ZAMBIA DEVELOPMENT AGENCY

A GUIDE TO ZAMBIA'S TRADE AGREEMENTS

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MARCH, 2024

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Disclaimer:

This document is meant as a guide to assist the private sector in Zambia appreciate the Trade Agreements Zambia is party to, particularly as it relates to determination of origin for trade in goods. The guide does not in any way replace the legal texts of the agreements referred to herein. In no event will the Government of the Republic of Zambia or ZDA be liable for any loss whatsoever arising from the use of the information.

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1.0 INTRODUCTION

A free trade agreement (FTA) between two or more countries can be used to set the rules for how countries treat each other when it comes to doing business together. The focus of an FTA is mainly on economic benefits and encouraging trade between the countries by making it more efficient and profitable. Agreements usually remove tariffs on goods, simplify customs procedures, remove unjustified restrictions on what can or can't be traded, and make it easier for business people to travel or live in each other's country. FTAs are legally binding, so they provide certainty and security for exporters, importers and investors. They help businesses to become, and remain, competitive in those markets.

Trade agreements are important for companies that are looking to export their products or services, as they may benefit from favourable treatment in comparison to exporters from countries that are not party to or beneficiary of a particular trade agreement. Trade agreements make it easier and cheaper for exporters, giving their product a competitive advantage in the destination market

Market Access for Zambia's export products has been governed by the various multilateral, regional and bilateral trade agreements that it is party to as well as the unilateral trade agreements that it is a beneficiary of. These include the World Trade Organisation (WTO) at multilateral level, the African Continental Free Trade Agreement, SADC, COMESA and the COMESA – EAC – SADC Tripartite at regional level, and the Zambia Angola Trade Agreement and Zambia DRC Trade Agreement at bilateral level. At the time of the development of this guide, the COMESA – EAC – SADC Tripartite, the Zambia-Angola agreement and the Zambia-DRC Trade Agreement had not yet come into effect and were therefore not included in this guide

The purpose of this guide is therefore to give Zambian existing and potential exporters an overview of the main trade agreements that Zambia is party to and the unilateral ones that it is a beneficiary of. The guide focuses on trade in goods and the requirements for goods to qualify for preferential treatment. Zambian companies are therefore encouraged to take advantage of FTAs and develop good understanding of FTA provisions and trade requirements to be able to tap on the opportunities brought by FTAs to penetrate export markets.

2.0 MULTILATERAL

2.1 World Trade Organisation

2.1.1.1 Introduction to the WTO and Zambia's Membership

The World Trade Organization (WTO) is an international institution which was created in 1995 to regulate trade between nations. A replacement for the 1947 General Agreement on Tariffs and Trade (GATT), the WTO manages the rules of international trade and seeks to ensure fair

and equitable treatment for its 164 members by conducting negotiations, lowering trade barriers, and settling disputes.

Zambia has been a member of the World Trade Organisation (WTO) since its inception on 1st January 1995 and a party to the General Agreement on Tariffs and Trade (GATT) since 10 February 1982.

2.1.1.2 Basic Principles of the WTO Agreements

Basic Principles of the WTO Agreements - the WTO Agreement is based on the concept of reducing trade barriers and applying non-discriminatory rules. These ideals are embodied in the following basic principles of the WTO.

(a) Principle of MFN (Most-Favoured-Nation) Treatment

GATT Article I provides that with respect to tariffs, etc. on exports and imports, the most advantageous treatment accorded to the products of any country must be accorded immediately and unconditionally to the like products of all other members

(b) Principle of National Treatment

GATT Article III requires that with respect to internal taxes, internal laws, etc. applied to imports, treatment not less favourable than that which is accorded to like domestic products must be accorded to all other Members

(c) Principle of General Prohibition of Quantitative Restrictions

GATT Article XI stipulates that "No prohibitions or restrictions other than duties, taxes or other charges shall be instituted or maintained by any contracting party" and generally prohibits quantitative restrictions. One reason for this prohibition is that quantitative restrictions are considered to have a greater protective effect than tariff measures and are more likely to distort the free flow of trade

(d) Principle regarding Tariffs as Legitimate Measures for the Protection of Domestic Industries

GATT accepts the imposition of tariffs as the only method of trade control, and attempts to gradually reduce tariff rates for individual items in tariff negotiations. Member countries make "concessions" ("bind" themselves to maximum rates) according to GATT Article XXVIII the imposition of tariffs beyond such maximum rates ("bound rates") or the unilateral raise in bound rates is banned. In addition, tariff rates are to be reduced in negotiations "on a reciprocal and mutually advantageous basis" according to GATT Article XXVIII.

2.2 REGIONAL TRADE AGREEMENTS

2.2.1 African Continental Free Trade Agreement

2.2.1.1 Introduction to the AfCFTA

The Framework Agreement establishing the African Continental Free Trade Area was opened up for signature on 21st March, 2018 in Kigali, Rwanda. As at January 2021, fifty-four (54) out of the fifty-five (55) AU Member States had signed the Agreement. As at August 2023, forty seven (47) of the 54 signatories (87%) had deposited their instruments of AfCFTA ratification, including Zambia. With a combined GDP of an estimated US$ 3.4 trillion and a population 1.3 billion people make the AfCFTA the biggest trade arrangement since the creation of the World Trade Organisation.

The Protocol on Trade in Goods nominally entered into force with the AfCFTA Agreement in 2019, although negotiations to finalise the rules of origin and schedules of tariff concessions are still ongoing. The AfCFTA will see the progressive liberalisation of 97% of intra-Africa tariffs, 7% of which are categorised as sensitive- products and will be liberalised over a longer time frame. The remaining 3% of tariffs may be excluded from liberalisation for reasons relating to food security, national security, fiscal revenue, livelihood, and industrialization. The majority of State Parties have tabled tariff offers that comply with agreed modalities.

Rules of origin (the legal provisions that are used to determine the nationality of a product in the context of international trade) have been agreed to for 88.3% of total tariff lines. Non-tariff barriers (NTBs) are in fact a larger contributor to intra-Africa trade costs than tariffs. The Annexes to the Protocol on Trade in Goods which deal with issues related to non-tariff measures, such as standards (sanitary and phyto-sanitary standards, and Technical barriers to trade), customs and border management, trade facilitation, and transit arrangements, are complete.

While preferential trade under the AfCFTA can only truly begin once negotiations on issues such as tariff concessions and rules of origins are finalized, a ‘pilot phase’ of the AfCFTA was launched in 2022 in the form of the Guided Trade Initiative (GTI). The primary aim of the GTI is to allow commercially meaningful trading, and test the operational, institutional, legal and trade policy environment under the AfCFTA. Eight (8) State Parties are participating: Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia. At least 96 products are eligible for trade among participating countries including ceramic tiles, batteries, horticulture products and flowers, avocados, palm oil, tea, rubber, and components for air conditioners.

