

## WORK EXPERIENCE

U. S. INTERNATIONAL TRADE COMMISSION, Washington, D.C. 20436

Director, Office of Tariff Affairs and Trade Agreements 1979 - 2005

- s Commission=s first Director of office responsible for activities concerning the operation of the Customs laws, related international trade regulations and foreign trade statistical requirements
- s Lead a diverse professional staff (15 to 26) of attorneys, economists, chemists, metallurgists, and textile, agricultural and electronics experts
- s Appointed by Vice President and subsequently chaired inter-agency Board of Directors of an initiative to develop an integrated, government-wide system to facilitate clearance of international shipments, reduce costs for the private sector and the government, enable greater opportunity for effective enforcement of revenue, health, safety and environmental laws and to provide more accurate and timely trade data for private sector and public policy analysis
- s Head of delegation to four different committees of the World Customs Organization (WCO), Brussels
- s Lead U.S. negotiating team at the WCO and the World Trade Organization (WTO), Geneva, in developing country of origin rules applicable for all non-preferential purposes, including those for dumping and countervailing duty investigations, procurement, and general customs and trade statistical purposes
- s Directed reports to the Congress and Executive on trade and related matters
- s Directed studies on a variety of subjects on request by the President and Congress, including reports on the foreign trade zones program, country of origin rules, laws concerning the exclusion of drug paraphernalia, the European single market, agreements for the protection of the environment, and the simplification of the Harmonized Tariff Schedule of the United States.
- s Directed the United States contribution to the development of the Harmonized Description and Coding System, a multi-lateral classification which serves as the basis for the customs tariff and foreign trade statistical programs for the United States and over 110 other nations
- s Directed the preparation, at the request of the President, of the Harmonized Tariff Schedule of the United States
- s Advisor to the government of the Ukraine on its WTO application
- s Delegate, NAFTA negotiating team
- s Negotiated agreement with Canada to eliminate need for over 9 million export documents annually
- s Appointed to represent the United States in reorganizing the secretariat of the WCO

- S Elected by the contracting parties to the WCO=s Harmonized System Committee to serve as chairman
- S Chair, interagency committee that manages the U.S. import and export statistical programs.
- S Chair, high-level group to recommend modifications to improve the operation of the Convention on the Harmonized System

Assistant General Counsel, 1972-1979

- S Responsible for the preparation of reports to Congress on tariff and Customs matters
- S Attorney assigned to comprehensive study to rewrite Tariff Schedules of the U.S.

U. S. Customs Service, Office of Regulations and Rulings, Washington, D.C.

Attorney advisor, 1967-1972

- S Prepared rulings and regulations on the dutiable status of imported goods
- S Advised Justice Department on issues involved in litigation
- S Headed team of specialists to advise the Secretary of the Treasury of goods to exempt from import surcharge.

**OTHER**

Member, Maryland Bar

Guest Lecturer - University of Maryland

University of Southern California

Institute for Tax Administration

Recipient, Presidential Meritorious Executive Award 2000