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ISSUING OF CERTIFICATES OF ORIGIN IN SOME ECONOMIC INTEGRATION AGREEMENTS SIGNED BY LATIN AMERICAN COUNTRIES

In the context of an economic integration agreement (EIA), the issuing and verification of certificates of origin are carried out in accordance with procedures which ensure compliance with the rules of origin. Each EIA has its own system of rules of origin with their corresponding procedures. The purpose of the rules is to define clearly the geographical provenance of a good which may benefit from preferential tariffs in the importing country.

The main purpose of the rules of origin is to avoid the diversion of trade, so that preferential tariff treatment is applied only to those products negotiated between the parties. The rules of origin of an EIA are more important than the actual process of tariff reduction, as that process is concluded at some point in time, whereas the rules of origin remain applicable indefinitely.

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I. INTRODUCTION

The procedures of origin consist of a series of administrative actions and formalities which must be carried out by international economic agents, whether exporters or importers. As they include regulations which generate transaction costs for international operators, this issue is studied in the broader context of trade facilitation.

In view of space restrictions, the current issue of the FAL Bulletin contains a comparative analysis of procedures for issuing certificates of origin only in the case of the Latin American Integration Association (LAIA) and of some economic complementarity agreements signed in that legal context. Future issues will contain a study of the verification of origin.

The objectives of this issue are to show the main weaknesses and strengths of the systems studied and to discuss the basic conditions which are required in order to minimize the transaction costs of the private sector, without neglecting the public role of security and tax collection. Another objective is to highlight the role of LAIA in this area.

II. DIFFERENT WAYS OF ISSUING CERTIFICATES OF ORIGIN ACCORDING TO ECONOMIC INTEGRATION AGREEMENTS IN FORCE BETWEEN SOUTH AMERICAN COUNTRIES

The economic integration agreements in force between South American countries typically include just one type of procedure for issuing the certificate of origin of a good. The procedure always involves the participation of at least one state agency and, in some cases, complementary action by private trade entities.

A. The declaration and certification of origin in the LAIA system

All of the EIAs in force between South American countries are economic complementarity agreements signed in the legal framework of LAIA. The fact that there are significant differences between these agreements is hardly surprising as LAIA was intended from the outset to be a framework agreement which would facilitate economic complementarity agreements specifically designed to meet the interests of the countries involved.[1]

In the relevant regulations,[2] LAIA establishes that, prior to the request for a certificate of origin, a statement of origin of the good must be issued by the exporter or final producer, and certified by an official unit or trade entity with legal status which is authorized for that purpose by the government of the exporting country. The same procedure is followed for issuing the certificate of origin, which is valid for 180 days and may be used only once, as in the case of the corresponding statement. In the case of the LAIA system, the statement of origin of the good, which for all practical purposes consists of a sworn statement, is included in the certificate of origin.

With regard to the authorities authorized to issue the certificates of origin, LAIA specifies that the Offices of its Permanent Representatives must communicate to the General Secretariat the list of official units and trade associations authorized for such issuance, together with the names of the authorized officials and their corresponding signatures. These communications shall be distributed as soon as possible to all Offices of Permanent Representatives, so that all member countries have updated information.

The same procedure applies in the case of any change of authorized entity or signature, in which case LAIA specifies that such modifications shall enter into force 15 calendar days after the General Secretariat has communicated them to the Offices of the Permanent Representatives. With respect to the certifying agencies, the regulations state that the ideal situation would be for them to be national and decentralized entities, so that they can delegate their functions at the regional and local levels within the countries.

Main observations in connection with the LAIA system

(a) It is restrictive, as a certificate of origin is valid for just one trade operation;

(b) As each certificate of origin includes a sworn statement, the statement cannot be used for more than one certificate of origin;

(c) The certificate of origin is valid for only 180 days, which would seem contrary to trade facilitation. If it was valid for a longer period, the transaction costs of international trade agents would be reduced;

(d) Frauds of origin have been detected more frequently when these procedures are carried out by an exporter rather than by the direct producer. The reason is that it is often impossible to locate the trade agent when checks are carried out;

(e) Experience shows that the parties do not always give immediate notification of changes in the authorized signatures;

(f) It is not specified how long the documents relating to the statement and certificate of origin should be kept for the purposes of subsequent inspection. In all the agreements analysed in this context, LAIA is the only entity that does not refer to this point;

(g) The regulations do not specify a maximum time limit for issuance of a certificate of origin by a public or private entity subsequent to the receipt of a request for such a document;

(h) A debate is needed on the subject of evaluating the difference between a public and private agency in terms of issuing both the statement and the certificate of origin of a good. This is an important issue as an EIA may include provision for the issuance of these documents by both public and private entities, as in the case, for example, of the Andean Community.