2.2.1.2 Rules of origin

Goods need to fulfil the AfCFTA rules of origin as outlined in Annex 2 on Rules of Origin of the AfCFTA Protocol on Trade in Goods to benefit from this continental trade agreement and hence circulate without paying customs duties within the AfCFTA State Parties.

i. Wholly obtained or Produced Goods

The criterion "wholly obtained or produced" is mainly used for natural products and for goods made from natural products which are obtained entirely in one country or area, comprising products extracted or harvested in a country and live animals born, raised or hunted there. The scope of wholly obtained or produced products is normally interpreted in a very strict way, insofar as the addition of imported parts or materials excludes such products from being wholly obtained or produced. Article 5 of Annex 2 on Rules of Origin contains an exhaustive list of wholly obtained products and these are:

(a) Mineral products and other non-living natural resources extracted from the ground, sea bed, below sea bed and in the Territory of a State Party in accordance with the provisions of UNCLOS;
(b) Plants, including aquatic plants and plant products, vegetables and fruits, grown or harvested therein;
(c) Live animals born and raised therein;
(d) Products obtained from live animals raised therein;
(e) Products from slaughtered animals born and raised therein;
(f) Products obtained by hunting and fishing conducted therein;
(g) Products of aquaculture including mariculture, where the fish, crustaceans, molluscs and other aquatic invertebrates are born and or raised therein from eggs, larvae, fry or fingerlings born or raised therein;
(h) Products of sea fishing and other Products taken from the sea outside the Territory of a State Party by their Vessels;
(i) Products made aboard their Factory Ships exclusively from Products referred to in subparagraph (h);
(j) Used articles fit only for the recovery of Materials, provided that such articles have been collected therein;
(k) Scrap and waste resulting from manufacturing operations therein;
(l) Products extracted from marine soil or sub-soil outside their territorial waters provided that it has sole rights to work that soil or sub-soil;
(m) Goods produced therein exclusively from the Products specified in subparagraphs (a) to (l); and
(n) Electric energy produced therein.

ii. Sufficiently Worked or Processed Products

Sufficient working or processing is a production requirement guaranteeing that a meaningful manufacturing process has taken place in the free trade area in order to confer originating status to a product. Article 6 of AfCFTA Annex 2 on Rules of Origin states that in order for a product to be considered sufficiently worked or processed, one of the following criteria has to be fulfilled:

(a) Value added;

A product is considered as originating when the value of the product is increased up to a specified level expressed by an ad valorem percentage, i.e. a minimum requirement of domestic content. The formula used in the AfCFTA Agreement for applying the value-added criterion is the following:

$$VA\ (\%) = \frac{VA}{EXW \times 100}$$

Where:

- ✓ VA (%) is the required threshold for goods to qualify. The applicable threshold can be found in the list of product specific rules of origin in Appendix IV.
- ✓ VA is the difference between the ex-works price of a finished product and the customs value (based on FOB) of the materials imported from outside the State Parties and used in the production.
- ✓ EXW is the ex-works price.

(b) Non-Originating Material Content

A final product can be considered as originating provided that the foreign inputs do not exceed a certain threshold, i.e. a maximum allowance for non-originating materials (maximum third country content allowance). The AfCFTA formula for applying the value of non-originating materials criterion is the following:

$$VNOM\ (\%) = \frac{VNOM}{EXW \times 100}$$

Where:

- ✓ VNOM (%) is the required threshold for goods to qualify.
- ✓ VNOM is the customs value (based on FOB) at the time of importation of the non-originating materials used in the production, or if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in any State Party
- ✓ EXW is the ex-works price.

(c) Change in Tariff Heading;

A product is considered originating in a State Party if there is a change in tariff heading (on 4 digit level) or sub-heading (6 digit level) between the final product and all the imported, non-originating inputs used in its production. It is important to note that change of tariff heading are product specific.

For example inputs for manufacture of soap bars include animal fat, perfume and disodium are found in HS 15.06, HS 33.02) and HS 38.24, respectively while the soap bars in found in HS 34.01. Since all raw the materials are found in different HS codes than the final product, soap bars are therefore considered as originating.

On the other hand, the rule for the whole of Chapter 46 is "Manufacture from Materials of any Heading other than that of the Product provided that Materials of Chapter 14 are wholly obtained ". If the straw material was imported from a non-AfCFTA State Party, the product specific rule is not fulfilled, and the basket is considered as not originating in the State Party where it was manufactured.

(d) Specific Processes.

Regardless of any change in its classification or the extent of value added, a product is considered to be substantially transformed when it has undergone a specific manufacturing or processing operation which is described in the list of product specific rules of origin. For example if diamonds of heading 71.02 are exported from State Party A to State Party B, the rule of origin that applies is “Manufacture from unworked, precious or semi-precious stones”.

In this regard, if a manufacturer in State Party A imports raw diamonds and further processes them (polishing etc.), the final product will be considered as originating in that State Party according to the AfCFTA rules of origin.

iii. Insufficient Working or Processing for Conferring Origin

In order to ensure that only substantial manufacturing processes count for conferring origin, Article 7 of Annex 2 on Rules of Origin contains a list of operations which are considered to have only minor effects on the final goods. Insufficient operations carried out individually, or even in combination, will never confer origin to a final product even where the applicable rule included in the list of product specific rules of origin would have been satisfied. However, if a manufactured product achieves its originating status through operations that go beyond the insufficient operations, it does not matter if the product is, in addition, subjected to one or more minimal operations.

The list of insufficient operations contained in Article 7 is the following:

(a) operations exclusively intended to preserve products in good condition during storage and transportation;
(b) breaking-up or assembly of packages;
(c) washing, cleaning or operations to remove dust, oxide, oil, paint or other coverings from a product;
(d) simple ironing or pressing operations;
(e) simple painting or polishing operations;
(f) husking, partial or total bleaching, polishing or glazing of cereals and rice;
(g) operations to colour sugar or form sugar lumps, partial or total milling of crystal sugar;
(h) peeling, stoning or shelling of vegetables of Chapter 7, fruits of Chapter 8, nuts of Heading 08.01 or 08.02 or groundnuts of Heading 12.02, fruits, nuts or vegetables;
(i) sharpening, simple grinding or simple cutting;
(j) simple sifting, screening, sorting, classifying, grading or matching;
(k) simple packaging operations, such as placing in bottles, cans, flasks, bags, cases, boxes or fixing on cards or boards;
(l) affixing or printing marks, labels, logos, and other like distinguishing signs on the Products or their packaging;
(m) simple mixing of materials, whether or not of different kinds; which does not include an operation that causes a chemical reaction;
(n) simple assembling of parts of articles to constitute a complete article;
(o) combination of two or more operations specified in sub-paragraphs (a) to (n); and
(p) slaughter of animals.

iv. Goods produced under Special Economic Arrangements/Zones

According to Article 9.1 of Annex 2, goods produced in Special Economic Arrangement/Zone shall be treated as originating goods provided that they satisfy the rules of origin in the Annex and in accordance with the provisions of Article 23.2 of the Protocol on Trade in Goods. State Parties shall take all necessary measures to ensure that products which are traded under the cover of proof of origin, and which during their transportation use a Special Economic Arrangement/Zone situated in their territory, shall remain under the control of the Customs Authority and are not substituted by other goods (Article 9.2).

2.2.1.3 Proof of Origin in the AfCFTA Agreement

According to the general requirements for origin certification in Article 17 of Annex 2 on Rules of Origin of the AfCFTA Agreement, goods originating in a State Party will benefit from preferential tariff treatment when imported into another State Party upon submission of either:

(a) a certificate of origin, whether in hard or electronic copy in the form of Appendix I of Annex 2.

(b) in the cases specified in Article 19 of the Annex, a declaration, subsequently referred to as the 'origin declaration', given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified.

2.2.2 Southern African Development Community (SADC)

2.2.2.1 Introduction to SADC

The Southern African Development Community (SADC) is a Regional Economic Community comprising sixteen (16) Member States; Angola, Botswana, Comoros, Democratic Republic of Congo (DRC), Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic Tanzania, Zambia and Zimbabwe.

With a consumer base of 372 million people and a combine Gross Domestic Product (GDP) of USD 755 billion, SADC represents a large market for Zambian exporters to tap into. Being a member of SADC and party to the SADC Free Trade Area, Zambia enjoys duty-free access to the SADC region

2.2.2.2 SADC FTA

Out of the sixteen (16) Member States, thirteen (13) are already implementing the FTA and are Botswana, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia and Zimbabwe. DRC and Comoros are yet to join the SADC FTA while Angola has recently submitted an offer to accede to the FTA.

At the commencement of negotiation for the SADC FTA, goods were categorized into three classes for the purposes of tariff reduction. As contained in the SADC Protocol on Trade goods were categorized:

- ✓ **Category A,** *for which tariffs must be eliminated (i.e. liberalized) immediately;*
- ✓ **Category B,** *which must be liberalized progressively; and*
- ✓ **Category C**, *which will be liberalized last as they include goods that are strategic and/or sensitive to individual member states.*

2.2.2.3 Rules of origin

For a product to be considered as originating in a Member State, it must meet one of the criteria prescribed in the SADC rules of origin (Annex I rule 2 of the SADC Protocol on Trade). For goods to be accepted as originating they should be consigned directly from a Member state to a consignee in another Member State and should meet one of the rules of origin.

i. Wholly Produced/Obtained Goods

They have been wholly produced/obtained. The product is considered as wholly obtained or produced in SADC Member State if the product is entirely grown, mined, fished, born and raised there, products produced exclusively from materials/components that qualify in their own right as originating in a SADC Member Sate etc (Annex I rule 4). This does not include products of the same kind purchased in a SADC Member State that were imported from a Non-SADC country

The following goods are considered as wholly produced in the member States:

(a) mineral products extracted from the ground or sea-bed of the member States;
(b) vegetable products harvested within the member States;
(c) live animals born and raised within the member States;
(d) products obtained from live animals within the member States;
(e) products obtained by hunting or fishing conducted within the member States;
(f) products obtained from the sea and from rivers and lakes within the member States by a vessel of a member State;
(g) products manufactured in a factory of a member State exclusively from the products referred to in sub-paragraph (f) above;
(h) used articles fit only for the recovery of materials, provided that such articles have been collected from users within the member States;
(i) scrap and waste resulting from manufacturing operations within the member State;
(j) goods produced within the member States exclusively or mainly from one or both of the following:
    (i) products referred to in sub-paragraphs (a) to (i) above;
    (ii) materials containing no element imported from outside the member states or of undetermined origin

ii. Sufficiently Worked or Processed (Specific Rules of Origin)

SADC Trade protocol provides for product specific rules of origin for products that incorporates non-originating materials (Annex I Appendix I). The goods should be produced in the member States and the Ex-factory price of any foreign materials should not exceed a specific percentage stipulated on the item or the value added should not be less than the stipulated percentage.

Under this criterion, only the cost of the materials (domestic and imported) used in production is considered for purposes of determining origin. Materials whose origin is unknown are considered as “imported” for purposes of this criterion, and their price shall be the earliest ascertainable price paid for them in the Member State where they are used in a process of production

To determine the percentage content of added value on non-originating materials on the finished product the producer should subtract the value of imported material (customs value) from the ex-factory price. In most cases, the customs value of non-originating material is the total amount it cost the producer to purchase the material and the cost of getting them at the first port of entry into the Member State where production process will be first carried out. Then divide the difference by the ex-factory price and convert the result to a percentage.

Formula

Ex-factory price – customs value of non-originating material multiply by one hundred divide by Ex-factory price.

Example:

The producer sales his manufactured product for 100 units of account. The customs value of non-originating materials used in the finished product amounts to 30 units of account. To determine import content, the producer calculates it as follows:

$$\frac{(100-30) \times 100}{100} = 70\%$$

Therefore, the added value on non-originating material is 70% and the product.

To calculate the percentage value of non-originating material in the finished product simply express the customs value as a percentage of ex-factory price. Thus:

$$\frac{30 \times 100}{100} = 30\%.$$

Therefore non-originating material constitutes 30% of the value of the finished product.

Non originating materials are:

- ✓ *Materials or components imported from a non SADC country; or*
- ✓ *Materials produced in a SADC country but, do not meet the rule of origin*.

iii. Regional Value Content Test (Import Content or Value Addition Criteria)

The regional value content tests requires that the value of non-originating on a finished product should not exceed the stipulated percentage or that the value addition in country of manufacture or cumulatively in SADC Member States should not be below the prescribed percentage for goods to be considered as origination.

For example, some rules may specify that the value (Customs Value) of non-originating materials in a finished product must not exceed 60% of ex-factory price or that the value addition should be at least 35% of ex-factory price.

iv. HS Tariff Classification Test (Change of Tariff Heading Rule)

The goods should be produced in the member States and should be classifiable, after the process of production under a tariff heading other than the tariff heading of the non-originating materials used in their production: Under this criterion, origin is conferred if the manufacturing or processing carried out in the Member States is sufficient and results in a product which falls under a heading of the Harmonized Commodity Description and Coding System (HS) which is different from that under which the non-originating materials used in its manufacture fall.

The specific rules of origin are organized using the six or eight digit HS classification. Therefore one needs to determine the Tariff classification number and use that classification to find the specific rule in Appendix I Annex I that applies to that product. If the product meets the prescribed rule of origin, then it is an originating product.

v. Cumulative Principle

For purposes of determining origin of goods SADC Member States are considered as one territory (country). Therefore cumulation occurs when a product is manufactured from originating materials in one or more Member State e.g. Sugar cane harvested in Eswatini, crushed in South Africa and refined in Zambia or Zambia may import sugar cane form Eswatini, crush and refine it, sugar the end product, will be regarded as originating in Zambia.

vi. De Minimis Rule/ Value Tolerance

The SADC Trade Protocol provides relief when a product does not qualify as originating only because some non-originating material of little value fails to meet the minimum percentage in terms of value criteria. If the value of the non-originating material in question is no more than 10% of ex-works price1 of item, resulting deemed originating regardless of other requirements mandating use of specific SADC sources input(s) of working/processing requirements(albeit not if it causes the item to exceed the mandatory maximum value percentages for not originating materials).

Example

A product uses two materials, A and B, and both non-originating materials. As a result of its transformation into the finished product, A makes the required HS classification change but B does not, Because B does not make the required change, the finished product will not qualify unless the value of B is no more than 10% of the ex-works price of the item.

Note

The Value Tolerance Rule is not applicable to HS headings 50 –63, 87 and 98.

vii. Processes not Conferring Originating Status

Annex I, Rule 3 of the Trade Protocol specifies a number of processes that do not confer originating status on goods made from non-originating materials even though the working carried out results in a change in the HS tariff heading(s) of the materials. These include:

- Packing, Packaging and other preparations for shipping and for sales;
- Mere dilution, blending and other types of mixing;
- Simple assembly or combining operations;
- Other minor operations;
- Slaughter of animals.

Note: A combination of two or more insufficient processing operations does not confer origin, even if the product specific rules of origin have been satisfied. However all operations carried out by the producer on a given product shall be considered together when determining whether the combined operations are to be regarded as insufficient within the meaning of rule 3 annex I.

2.2.2.4 Treatment of Material and Accessories

a) ***Packing Materials and Containers for Retail Sale***

Packaging materials and containers in which goods are packed for retail sale and classified as one with the good should not be taken into account when determining whether all non-originating materials used have undergone the applicable tariff change and if the good is subject to value percentage content, the value of such packaging material and container should be taken into account in calculating value percentage content.

b) ***Tools, Parts and Accessories***

Accessories, parts and tools are considered as one with the good only if these are imported together with the good and the price is included in that good and such is what normally constitute the standard equipment customary included in the sale of the kind of article.

2.2.2.5 Split Consignments

Unassembled or disassembled articles, which for transport or production reasons may have to be exported at different times shall for purposes of granting preference be treated as one article. This means that upon importation of the first consignment the importer should agree

with the Customs authorities to treat goods as one article and hence a single proof of origin (certificate) should be produced.

2.2.2.6 Documentary Evidence (Proof of Origin and Transport Documentation)

The following documentary evidence to support the fulfilment of the above conditions should be produced to the Customs authorities of the importing Member State:

(a) Certificate of Origin duly signed by the exporter and authenticated with a seal and signature by the designated authorities of the country of export:

(i) giving an exact description of the products;
(ii) Origin criteria
(iii) Consignee and consignor

Where the producer is not the exporter such producer must furnish the exporter with a declaration (Producer declaration) as stipulated in Appendix III of the Trade Protocol, declaring that the goods qualify as originating.