B. The statement and certification of origin in some LAIA economic complementarity agreements

The economic complementarity agreements examined are the Mercosur,[3] Bolivia-Mercosur , Chile -Mercosur and Chile-Peru agreements, which are LAIA agreements numbers 18, 36, 35 and 38, respectively. These agreements were chosen because they are the most advanced in South America in terms of procedures of origin.

In all of the agreements considered, the certification of origin is the responsibility of official entities designated by each signatory party. These entities may delegate the issuing function to public or private entities which operate at the national level, but they remain responsible for supervising the process. In the case of the Chile-Peru agreement, however, this responsibility is not made explicit. This agreement also specifies that the institutional arrangements would be the same as in the LAIA system with respect to the official units and the public or private agencies authorized to issue such certificates. In relation to this latter point, the other economic complementarity agreements studied refer to the fact that the authorized entities must be representative and have the appropriate technical capacity and qualifications.

Each certificate of origin must be accompanied by a sworn statement, which must be made by the final producer in the case of Mercosur, or by the exporter or final producer in the case of the other agreements. The Chile-Peru agreement specifies that if the exporter is not the producer of the good, the exporter will be responsible for providing the sworn statement, which forms part of the certificate of origin. The sworn statement must identify the party requesting the certificate, in addition to describing the production process and the components used in production of the good.

In the case of the Bolivia-Mercosur and Chile-Mercosur agreements, the certificate of origin must be issued within a maximum of five days from the day of the request. In contrast, the Chile-Peru agreement specifies a seven-day period. The Mercosur agreement does not refer to any specific period for this purpose.

Under the terms of the Chile-Peru agreement, the statement of origin is valid for two years, while in the case of the other agreements it is valid for 180 days from the day of issue. In all cases, the time periods mentioned are valid provided that it is a case of regular export, and that there has been no change in the production process or in the use of materials. All of the agreements also specify that the certificates of origin are valid for 180 days.

Without exception, this certificate must be issued with the signature of an authorized official and it is only valid for one trade operation. The Bolivia-Mercosur, Chile-Mercosur and Mercosur agreements use the same format for the certificate of origin, which is much more complex and detailed than in the case of LAIA, although it does include all the information requested by this entity. The Chile-Peru agreement follows the LAIA format.

Each certifying entity must keep a copy of the certificates of origin submitted, as well as all of the information that was required for it. The Mercosur, Chile-Mercosur and Bolivia-Mercosur agreements specify a two-year period, while it is three years in the case of the Chile-Peru agreement. In addition, all the agreements specify that the certifying entities must keep a permanent and correlative record of the certificates issued, together with the most important information items.

In all cases, both LAIA and the corresponding administrative body of the respective agreement must be notified as to which entities are authorized to issue certificates of origin and which officials are authorized to sign them. In the case of the Mercosur agreement, the Trade Commission must be notified. The administrating bodies are responsible for informing all of the countries concerned.

Mercosur has issued special instructions for the entities authorized to issue certificates of origin. These instructions define the responsibilities of these agencies and the procedures which facilitate their task, as well as the responsibilities of the international economic agents.

Main observations in connection with the system of economic complementarity agreements

(a) It is interesting that in the case of the Mercosur, Bolivia-Mercosur and Chile-Mercosur agreements, the sworn statement is valid for a period of 180 days, compared to two years for the Chile-Peru

agreement. Clearly, the 180-day period is more realistic and better suited to current international conditions, as it is most unlikely that a production process, especially a complex one, would remain unchanged for a longer period. The shorter period also facilitates supervision of the issuance of certificates of origin;

(b) Each trade operation requires a specific certificate of origin. As the information required for the certificate is usually very detailed, the question may arise as to whether all of the data requested are actually needed;

(c) The certificate of origin is valid for 180 days in all of the agreements considered;

(d) As there are more cases of origin fraud when the documents are filled out by an exporter, it is interesting to note the Mercosur procedure. It is different from that of all the other agreements because it includes a provision that the statement of origin must be provided by the final producer of the good;