(b) a single transport document covering the passage from the exporting member State through the country of transit; or

(c) a certificate issued by the Customs authorities of the country of transit:
(i) giving an exact description of the products;
(ii) stating the dates of unloading and reloading of the products, and where applicable, the names of the ships or other means of transport used; and
(iii) certifying the conditions under which the products remained in the transit country.

2.2.2.7 Registration of Exporters

All producers of goods wishing to export under preference should be registered with the relevant Competent Authority designated in the Member State, which in the case of Zambia is the Zambia Revenue Authority. Registration will ensure that only approved goods originating in the Member States and exported by companies operating within the SADC region benefit from preferential tariff treatment. This will eliminate the possibility of third country products from benefiting under the SADC trade regime.

Registration of an approved exporter of SADC originating products is only an aid to the clearance of the goods and does not entitle the goods to the automatic granting of preferential tariff rates in the importing Member State. Normal Customs procedures must be completed and all requirements satisfied.

Potential exporters under the SADC trade regime are required to register and such companies wishing to register as exporters should submit a written application to the designated competent authority (Customs, Revenue Authority, etc.) and such application should be submitted well in advance before any intended export is under taken.

The following information should be included in the application letter;

- Name of company
- Physical address of the company
- Contact details: contact person, telephone number, fax number, e-mail address, etc.
- List of products intended for export

2.2.2.8 Specific Requirements for Registration

(i) Specific Information for Manufacturers

a) Production capacity of the company
b) Quantity exported as percentage of total production
c) Export markets e.g. SADC, EU, USA, etc
d) Sketch plan of the factory showing layout of machinery
e) Step-by-step description of the manufacturing process for each product
f) Factual cost analysis for each product showing details of the materials used, their quantity, values, and details of how the requested criteria is being met.
g) Certificate of Incorporation (or any other evidence) to show that the company is registered and operates within the territory of a Member State
h) Import documents e.g. goods declaration, invoice, SADC Certificate of origin (for purposes of cumulation), etc. for materials imported by applicant
i) Purchase invoices for local materials and for imported materials purchased locally
j) List of employees involved in the manufacture of the product(s)
k) Wage sheets for the employees
l) Job descriptions for the employees
m) Proof of overheads e.g. rent bills, electricity bills, etc.
n) Any other documents that may be required

(ii) Specific Information for Non-manufacturing Exports:

In the case of non-manufacturing exports (e.g. commodity brokers, distributors), a formal application together with Declaration by the Producer manufacturer whose products have already been approved should be submitted to the designated competent authority.

(iii) Requirements for Exporters of Wholly Produced Goods

Producers of wholly produced goods (e.g. farmers, miners, etc) wishing to export their products under preference should support their application with Farmers' licenses, mining licenses or

any relevant supporting evidence. They should also provide details of where they are located and what goods they produce

Other exporters should support their application with any relevant evidence, e.g. a purchase invoice from the producer of wholly produced goods.

2.2.3 Common Market for Eastern and Southern Africa (COMESA

2.2.3.1 Introduction Common Market for East and Southern Africa (COMESA)

The Common Market for Eastern and Southern Africa (COMESA) was initially established in 1981 as the Preferential Trade Area for Eastern and Southern Africa (PTA), within the framework of the Organization of African Unity's (OAU) Lagos Plan of Action and the Final Act of Lagos. The PTA transformed into COMESA in 1994 and was established to take advantage of a larger market size, to share the region's common heritage and destiny and to allow for greater social and economic co-operation. With its 21 Member States, population of over 640 million, a Gross Domestic Product of US$1.0 trillion and a global export/import trade in goods worth US$ 383 billion, COMESA forms a major market place for both internal and external trading.

2.2.3.2 COMESA FTA

In October 2000, COMESA member states launched the Free Trade Area (FTA) in Lusaka, Zambia, making it the only FTA in Africa. FTA members have not only eliminated customs tariffs but are working on the eventual elimination of quantitative restrictions and other non-tariff barriers. The existence of the FTA and the tariff reductions effected by the other Member States has the result that average tariffs on intra-COMESA trade have fallen significantly

There are sixteen (16) countries were participating in the Free Trade Area. These include Burundi, Comoros, Djibouti, Egypt, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Tunisia, Uganda, Zambia, and Zimbabwe. Three (3) other Member States, namely Ethiopia, Eritrea and Eswatini are at different levels regarding their participation in the FTA.

2.2.3.3 COMESA Rules of Origin

Article 48 of the COMESA Treaty provides that goods shall be accepted as eligible for Common Market tariff treatment if they originate in the member States, and the definition of products originating in the member States shall be as provided for in a Protocol on Rules of Origin. In this regard, a product shall be considered as originating in a member State if it is consigned directly from a member State to a consignee in another member State and has either been wholly produced or undergone substantial transformation in that member State.

The COMESA Rules of Origin have five independent criteria, and goods are considered as originating in a member State if they meet any of the five. The rules are discussed in detail in paragraphs that follow.

(i) Direct Consignment Rule

The goods should be consigned directly from one Member State to a consignee in another member State. This implies that goods should be transported directly from a consignor in another member State. However, goods consigned from and to land locked member States may for purposes of transportation, transit through other countries.

(ii) Wholly Produced Goods - [Rule 2(1)(a) of the Protocol]

They have been wholly produced in a member State as defined in Rule 3 of the Protocol. Rule 3 provides a list of products that are considered as "wholly produced" in the member States. Such products contain no materials imported from outside the COMESA region and include the following:

(a) mineral products extracted from the ground or sea-bed of the member States;
(b) vegetable products harvested within the member States;
(c) live animals born and raised within the member States;
(d) products obtained from live animals within the member States;
(e) products obtained by hunting or fishing conducted within the member States;
(f) products obtained from the sea and from rivers and lakes within the member States by a vessel of a member State;
(g) products manufactured in a factory of a member State exclusively from the products referred to in sub-paragraph (f) of paragraph 1 of this Rule;
(h) used articles fit only for the recovery of materials, provided that such articles have been collected from users within the member States;
(i) scrap and waste resulting from manufacturing operations within the member State;
(j) goods produced within the member States exclusively or mainly from one or both of the following:
    (i) products referred to in sub-paragraphs (a) to (i), above
    (ii) materials containing no element imported from outside the member states or of undetermined origin

Note:

Electrical power, fuel, plant, machinery and tools used in the production of goods shall always be regarded as wholly produced within the Common Market when determining the origin of the goods.

(iii) Material content criterion - [Rule 2(1)(b)(i) of the Protocol]

The goods have been produced in a member State wholly or partially from imported materials (or from materials of unknown origin) and the c.i.f. value of materials imported from outside the region does not exceed 60% of the total cost of materials used in production. Under this criterion, only the cost of the materials (domestic and imported) used in production is considered for purposes of determining origin. Materials whose origin is unknown are considered as "imported" for purposes of this rule, and their price shall be the earliest ascertainable price paid for them in the Member State where they are used in a process of production. The value of the imported materials is the c.i.f. value accepted by Customs at the time of clearance for home consumption or under temporary admission procedures.

Formula for calculation of material content (%):

- ✓ **Import material content:**

$$\text{Import material content} = \frac{\text{c.i.f. value of imported materials}}{\text{cost of local materials + c.i.f. value of imported materials}}$$

This rule can also be expressed in terms of domestic materials, where a minimum of 40% local content should be achieved for the finished goods to qualify as originating in a member State.

- ✓ **Local material content:**

$$\text{Local material content} = \frac{\text{cost of local materials}}{\text{cost of local materials + c.i.f. value of imported materials}}$$

(iv) Value-added criterion - [Rule 2(1)(b)(ii) of the Protocol]

The goods have been produced in a member state wholly or partially from imported materials (or materials of unknown origin) and the value added resulting from the process of production accounts for at least 35% of the ex-factory cost of the finished product. The value added is the difference between the ex-factory cost of the finished product and the c.i.f. value of imported materials used in production. Ex-factory cost means the value of the total inputs required to produce a given product. In applying this criterion, domestic material content may be either low or non-existent in the composition of the products to be exported.
Materials whose origin cannot be determined shall be deemed to have been imported from outside the region.

Calculation of ex-factory cost:

The following costs, charges and expenses should be included:

(a) The cost of imported materials, as represented by their c.i.f. value accepted by the Customs authorities on clearance for home consumption, or on temporary admission at the time of last importation into the Member State where they were used in a process of production, less the amount of any transport costs incurred in transit through other member States. Provided that the cost of imported materials not imported by the manufacturer will be the delivery cost at the factory but excluding customs duties and other charges of equivalent effect thereon;
(b) The cost of local materials, as represented by their delivery price at the factory;
(c) The cost of direct labour as represented by the wages paid to the operatives responsible for the manufacture of the goods;
(d) The Cost of direct factory expenses, as represented by:
    - ✓ the operating cost of the machine being used to manufacture the goods;
    - ✓ the expenses incurred in the cleaning, drying, polishing, pressing or any other process, as may be necessary for the finishing of the goods;
    - ✓ the cost of putting up the goods in their retail packages and the cost of such packages but excluding any extra cost of packing the goods for transportation or export and the cost of any extra packages;
    - ✓ the cost of special designs, drawings or layout; and the hire of tools, or equipment for the production of the goods.
(e) The cost of factory overheads as represented by:
    - ✓ rent, rates and insurance charges directly attributed to the factory;
    - ✓ indirect labour charges, including salaries paid to factory managers, wages paid to foremen, examiners and testers of the goods;
    - ✓ power, light, water and other service charges directly attributed to the cost of manufacture of the goods; consumable stores, including minor tools, grease, oil and other incidental items and materials used in the manufacture of the goods;
    - ✓ depreciation and maintenance of factory buildings, plant and machinery, tools and other items used in the manufacture of the goods

The following costs, charges and expenses should be excluded:

(a) Administration expenses as represented by:
    - ✓ office expenses, office rent and salaries paid to accountants, clerks, managers and other executive personnel;
    - ✓ directors' fees, other than salaries paid to directors who act in the capacity of factory managers;
    - ✓ statistical and costing expenses in respect of the manufactured goods; investigation and experimental expenses.
(b) Selling expenses, as represented by:
    - ✓ the cost of soliciting and securing orders, including such expenses as advertising charges and agents' or salesmen' commission or salaries;
    - ✓ expenses incurred in the making of designs, estimates and tenders.

(c) Distribution expenses, represented by all the expenditure incurred after goods have left the factory, including; the cost of any materials and payments of wages incurred in the packaging of the goods for export; warehousing expenses incurred in the storage of the finished goods; the cost of transporting the goods to their destination.

(d) Charges not directly attributed to the manufacture of the goods: any customs duty and other charges of equivalent effect paid on the imported raw materials; any excise duty paid on raw materials produced in the country where the finished goods are manufactured; any other indirect taxes paid on the manufactured products; any royalties paid in respect of patents, special machinery or designs; and finance charges related to working capital.

Example:

A producer in member State X makes wooden tables for sale to a buyer in member State Y. The producer uses local timber and timber imported from Member State Z and Malaysia, respectively. The producer incurs the following costs per table, but he is not sure whether the tables qualify for preferential tariff treatment or not:

Materials	***Cost (currency unit)***
Timber:	
Local timber	*200*
From member State Z	*100*
Malaysian origin	*900*
Other costs:	
Glue (imported from Brazil)	*5*
Varnish (imported from Germany)	*8*
Factory overheads:	
Rent and rates	*100*
Depreciation of machinery	*80*
Direct labour	*300*
Ex-factory cost	*1693*

Calculations:

(a)(i) Import material content $= \frac{900+5+8}{200+100+900+5+8} = \frac{913}{1213} = 75\%$

OR

(ii) Local material content $= \frac{200+100}{200+100+900+5+8} = \frac{300}{1213} = 25\%$

(b) Value added $= \frac{1693-913}{1693} = \frac{780}{1693} = 46\%$

Note: The material content and value added should be calculated to the nearest whole number.

(v) Change in Tariff Heading (CTH) Rule - [Rule 2(1)(b)(iii) of the Protocol]

This applies to goods that have been produced in a member State wholly or partially from imported materials and are classified or become classifiable under a heading other than the tariff heading of the imported materials. Under this criterion, origin is conferred if the manufacturing or processing carried out in the member States is substantial and results in a product which falls under a heading of the Harmonized Commodity Description and Coding System (HS) which is different from that under which the non-originating materials used in its manufacture fall. In applying the CTH Rule particular attention should be given to exclusions.

Example I

Margarine of tariff heading 15.07 manufactured in a COMESA member State can only qualify as a COMESA originating product if it is manufactured from imported materials classified in headings other than 15.07, 15.12 and 15.15.

Example II

Men's or boys' shirts, knitted or crotcheted of tariff heading 61.05.
Rule: Change of Tariff Heading except from cotton fabrics and goods of heading 61.17.

Explanation:

These products will qualify as originating in COMESA if they are made from imported fabrics other than cotton, and also if they have not been made from parts and accessories of heading 61.17.

(vi) Goods of Particular Importance to Economic Development – [Rule 2(1) (c) of the Protocol]

The goods have been produced in the member States and should be designated by Council of Ministers of Trade as "goods of particular importance to the economic development of the member States" and should contain not less than 25% value-added, notwithstanding the provisions of the Value added Rule that require value added of at least 35%. Examples: include goods such as Portland cement and Machinery for preparing hides; etc.

(vii) Cumulation of Origin [Rule 2(3) of the Protocol]

For the purposes of implementing the Protocol on Rules of Origin, the member States shall be considered as one territory. Raw materials or semi-finished goods originating in any of the member States and undergoing working or processing either in one or more States shall, for

the purpose of determining the origin of a finished product, be deemed to have originated in the member State where the final processing or manufacturing takes place, provided they have undergone working or processing going beyond that referred to in Rule 5 of the Protocol.

In applying this rule, the evidence of originating status of raw materials or semi-finished goods imported from another member State is given by a Certificate of Origin issued by the Designated Issuing Authority in the exporting Member State.

(viii) Processes not conferring origin [Rule 5 of the Protocol]

The Protocol contains a list of operations and processes, which shall be considered as insufficient to support a claim that goods originate from a member State. The list is as follows:

(a) packaging, bottling, placing in flasks, bags, cases and boxes, fixing on cards or boards and all other simple packaging operations;
(b) (i) simple mixing of ingredients imported from outside member States
(ii) simple assembly of components and parts imported from outside the member States to constitute a complete product;
(iii) simple mixing and assembly where the costs of the ingredients, parts and components imported from outside member States and used in any of such processes exceed 60 per cent of the total costs of the ingredients, parts and components used.
(c) operations to ensure the preservation of merchandise in good condition during transportation and storage such as ventilation, spreading out, drying, freezing, placing in brine, sulphur dioxide or other aqueous solutions, removal of damaged parts and similar operations;
(d) changes of packing and breaking up of or assembly of consignments;
(e) marking, labelling or affixing other like distinguishing signs on products or their packages;
(f) simple operations consisting of removal of dust, sifting or screening, sorting, classifying and matching, including the making up of sets of goods, washing, painting and cutting up;
(g) a combination of two or more operations specified in sub-paragraph (a) to (f) of this Rule;
(h) slaughter of animals.