(e) In three of the four agreements studied, general criteria are established for designating the certifying entities. None of these agreements specify which factors should be taken into account to ensure due supervision by the public sector;

(f) The member countries do not always advise the interested parties in a timely manner of changes in authorized entities and signatures. This situation is particularly complex for the agreements in which Mercosur participates, as Brazil has an extensive list of national certifying entities;

(g) In general, the definitions contained in the regulatory texts considered are sufficiently clear and precise;

(h) In the case of the Mercosur agreement, however, no time period is specified within which an authorized entity must issue a certificate of origin, once it has been requested. In the other agreements this period is specified, but a period of from 5 to 7 days seems excessively long for the purposes of trade facilitation;

(i) In all of the economic complementarity agreements considered, certificates of origin may be issued by public entities or by private organizations. This indicates the need to initiate a discussion for the comparative analysis of these different procedures.

C. A pending issue

One important issue which remains pending is to clarify which system functions better for issuing the statement and certificate of origin under an EIA: one in which only the public sector participates, or one in which the public sector delegates the relevant functions to a professional entity. When it is a government entity that takes on the role, it must have the required capacities in terms of personnel with adequate training, economic resources and the possibility of operating in a decentralized manner throughout the country. It is often the case, however, that the public administration does not have these capacities, or when it does have them, the national legislation does not allow for the receipt of direct payments from the private sector, as in the case of this remunerated service.

The other option is to have recourse to the services of a business chamber. As the services required are well paid, the private sector is interested in gaining access to this rather lucrative business. For example, in some countries the charge for each certificate of origin issued may be as much as US$ 30, and the large numbers of documents issued means a very high total income.[4] In addition, in most countries which operate with this system, the entities involved have had this role for many years, and may have established a power dynamic that they wish to maintain. In some countries in the region, there is no State participation in setting the amounts to be charged for this service by the professional entities.

At the same time, professional associations are usually the best qualified for issuing a reliable certificate of origin, as in general they are well acquainted with the production processes, even the most complex ones, of the industrial sector. Nevertheless, it would be interesting to know what the reaction of a professional association would be if a certificate of origin was requested in a dubious manner by one of its main partners. In addition, this type of organization often does not perform the necessary visits to a producer prior to issuing the certificate, nor do they carry out the relevant checks prior to issuing a certificate.

Another problem associated with authorizing private entities to issue the certificates of origin is that if they do not perform well, it is difficult to replace them, as there are not usually very many such decentralized entities in a country which have the necessary capacities to take on this task. The task of issuing certificates of origin is rather specialized and unusual, and there is not much experience available, even in professional associations.

There also tends to be a lack of adequate supervision by the public sector, which should ensure that the proper procedures are being followed by the authorized private entities. The professional organizations are selective in their verification of the validity of the statement of origin, and the accuracy of the additional information required. In relation to the statement of origin, it is unlikely that the production process of an industrial good or the proportion of the costs of imported inputs should remain unchanged for two or three years. In relation to the issuance of certificates of origin, the authorizing entities also have to review the background information required for the certificates and, in cases of doubt, should visit the enterprise in question.

In general terms, the professional associations do not carry out these tasks relating to supervision of the requesting enterprises. It does not seem appropriate, however, that the government apparatus should act solely on the basis of good faith, a principle which is often used to cover up the difficulty that the public sector has in controlling private issuing entities. This is exacerbated by the idea of promoting national exports, despite the fact that such action could be prejudicial to the image of the country or region, which is an issue of vital importance for both the private and public sectors. [5]

All in all, the best option would seem to be a mixed system, where there is active control of the private sector by the public sector, with agreements that make clear and precise provisions for the relationship between the two, as well as their corresponding rights and obligations. At the same time, the amounts involved in terms of tariff duties not received by the public sector could in some cases amount to very high sums. This explains the need to apply public, but selective and efficient controls, as opposed to large-scale and indiscriminate ones. It needs to be a form of government inspection that does not impede trade facilitation.

An additional difficulty arises in the cases of large countries, which have a long list of authorized private certifying entities and signatures, in which case the challenge of public control is greater. [6] In any case, exporters should have to deal with the same conditions, when a single integration agreement provides for the issuance of certificates of origin by both public and private entities.