Explanation:

Products resulting from these operations and processes retain their foreign origin and are thus not entitled to preferential tariff treatment.

(ix) Split consignments [Rule 6(3) of the Protocol]

Unassembled or disassembled articles, which for transport or production reasons may have to be exported at different times shall for purposes of granting preference be treated as one article. This means that upon importation of the first consignment the importer should agree with the Customs authorities for the goods to be treated as one article and hence a single proof of origin (certificate) should be produced.

(x) Goods produced in Export Processing Zones (EPZs)

Goods produced in Export Processing Zones within member States shall be granted preferential tariff treatment if they meet the requirements of the COMESA Rules of Origin.

(xi) Goods Produced Under Licence

Goods produced under licence shall be granted preferential tariff treatment if they meet the requirements of the COMESA Rules of Origin. Companies manufacturing goods under licence of international firms should ensure that the outer package of the product shows the name and address of the company producing the products in the Member State. This will enable the goods in question to be considered as goods of COMESA origin

3.0 UNILATERAL TRADE PREFERENCES

3.1 The African Growth and Opportunity Act (AGOA)

3.1.1 Introduction to AGOA

The African Growth and Opportunity Act (AGOA) - is legislation enacted by the United States Congress that enables exporters in eligible Sub-Saharan African beneficiary countries to sell their goods on the U.S. market free of standard import tariffs. AGOA preferences allow almost 7,000 tariff lines (products) to enter the U.S. duty-free, subject to a number of basic requirements being fulfilled. AGOA preferences apply only to qualifying Sub-Saharan African countries that meet the AGOA eligibility criteria and Zambia is one of the 36 countries that are currently eligible.

3.1.2 AGOA and the Generalized System of Preferences

AGOA builds on the U.S. Generalized System of Preferences (GSP), one of many similar such arrangements around the world that offer preferential market access to developing countries. The exporter must be from an eligible Sub-Saharan African country that has AGOA ‘beneficiary’ status (i.e. not suspended or otherwise excluded)

3.1.3 Product Eligibility

AGOA covers more than 6,700 products based on the HTS-8 tariff classification. This includes approximately 5,100 products (tariff lines) that fall under the GSP as well as more than 1,600 tariff lines that are duty-free only for exports to the US from AGOA beneficiaries.). AGOA eligibility for non-textile articles is indicated by a "D" under the "Special" column of Column 1. This is located in the HTSUS and classified in Chapters 1 – 97. The list of AGOA eligible products can be found on the following link: https://agoa.info/about-agoa/products.html.

3.1.4 Rules of Origin

1) Qualifying Criteria for Non-Textile / General Goods

a) **Wholly Produced** - The product must be wholly the growth, product, or manufacture of the AGOA beneficiary country

b) **Wholly Produced" "Substantially Transformed** - The product must be a new or different article of commerce that has been grown, produced or manufactured in the beneficiary country

2) Local Processing Criteria

- ✓ The cost or value of the materials produced in the AGOA beneficiary country or any (two or more such) AGOA countries;
- ✓ The direct costs of processing operations performed in such AGOA country (or countries);
- ✓ Must be no less than 35% of the appraised value of that article at the time it enters the U.S;
- ✓ Up to 15% (of the 35%) of the appraised value at the time it enters the U.S. may comprise U.S. originating value and may be applied toward determining the percentage Products that are AGOA eligible, and meet the Rules of Origin, qualify to enter the U.S. duty-free

3) Direct Shipping to the United States

The article must also be imported directly from the AGOA beneficiary country into the customs territory of the U.S.

4) Exclusions - Insufficient Processing

An article cannot be considered originating by virtue of only having undergone:

- ✓ simple combining operations
- ✓ mere dilution with water or another substance that does not materially alter the substance of the article

US Customs will generally appraise the merchandise at the full value of the transaction, which includes the following components: Packaging costs, selling commission, royalty and licensing fees incurred by a buyer, the value of free assistance that may have been provided to the buyer conditional upon the sale; included under the "direct costs of processing" are the cost of labour, engineering or supervisory quality control, machinery costs

3.1.5 Qualifying Criteria for Textile and Apparel Goods

AGOA eligible sub-Saharan African countries looking to export textile and apparel duty-free into the U.S.A. under AGOA must first be certified as having complied for the 'Textile and Apparel' provisions. This entails establishing adequate and effective product visa systems to prevent illegal transshipment and the use of counterfeit documentation, as well as having instituted required enforcement and verification procedures.

Textiles and apparel are subject to their own Rules of Origin criteria as the 'general' rules do not apply.

Textiles: Yarns, fabric (of Chapters 50-60 and 63) from any AGOA beneficiary country classified as a 'lesser developed beneficiary country' qualify for AGOA preferences provided that they are wholly produced from locally made fibres, yarns, fabrics, or components knit-to-shape in such countries.

Apparel: Products of Chapter 61 and 62 may enter the U.S. duty-free under AGOA provided that the AGOA beneficiary country has implemented the required AGOA apparel visa system, and provided that the products can be classified under one of the following RoO categories (Categories 1 - 9):

Grouping 1: Apparel articles sewn or assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States: **Duty-free and quota-free treatment.**

Grouping 2: Apparel articles sewn or assembled and further processed in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States from yarns wholly formed in the United States: **Duty-free and quota-free treatment**.

Grouping 3: Apparel articles sewn or assembled in one or more beneficiary sub-Saharan African countries with United States thread from fabrics wholly formed in the United States and cut in one or more sub-Saharan African countries from yarns

wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both: **Duty-free and quota-free treatment.**

Grouping 4: Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or from components knit-to-shape in one or more beneficiary sub-Saharan African countries from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries, or apparel articles wholly formed on seamless knitting machines in a beneficiary sub-Saharan African country from yarns originating either in the United States or one or more beneficiary sub-Saharan African countries: **Duty-free and quota-free treatment within cap.**

Grouping 5: Under the Special Rule for LDBCs, duty-free access within cap is granted to apparel articles wholly assembled, or knit-to-shape and wholly assembled, or both, in one or more LDBCs, regardless of the country of the origin of the fabric or yarn used: **Duty-free and quota-free treatment within cap.**

Grouping 6: Cashmere sweaters: Sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries: **Duty-free and quota-free treatment.**

Grouping 7: Merino wool sweaters: Wool sweaters containing 50 per cent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries: **Duty-free and quota-free treatment.**

Grouping 8: Apparel articles wholly assembled from fabric or yarn not available in commercial quantities (that is, "in short supply") in the United States: Duty-free and quota-free treatment, if:

(a) Apparel articles that are both cut and assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country are subject to duty-free/quota-free treatment to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under NAFTA annex 401. The AGOA provision applies to apparel articles that would be originating goods and thus would be entitled to preferential duty treatment under the NAFTA tariff shift and related rules on the basis of the fact that the fabrics or yarns used

to produce them were determined to be in short supply in terms of the NAFTA;
Or:

(b) The President proclaims duty-free/quota-free treatment for apparel articles that are both cut and assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, if he has determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed such treatment.

Grouping 9: Hand-loomed, handmade and folklore articles: Products covered under this category will be determined through United States consultations with the beneficiary countries and must also be certified by the competent authority of the beneficiary countries as hand-loomed, handmade or folklore articles: **Duty-free and quota-free treatment.**

3.1.6 Compliance with other Requirements

Any goods that fall under the jurisdiction of the FDA, USDA and/or EPA may either be prohibited or restricted (require an import permit). Exporters are advised to check relevant Agency requirements prior to export. Shipment(s) must be in compliance with the requirements of other U.S. Government agencies enforced by U.S. Customs and Border Protection, including:

- ✓ **U.S. Food and Drug Administration (FDA):** The FDA regulates the importation of food, drugs, medical devices, animal feed and cosmetics.
- ✓ **U.S. Department of Agriculture (USDA):** The USDA Animal and Plant Health Inspection Service (APHIS) regulates compliance with phytosanitary regulations for plants and animals. The USDA Food Safety and Inspection Service (FSIS) regulates the safety of imported meat, poultry and egg products.
- ✓ **Environmental Protection Agency (EPA):** The EPA regulates the importation of pesticides, ozone-depleting substances, chemicals, vehicles, engines and fuels and waste products.

3.1.7 Required Documents for Shipments to the United States of America

Merchandise entering the United States of America must follow a two-step process:

- ✓ **Step One:** File the necessary documents to determine whether merchandise may be released from U.S. Customs and Border Protection (CBP) custody.
- ✓ **Step Two:** File the documents that contain information for duty assessment and statistical purposes.

All shipments to the U.S. must be accompanied by specific documents to meet the U.S. Customs and Border Protection requirements for the two-part process. The documents must be sent within 15 calendar days of the shipment's arrival at a U.S. port of entry. Entry documents must be filed at a location specified by the Port Director. Failure to provide the needed documents can lead to delays and fines.

Required Documents Checklist

- ✓ Any export form or license that is required by the country of export.
- ✓ Entry Summary (CBP Form 7501).
- ✓ Evidence of Bond (CBP Form 301). NOTE: The entry must be accompanied by evidence that a bond has been posted with CBP to cover any potential duties, taxes, and charges that may accrue.
- ✓ Entry Manifest (CBP Form 7533) or Application and Special Permit for Immediate Delivery (CBP Form 3461) or other form of merchandise release required by the Port Director.
- ✓ Proof of Country of origin for the purposes of:
    1. Country of origin marking OR
    2. Eligibility for a preference program
- ✓ Evidence of right to make entry. When the goods are consigned "to order," the bill of lading or an air waybill may serve as evidence of the right to make entry.
- ✓ The packing list showing quantity, Harmonized Tariff System (HTS) code number, item description, unit cost and total cost.

Other documents necessary to determine admissibility such as specific permits or licenses needed for certain products.

All required documentation can be found online on the U.S. Customs and Border Protection website, which is www.cbp.gov/document/publications/importing-united-states and https://www.cbp.gov/newsroom/publications/forms.

3.2 European Union (EU) General System of Preferences (GSP)/Everything But Arms (EBA)

3.2.1 Introduction to the European Union (EU) General System of Preferences (GSP) and Everything But Arms (EBA)

Standard GSP reduces EU import duties for about 66% of all product tariff lines.
Any developing country is eligible to benefit from Standard GSP unless:

- ✓ it has another type of special trade access to the EU granting the same tariff preferences as the scheme, or better, for substantially all trade; or
- ✓ it has achieved a high- or upper-middle income economy status during three consecutive years according to the World Bank classification.

Countries do not need to apply to benefit from Standard GSP as they are added or removed from the relevant list by the EU through a delegated regulation. The EU can withdraw Standard GSP in exceptional circumstances, notably serious and systematic violation of fundamental human rights and labour rights conventions.

There are three main variants (arrangements) of the scheme and this are:

a) the standard GSP scheme, which offers generous tariff reductions to developing countries. Practically, this means partial or entire removal of tariffs on two thirds of all product categories. Many key products, especially among agricultural products, are not covered by the standard GSP scheme (e.g., rice, bananas and sugar);
b) the "GSP+" scheme, in which enhanced preferences allow full removal of tariffs on essentially the same product categories as those covered by the general arrangement. These are granted to countries which ratify and implement core international conventions relating to human and labour rights, environment and good governance; and
c) the Everything but Arms" (EBA) scheme for least developed countries (LDCs), which grants duty-free quota-free access to all products, except for arms and ammunitions.

Under the general GSP and the GSP+ scheme, tariff preferences are either in form duty free access or reductions in the applicable standard tariffs and cover approximately 66% of tariff lines (at 8-digit level of the European Union Customs Code). Around 9% of tariff lines are not covered, while around 25% of tariff lines are already at MFN zero, meaning they are not relevant for GSP preferences.

Under the Everything but Arms scheme LDCs enjoy duty-free quota-free access to EU markets (except for arms and ammunitions, for which MFN duties range from 0% to 3.2%). This means 99.8% of all tariff lines are covered. Unlike other GSP arrangements, the EBA does not expire. A country is granted EBA status if it is listed as a Least Developed Country (LDC) by the United Nations Committee for Development Policy.

3.2.2 Preconditions and Legal Basis

For an export from Zambia to benefit from the EU GSP, four preconditions have to be met:

a) The goods must above all originate in Zambia in accordance with the EU GSP rules of origin.
b) A valid proof of origin must be submitted (certificate of origin Form A or an invoice declaration, or an exporter declaration under the new REX system
c) The goods need to be shipped directly to the EU (with certain exceptions) and should not be altered or transformed when transported from Zambia to the EU.
d) The country has to comply with a series of administrative obligations (i.e. the notification of the competent authorities issuing the certificate of origin Form A, and granting administrative cooperation in respect of the verification of proof of origin).

3.2.3 Rules of Origin

i) Wholly Obtained Goods

The first type relates to those goods that are "wholly produced" in one single country. In most cases, this rule applies to basic materials and natural products and not to manufactured goods. The EU GSP defines the following as being considered as "wholly obtained" in a beneficiary country:

(a) mineral products extracted from its soil or from its seabed;
(b) plants and vegetable products grown or harvested there;
(c) live animals born and raised there;
(d) products from live animals raised there;
(e) products from slaughtered animals born and raised there;
(f) products obtained by hunting or fishing conducted there;
(g) products of aquaculture where the fish, crustaceans and mollusks are born and raised there;
(h) products of sea fishing and other products taken from the sea outside any territorial waters by its vessels;
(i) products made on board its factory ships exclusively from the products referred to in point (h);
(j) used articles collected there fit only for the recovery of raw materials;
(k) waste and scrap resulting from manufacturing operations conducted there;
(l) products extracted from the seabed or below the seabed which is situated outside any territorial sea but where it has exclusive exploitation rights;
(m) goods produced there exclusively from products specified in points (a) to (l)."

ii) Sufficiently Worked or Processed Products

Products that are not wholly produced in a single country are made with one or more imported materials. The Rules of Origin define exactly what kind of transformation must occur to the imported material in order for the exported product to be considered as originating in the country of exportation. Substantial transformation is normally expressed or defined by one, or a combination of, the following methodologies: a required change in tariff classification to the imported material; a required degree of value that must be added to the imported material in relation to the finished product; or the imported material must undergo a specifically listed operation or a particular form of manufacturing (processing rule).

Article 45 of the Commission Delegated Regulation 2015/2446 refers directly to Annex 22-03, the so-called list rules. The list rules define the rules of origin applicable, depending on the Harmonised System (HS) classification of the goods concerned.

Unlike other Rules of Origin systems, e.g. those of the COMESA Free Trade Area, the EU GSP Rules of Origin do not contain horizontal rules of origin on sufficiently worked or

processed products that are applicable to all product categories. All origin rules are to be found exclusively in the product-specific list laid down in a special Annex

iii) Change of Tariff Classification Rule

Based on the HS, the change of tariff classification rule (CTC) works on the assumption that if an imported material changes its tariff classification (at a certain level) in the course of its processing, it has been sufficiently transformed. For example, the reference to "Heading" in the EU GSP rules of origin refers to the 4-digit HS heading. If the main article is classified in 8403.10 and the parts in 8403.90, they are part of the same heading for the purpose of the origin rule.

Examples:

- ✓ "Manufacture from materials of any chapter, except that of the product";
- ✓ "Manufacture from materials of any heading, except that of the product";
- ✓ "Manufacture from materials of any heading";
- ✓ "Manufacture from materials of any heading, except that of the product and of heading 8522";
- ✓ "Manufacture from materials of any sub-heading, except that of the product".

Note: Originating material does not have to be transformed according to CTC rules. For example, if a "change in heading" is required for a product, then this requirement only applies to non-originating inputs. Inputs that are originating in Zambia can be used even if they fall under the same HS heading.

iv) "Ex-Works Price"-Based Value Content Criteria

Unlike other Regional Trade Agreements (RTAs) or Free Trade Agreements (FTAs), the EU GSP Rules of Origin (RoO) do not define the value added to the imported material, but start from the "Ex-works price" of the product obtained and refer to the value of non-originating materials used. The ex-works price is the price paid for the product ex-works to the manufacturer in whose undertaking the last working or processing is carried out.

From this exworks price, the value of the non-originating materials has to be deducted. This allows goods to originate in the beneficiary country by respecting a prescribed maximum value of non-originating material incorporated into the final product.

The EU approach, focusing on the final ex-works price of the product and the value of the materials used, avoids some of the difficulty calculations necessary to assess the value of overhead and production costs. Non-originating materials used can be taken into consideration using the customs value at the time of importation. The reference price of the product (consignment) is its ex-works price.

A negative aspect of the value added criterion is the potential for changes to prices of imported materials or to the ex-works prices of the products, e.g. due to exchange rates or other factors. When applying the value added rule, operators might have to reveal their price calculations (which are possibly viewed as trade secrets) to the customs administration in the process of verification of origin.

Examples of value content rules:

- ✓ "Manufacture in which the value of all the materials used does not exceed 50 % of the ex-works price of the product" (e.g. many industrial products from Chapters 25 to 97 with exception to textiles and garments of Chapters 50 to 63);
- ✓ "Manufacture in which the value of all the materials used does not exceed 70 % of the ex-works price of the product" (e.g. for assembly operations in the machinery sector, for LDCs only)

3.3 Chinese Market Access Initiative for LDCs

3.3.1 Introduction to the Chinese Market Access Initiative for Least Developed Countries

The Hong Kong Ministerial Declaration provides a commitment on developed countries and developing countries in a position to do so to grant Least Developed Countries (LDCs) duty free and quota free (DFQF) market access for products originating from all LDCs. Based on this, China grants preferential market access for products originating from LDCs that have diplomatic relations with China.

3.3.2 Rules of Origin

i) Wholly Obtained Products

The following goods shall be considered as wholly obtained or produced entirely in a beneficiary country:

(a) live animals born and raised in a beneficiary country;
(b) goods obtained in a beneficiary country from the animals specified in sub-paragraph (a) above;
(c) plants and plant products harvested, picked or collected in a beneficiary country;
(d) goods obtained by hunting, aquaculture, trapping or fishing in a beneficiary country;
(e) fish, shellfish and other marine life taken from the high seas by vessels registered or recorded in a beneficiary country and entitled to fly the flag of that country;
(f) goods obtained from the processing of goods listed in sub-paragraph (e) above on board factory ships registered or recorded in a beneficiary country and entitled to fly the flag of that country;

(g) minerals and other naturally occurring substances extracted in the beneficiary country or goods, exclusive of fish, shellfish and other marine life, taken or extracted from the waters, seabed or subsoil beneath the seabed outside the territorial waters of a beneficiary country, provided that the beneficiary country has the right to exploit such waters, seabed or subsoil beneath the seabed.
(h) used goods collected in a beneficiary country which are consumed in that country and fit only for the recovery of raw materials;
(i) waste and scrap derived from processing or manufacturing operations in a beneficiary country and fit only for the recovery of raw materials;
(j) goods obtained through processing in a beneficiary country exclusively from goods referred to in sub-paragraphs (a) to (i) above.

ii) Criteria for Not-Wholly Produced Products

The determining criteria for "substantial transformation" is "Regional Value Content" (RVC) or "Change in Tariff Classification" (CTC). It must be noted that the goods listed in the "Product Specific Rules" (PSR) are not subject to the aforementioned criteria. The criterion of RVC means that the regional value content of goods, expressed as a percentage, is no less than 40%. The criterion of Change in Tariff Classification means that the heading of all non-originating materials used in the production or manufacture of goods in the territory of beneficiary country is different from that of the goods produced

The Regional Value Content is calculated as follows:

$$RVC = \frac{V - VNM}{V} x100\%$$

Where:

- ✓ V is the transaction value of the goods adjusted on a F.O.B. basis in accordance with Customs Valuation Agreement.

- ✓ VNM is the value of the non-originating materials. VNM is the cost of importation, the freight and insurance for transportation to the destination port or place, including the value of materials of undetermined origin. When the producer of goods acquires non-originating materials in the territory of the beneficiary country, the transaction value of such materials, in accordance with Customs Valuation Agreement, shall not include freight, insurance, packing costs and any other costs incurred in transporting the materials from the supplier's warehouse to the producer's location.

iii) Insufficient Working Process for Conferring of Origin

Goods shall not be considered as originating goods, only be reason of undergoing one or more of the following operations or processes, without any other operations or processes:

(a) operations or processes to ensure preservation of goods in good condition for the purpose of transport or storage;
(b) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
(c) changing package, unpacking or combining package
(d) washing, cleansing, removal of dust, oxide, oil, paint or other cover;
(e) ironing or pressing of textiles or textile products
(f) simple painting or polishing;
(g) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
(h) operations to colour sugar, to add flavour, or to form sugar lumps; partial or total powdering crystallized sugar;
(i) peeling and removal of stones and shells from fruits, nuts and vegetables;
(j) sharpening, simple grinding or simple cutting;
(k) sifting, screening, sorting, classifying, grading, matching (including combining set goods), rip cutting, curving, winding, unfolding;
(l) simple placing in bottles, cans, flasks, bags, cases, boxes; fixing on cards or boards; and all other simple packaging operations;
(m) affixing or printing marks, labels, logos, and other like distinguishing signs on products or their packaging;
(n) simple mixing of products, whether or not of different kinds; mixing sugar with other materials;
(o) testing or calibrating;
(p) mere dilution with water or other substances, which does not materially alter the characteristics of the goods;
(q) drying, salting (or keeping in brine), refrigeration or freezing;
(r) slaughter of animals; and
(s) combination of two or more operations specified in subparagraphs (a) through (r).

3.3.3 Direct Shipment

Direct consignment in the regulation means that the originating goods are transported directly from the beneficiary country to ports of entry in China without going into any other countries or regions other than China or the beneficiary country. Originating goods of the beneficiary country which are transported to China through other countries or regions, with or without trans-shipment or temporary storage shall be determined as direct consignment, provided that the following requirements are satisfied at the same time:

1. the goods do not enter into trade or consumption there;

2. the goods do not undergo any operation there other than unloading, reloading or any other operations required to keep them in good condition;
3. the goods shall be subject to the control of customs or related government competent authorities in such countries or regions; and
4. the goods which enter other countries or regions shall stay no longer than 6 months.

3.3.4 Documentary Requirement for Proof of Direct Shipment

The following documents are required for proof of direct shipment, including when the transport of consignment involves transit through one or more intermediate countries:

1) A valid Certificate of Origin. If Customs has received the electronic data information of a Certificate of Origin of a beneficiary country via electronic data exchange system, it is not compulsory for importers to submit a Certificate of Origin for goods of that beneficiary country. For advance ruling goods, importers may submit a Declaration of Origin rather than a Certificate of Origin;
2) Commercial invoice of the goods;
3) Transport documents covered the whole route from the beneficiary country to ports of entry in China;
4) For goods transported into the territory of China through other countries or regions, importers shall submit certified documents issued by customs of that country or region or other documents accepted by China customs. Those certified documents mentioned above are not compulsory when customs has obtained electronic data information of certified documents via related electronic data system for transhipment. If the transport documents are determined by China customs to be sufficient to fulfil the requirement of the Direct Consignment, importers are not required to submit] certified documents.